

ELEMENT 9



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: Corrective Actions/Sanctions

1. Purpose: To provide information on how the standards for corrective and remedial actions are to be applied when violations of WIA Section 188 or 29 CFR Part 37 are found.

2. General Information:

CORRECTIVE ACTIONS may occur whenever a recipient is cited as the result of an EO monitoring review or complaint investigation being conducted. If discrimination is found, a conciliation agreement and corrective action plan will be required. The corrective action must address the particular act of discrimination, must correct the discrimination, and must include timetables by which to correct the discrimination. A written assurance must accompany a corrective action (to help ensure that the discrimination does not recur) stating that the recipient will cease in its discriminatory practices.

SANCTIONS after all attempts to provide assistance and correction of deficiencies fail, the imposition of sanctions will be considered. The sanctions imposed for noncompliance will be on a case-by-case basis. And may include any or all of the following:

- a. Imposition of reparation for discriminatory practices.
- b. Establishment and issuance of policies as applicable to the violation.
- c. Placement into a training program or hire into a vacant position for which one may have been qualified but denied.
- d. Discontinuing referral or participants to sites against which discrimination allegations have been alleged and proven.
- e. Removal of participants from site refusing to implement corrective actions.

When necessary, the case will be referred to the U.S. Department of Labor, Civil Rights Center for enforcement or recommendation for suspension of funds until compliance is met.

AW:dl

See nondiscrimination policies and procedures page 6(e). For more detailed information see pages 33-34.

CORRECTIVE ACTIONS/SANCTIONS

Reference: 37.54(d)(2)(vii)

- (a) As part of the Notice of Final Action, the WIB may impose any corrective or remedial action, which may be, imposed by the Director of CRC under 29 CFR Section 37.94.
- (b) In addition to the corrective actions and remedies described in 29 CFR Section 37.94, the WIB may require that the respondent complete one or more of the following:
 - (1) develop an appropriate equal opportunity policy;
 - (2) remove any discriminatory information from the complainant's records; and
 - (3) provide equal opportunity training for all staff members.
- (c) the respondent shall inform the WIB within ten days of receipt of the Notice of Final Action that it has accepted the WIB's resolution of the complaint and that it will complete the required corrective actions listed in the Notice.
- (d) If the complaint involved discrimination against an applicant for employment, a respondent may be required by the WIB to make a written offer of employment of the type and grade denied to the applicant, unless the record indicates the applicant would not otherwise have been hired. If the employment is accepted, the appointment may be retroactive, with back pay, from the date the applicant would have been hired to the date of actual employment. The applicant may be deemed to have been employed from the retroactive date for all purposes except for meeting a probationary or trial employment period.
- (e) Monetary relief required by a Notice of Final Action may not be paid from federal funds.

Sanctions

If the WIB finds a recipient to be in violation of the nondiscrimination and equal opportunity provisions of the WIA, or such entity has not accepted a suggested resolution or conciliation agreement, or has breached an establishment resolution or conciliation agreement, the WIB may impose sanctions.

- (A) If no findings are reported, the monitoring report will be closed out and the monitoring agency will send a close out letter to the monitored entity with the report. If there are findings, a letter closing the report will be issued within 10 calendar days of the receipt of the last response. If corrective action is determined acceptable, the close out letter will constitute final action on the report.
- (B) If, after two (2) responses from the monitored entity, corrective action is determined to be inadequate and findings are unresolved, a final determination will be written which will include identification of the unresolved issues and identify what steps are to be taken as a result of the unresolved issues. Within ten (10) calendar days, copies of the letter and all related written reports and communication will be sent to the monitored

entity, Workforce Investment Board, Board Chair, the monitoring agency's resolution staff, and the Department of Labor, if applicable.

- (C) If sanctions are imposed, the monitored entity has the option of appealing through the WIA grievance process. Ten (10) calendar days after the final action on the grievance or the notification of imposed sanctions, copies of the report, responses and other related written communication will be mailed to the local Workforce Investment Board Chairperson.

DOCUMENTATION

1. See Element 7 for follow-up monitoring to ensure compliance.
2. See Element 7 for corrective action and recommendation procedures.