

ELEMENT 8



MEMORANDUM

To: All Local Workforce Investment Area Chief Elected Officials, Local Workforce Investment Board Chairs, and Arkansas Workforce Center Operators and Partners

From: Artee Williams, Director

Date: November 30, 2010

RE: Workforce Investment Act of 1998 – Complaint and Processing Procedures

1. Purpose: To transmit to the Chief Elected Official, Local Workforce Investment Boards, Arkansas Career Development Operators, and Arkansas Career Development Network Partner Agencies the Arkansas Workforce Investment Board's policies and standard procedures on processing complaints.
2. General Information: The Arkansas Workforce Investment Board will:

- a. Enforce the provision that individuals may not be discriminated against on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under the Title I of the Workforce Investment Act (WIA) of 1998, on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrants authorized to work in the United States, or his/her participation in any WIA Title I – financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIA Title I – financially assisted program or activity;
 - Providing opportunities in, or treating any person with regard to, such a program or activity; or
 - Making employment decisions in the administration of, or in connection with, such a program or activity.
- b. Process complaints alleging discrimination in violation of any applicable Federal, State, or Local law in accordance with those laws and implementing regulations 29 CFR Part 37.70, if applicable. Until the Method of Administration has been approved, all discrimination complaints shall be processed in accordance with policies prescribed in the attached policy statement.

AW:dl

Complaint Processing Regarding Retaliation

A recipient shall not discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has filed a complaint, opposed a prohibited practice; furnished information; assisted or participated in any manner in an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privileges secured by, the nondiscrimination and equal opportunity provisions of WIA or this part (see nondiscrimination policies and procedures page 17(a) thru page 18(b)).

COMPLAINT PROCESSING PROCEDURES

Reference: 37.77 & 37.25(d)

Purpose: To transmit to all WIA State and local level recipients and designated EO Officers, the standard procedures to be used when processing complaints of discrimination filed against a WIA recipient as defined under 29 CFR Part 37, Subpart A, 37.76(3).

Filing Complaints of Discrimination

- (a) Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or 29 CFR Part 37 may file a written complaint, either by him/herself or through a representative.
- (b) A complainant may file a complaint with either:
 - (1) WIA Equal Opportunity Manager, P. O. Box 2981, Little Rock, Arkansas 72203, (501) 682-3106/Local Level WIB Equal Opportunity Officer or
 - (2) The Director of the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave. NW, Room N-4123, Washington, D.C. 20210, or the address listed in 29 CFR Part 37.
- (c) Complaints shall be filed within 180 calendar days of the alleged violation unless such time limitation is waived by the Director of CRC for good cause shown. The WIA EO Manager shall not accept complaints filed after the 180-day limit unless the complaint includes written notice of a waiver obtained from the Director of CRC. If a complainant submit a complaint that is untimely (over 180 days) the complaint will be processed as usual and submitted to CRC for an extension of time.
- (d) All complaints shall be submitted in writing and filed in a timely manner. A complainant may file a complaint by:
 - (1) completing and submitting a CRC Complaint Information Form (OMB approval number – deleted)
 - (2) submitting a written document containing the information required by 29 CFR Section 37.73 which includes:
 - (A) the complainant's name and address, or other means of contacting the complainant;
 - (B) the identity of the respondent;
 - (C) a description of the complainant's allegations with sufficient detail to allow the WIA EO Manager to determine whether the WIB has jurisdiction, whether the complaint was filed on time, and whether the complaint has apparent merit, and
 - (D) the complainant's signature or the signature of complainant's representative.
- (e) Both the complainant and the respondent have the right to representation by an attorney or other individual of their choice. The WIB shall not be responsible for any costs incurred by either the complainant or the respondent in obtaining representation.

Jurisdiction of Complaints of Discrimination

- (a) The WIA EO Manager/LWIB EO Officer shall accept and investigate only those discrimination complaints alleging a violation of the WIA Section 188, 29 CFR Part

37, the Age Discrimination Act, Section 504 of the Rehabilitation Act, and Title IX of the Education Act.

- (b) If a complaint filed with the WIA EO Manager alleges discrimination by a recipient on a basis that is both prohibited by WIA Section 188 and by a federal law enforced by a federal grant-making agency other than the U.S. Department of Labor, and the recipient is funded in whole or in part by that other federal agency, the WIB shall refer the complaint to the other federal agency for processing under the other federal agency's procedures.
- (c) If the WIA EO Manager determines that the WIA does not have jurisdiction over the complaint, he/she shall provide written notification to the complainant which includes:
 - (1) a statement of the reasons for the determination; and
 - (2) a notice that the complainant may file a complaint with CRC within 30 days of the receipt of the notification.

Processing Complaints of Discrimination

This policy sets forth a three-level system which allows any person or organization to file a complaint at either the local level, i.e., LWIB EO Officer, the state level, i.e., WIA EO Manager, or federal level, i.e., Director of CRC.

The complaint processing procedures will provide for the following:

- An initial, written notice to the complainant that includes (1) an acknowledgment that the recipient has received the complaint, and (2) notice that the complainant has the right to be represented in the complaint process;
- A written statement of the issue(s), provided to the complainant, that includes (1) a list of the issues raised in the complaint, and (2) for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;
- A period of fact-finding or investigation of the circumstances underlying the complaint;
- A period during which the LWIB EO Officer attempts to resolve the complaint. Alternative Dispute Resolution (ADR) will be included among the methods made available to resolve the complaint;
- A written Notice of Final Action, provided to the complainant within 90 days (45 days LWIB level/45 days State level) of the date on which the complaint was filed, that includes: (1) for each issue raised in the complaint, a statement of either the recipient's decision on the issue and an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue; and (2) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

If the complainant elects to file with CRC rather than with the recipient, the recipient may if requested, assist the complainant in filling out CRC's Complaint Information Form.

If the complainant elects to file at the state level, the complaint will be referred to the proper recipient.

If the complainant elects to file a complaint at the local level (LWIB), the LWIB EO Officer shall review the complaint for accuracy and completeness, and send a copy to the State WIA EO Manager. From the date of receipt, the LWIB EO Officer has 45 days to attempt to resolve the complaint.

All complaints alleging discrimination shall remain with the LWIB EO Officer for a period not to exceed 45 days. During this period, the LWIB EO Officer shall make every effort to resolve the complaint. At this time the LWIB EO Officer must inform the complainant of the two procedures that may be used in an effort to resolve the complaint through Alternative Dispute Resolution (ADR) or the customary complaint procedure. Should the LWIB EO Officer fail to conciliate the complaint, it shall be forwarded to the State WIA EO Manager by the end of the 45th day after the date of filing.

The State will conduct an investigation in accordance with the WIA Policy. The State will render a decision within 45 days.

If the complainant is not satisfied with the State's resolution, the complainant will be informed of his or her right to file with CRC within 30 days.

Alternative Dispute Resolution of Complaints of Discrimination

- (a) The complainant may choose to use the WIB Discrimination Complaint Alternative Dispute Resolution (ADR) procedure rather than the complaint processing procedure.
- (b) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director of CRC.
- (c) A party to an agreement reached under the WIB ADR process may file a complaint with the Director of CRC in the event the agreement is breached following the process described in 29 CFR Section 37.76(c). See Mediation information for more detailed information regarding Mediation.

WHERE/WHEN TO FILE

Workforce Investment Act 1998, Section 188 prohibited discrimination for employment based on:

Race, Color, Religion, Sex, Age

National origin, Disability, Political affiliation or belief

Time for filing

Election of Recipient
(Three level system)
Level (1)

Level (2) – LWIB Level
If the complainant elects to file

Timeframe ADR

PROCEDURES

Complaints alleging discrimination based on race, color, or national origin in violation of Title VI of the Civil Rights Act of 1964, or age, in violation of the Americans with Disability Act of 1990, must be processed in accordance with the DOL regulations at 29 CFR Part 37 and 28 CFR Part 35 which requires that the complaints be forwarded to the Civil Rights Center (CRC), the Education Amendments of 1972, and the Rehabilitation Act of 1973.

180 days from the date of the alleged discrimination actions. Complaints initiated more than 180 days from the date of the alleged discrimination may be extended for good cause only by the CRC.

At the Federal level, the State EO/LWIB EO Officer may assist with filling out CRC's Complaint Information form, if requested by complainant. If the complainant elects to file.

At the LWIB level from the date of receipt, the LWIB EO Officer has 45 days to attempt to resolve the complaint. Alternative Dispute Resolution (ADR) is included in this timeframe.

If the complainant elects the ADR method to resolve the complaint, the LWIB has ten (10) working days to complete the process.

Assignment of Mediator

Within two (2) working days after request.

Agreement to Mediate

Within two (2) working days of the assignment of the mediator.

Concluding mediation process

A settlement agreement shall be prepared and signed within five (5) working days.

Level (3) – State Level

At the State level, if the complainant elects to file, the complaint will be referred to the proper recipient and if the complaint is elevated to the state level from the LWIB level the state EO officer will have 45 days to attempt to resolve the complaint, and if not resolved at this level, the complainant will be made aware that he/she has the right to file their complaint with CRC.

DOCUMENTATIONS

1. Complaint Information Form
2. Americans with Disabilities Act – Complaint Procedures
3. Complaint Log
4. See Training Agenda on Investigative Techniques in Element 2
5. See Memorandum of Understanding in Element 3 – Page 10
(Behind Arkansas Career Development Network – One-Stop Center Development and Certification Instrument)
6. Mediation Information
7. Applicant/Participant Complaint Procedure Chart
8. Mediation Form
 - A. Agreement to Mediate
 - B. Mediation Settlement Agreement
 - C. Non-Settlement Decision
9. Mediation Poster/Pamphlet