**EQUAL OPPORTUNITY**

**Chapter 7.1: Discrimination Complaints (29 CFR 38.69 - 38.97)**

**Summary**
This policy sets procedures for handling verbal and written discrimination complaints and applies to all recipients of WIOA Title I funds.

**Relevant Laws, Rules, or Policies**
[29 CFR 38](https://www.govinfo.gov/content/pkg/FR-2016-12-02/pdf/2016-27737.pdf)
[MN Stat. 363A.02](https://www.revisor.mn.gov/statutes/?id=363A.02&year=2012)
[DEED WIOA Policy Manual Chapter 7.2 Program Complaints](https://apps.deed.state.mn.us/)

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**Policy**

It is the policy of the Minnesota Department of Employment and Economic Development (DEED) to assure nondiscrimination and equal opportunity (EO) in the operation and administration of all programs, services, benefits, and activities. All recipients must comply with the complaint procedures for handling verbal and written discrimination complaints set forth below.

**Applies to**

* Recipients include, but are not limited to:
* State-level agencies that administer or are financed in whole or in part with WIOA Title I funds
* State Workforce Agencies (Unemployment Insurance (UI)
* State and Local Workforce Development Boards (WDBs)
* Local Workforce Development Area (LWDA) grant recipients
* One-Stop Operators
* Providers of services and benefits, or training funded or authorized under WIOA, including eligible training providers
* On-the-Job-Training (OJT) employers
* Job Corps contractors and center operators, excluding the operators of federally operated Job Corps centers
* Job Corps national training contractors
* Outreach and admissions agencies, including Job Corps contractors that perform these functions
* Placement agencies, including Job Corps contractors that perform these functions
* One-Stop partners to the extent that they participate in the One-Stop delivery system

**Complaint Filing**

Any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIOA may file a written complaint, either by themselves or through a representative with the recipient or the Department of Labor (DOL) - Civil Rights Center (CRC). Examples of who may file:

* Applicant/registrant for aid, benefits, services, or training
* Eligible applicants/registrants
* Participants
* Employees
* Applicants for employment
* Service providers or eligible service providers (the organization involved may be attributed a racial, national origin, or other characteristic entitled to protection under WIOA).

**Complaint Types**

The majority of WIOA complaints can be determined to be either a:

1. Discrimination Complaint, which is processed according to WIOA/CRC regulations, or a
2. Program Complaint, which is processed according to the Department of Labor (DOL) Employment and Training Administration's (ETA) regulations. NOTE: See Policy 7.2: Program Complaints.

A complaint of discrimination may be filed as a:

1. Individual Complaint - filing by one individual alleging that they have been or is being subjected to discrimination.
2. Class Action Complaint - filing by one or more individuals alleging discrimination not only against themselves but also against a group of similarly situated individuals (must have the signed consent of all individuals in the complaint.)
3. Third Party Complaint - filing by a group or individual alleging discrimination against another group or individual (must have the signed consent of all individuals involved.)

**Timing of Complaint**

Any individual who believes that they have been discriminated against has the right to file a complaint. The complaint must be submitted in writing within one hundred eighty (180) days of the alleged violation. Extension of the one hundred eighty (180) days filing time may be granted by the Director of the CRC for good cause shown by the complainant.

**WIOA Jurisdiction**

Establishing jurisdiction under WIOA:

* The respondent (agency/service provider) is a WIOA recipient as defined in 29 CFR 38.
* The complaint was filed within the required 180-day period, or the Director of CRC has granted an extension waiver; and
* The complaint issue (basis) is covered under section 188 of WIOA Title I.

***Handling Jurisdiction (29 CFR 38.1)***

* *Dual Jurisdiction* - When the complaint alleges discrimination on a basis that is prohibited by WIOA Title I and a Civil Rights Act enforced by a federal grant-making agency other than the DOL, such as the Department of Education (DOE), then CRC and the grant-making agency have dual jurisdiction over the complaint. When dual jurisdiction occurs, the CRC Director or the WIOA Title I program provider will refer the complaint for processing to the grant-making agency responsible for the implementation.
* *Sole Jurisdiction* - Where the complaint alleges discrimination on a basis that is prohibited by WIOA section 188 but not by any civil rights laws enforced by a federal grant-making agency, then the CRC has sole jurisdiction over the complaint. In this case, the CRC or the recipient will retain the complaint and process it according to 29 CFR Part 38.

***Determining the type of jurisdiction***

* Identify the alleged action of discrimination;
* Identify the entity (program or activity) in which the alleged discriminatory decision/action occurred;
* Identify the primary source of federal financial assistance of the entity against which the complaint is filed;
* Establish whether the basis of the alleged discrimination involves one or more of the protected bases such as race, sex, national origin, color, disability or age, religion, or political affiliation;
* Establish whether the allegation(s), if true, would violate WIOA Title I section 188 or any of the following: Title VI; Title IX; Section 504; The Americans with Disabilities Act of 1990, as amended; or the Age Discrimination in Employment Act.

***Determination of no jurisdiction***

If the WIOA Title I program provider determines it has no jurisdiction over a complaint, it must immediately send the complainant a written "Notice of Lack of Jurisdiction." The WIOA Title I program provider must include in the document the reason(s) for the determination and notice that the complainant has a right to file a complaint with the CRC within 30 days of receiving the Notice of Lack of Jurisdiction.

*Non-WIOA Title I Complaint:* If a complaint is determined to be a non-WIOA Title I complaint, such as on a non-prohibited basis, the complaint is processed by the procedures approved by the non-WIOA Title I funding authority. See 20 CFR Subpart F, 667.600(a)(b).

**Federal and State Requirements**

Section 188 of the Workforce Innovation and Opportunity Act (WIOA) prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in any WIOA Title I-financially assisted program, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.

Minnesota State Law prohibits discrimination on the personal characteristics covered under WIOA and on the basis of creed, marital status, status with regard to public assistance, familial status, or sexual orientation (M.S. 363A.08; M.S. 363A.12).

A written policy must be in place setting forth the complaint resolution procedures prescribed by the regulations, including how the complaint processing procedures are made available to individuals with disabilities.

Each WIOA program provider must develop, publish, and maintain a complaint procedure regarding program services and discrimination.

**Responsibilities of Local Workforce Development Area (LWDA) EO Officer**

* Ensuring the complaint processing procedures are implemented.
* Ensuring complainants are provided notice of their rights, including the rights: to representation, to present evidence, to question information provided by others who present evidence, and to file with the CRC when they are not satisfied with an agency's decision.
* Ensuring complainants are provided a copy of this "Discrimination Complaint Policy and Procedures."
* If the complainant chooses Alternative Dispute Resolution (ADR), make certain the arrangements for ADR are completed in a timely fashion, including enough time to complete an investigation if ADR is unsuccessful.
* Ensuring that staff who interact with the public are aware of and properly implement the complaint procedures.
* Ensuring that persons, organizations, and agencies have notice that they may not discharge or retaliate in any manner against any person because that person filed a complaint, instituted any proceeding related to the Act, testified, or is about to testify, in any proceeding or investigation, or has provided information or assisted in an investigation.

**Discrimination Complaint Procedures**

***Verbal Discrimination Complaint***

* An applicant/participant's first attempt at resolution of a discrimination issue should be to make a verbal complaint at the local level. An oral attempt at resolution should take place before filing a written complaint. Note: if a complainant bypasses the local level and files a complaint of discrimination with the State-level EO Officer, the complaint may be referred to the local level.
* Upon receipt of a verbal discrimination complaint, an impartial member of staff should be designated to investigate the issue(s) and meet with the complainant so that, if possible, an appropriate resolution can be achieved. Note: the complainant is encouraged to attend the meeting, but the complainant's failure to do so should not preclude the complainant's right to request a hearing on the subject.
* The complainant must be advised of his or her rights, including the right: to representation, to present evidence, to question others who present evidence, and to file a complaint with the CRC when not satisfied with the agency's decision.
* If the complaint is mutually resolved at the verbal level, the staff member must: (1) write a brief report for the file stating the issues and resolution. The matter will then be considered closed.
* If the complaint is unresolved at the verbal level, the Local Workforce Development Area (LWDA) EO Officer will review the submitted allegation. If the complaint has apparent merit - that the allegation, if true, would violate a WIOA prohibited basis, the complainant must be directed to submit a written complaint for the complaint to proceed to the next step.

**Written Discrimination Complaint**

The complainant may file a written discrimination complaint with the:

* WIOA Title I local program provider and Local EO Officer;
* State-level EO Officer; or
* Director, Civil Rights Center
* The complainant may file directly with the State-level EO Officer, however, in most cases, the complaint will be referred to the local level for a decision before accepting it at the state level.
* Should the complainant opt to file directly with the CRC, staff shall assist the complainant, if requested, in completing the Complaint Form. For those individuals not requesting assistance, staff shall provide the necessary complaint forms, addresses, etc.
* DEED's Complaint Form (linked below) may be used when filing a complaint with the local-level EO Officer, the State-level EO Officer, or the CRC. However, a complainant is not required to use the written discrimination complaint form as long as he or she provides all necessary information.

The written complaint must be signed, dated, and contain:

* Complainant name/address and phone number or other means of contact;
* Individual/entity the complainant alleges is responsible for the discrimination;
* A written statement of the allegations in sufficient detail to determine whether:
* The complaint is covered as applicable under CRC or another jurisdiction;
* If other proceedings have commenced or have been concluded, including the dates, authorities, and other pertinent information;
* The complaint is timely filed;
* The complaint has apparent merit ("apparent merit" signifies that the allegation of discrimination if proven to be true, would violate WIOA regulations. Note: there is no apparent merit if the allegation of discrimination does not reference a basis prohibited under WIOA Title I Section 188).
* In the event the complainant is unable to put the complaint in writing, an alternative method of obtaining written documentation from the complainant must be pursued and may include assistance by agency staff or the complainant's representative.
* All written complaints, concerns, or issues alleging discrimination must be reported to the State-level EO Officer.
* All written complaints, concerns, or issues alleging discrimination must be reported on the local Discrimination Complaint Log.
* The State-level EO Officer must promptly notify the CRC when any administrative enforcement actions or lawsuits are filed against it alleging discrimination.

**Local EO Officer Review/Investigation**

* Upon receipt of a written complaint, an initial written notice must be provided to the complainant that contains:
* Acknowledgment that the recipient has received the complaint;
* Notice that the complainant has the right to be represented in the complaint process;
* A written statement of the issue(s) that includes:
	+ A list of the issues raised in the complaint, and
	+ For each such issue, a statement about whether the recipient will accept the issue for investigation or reject the issue, and the reason(s) for each rejection, such as lack of jurisdiction, untimely, or no basis for discrimination.
* An "impartial decision-maker" is required to investigate and process complaints. The person investigating the case must not be the person who has allegedly committed the adverse action against the complainant.
* Upon receipt of a written complaint, notice must be provided to the complainant that he/she, as a means of resolving the complaint, has the right to choose between Alternative Dispute Resolution or investigation.

**Alternative Dispute Resolution (ADR)**

* ADR is a confidential process that encourages open communication and allows disputes to be resolved in a less adversarial manner.
* The local EO Officer will provide information and mediation resources regarding ADR to parties requesting this method of resolving discrimination complaints.
* The choice of whether to use ADR or the investigation process rests with the complainant. NOTE: If the complainant chooses ADR, the State-level EO Officer is still obligated to review internal processes to determine if corrective action is needed to safeguard against potential future inequities.
* The complainant must inform the local EO Officer within five (5) days of his/her choice between ADR and the investigatory process.
* It is not mandatory that the parties agree.

If the complainant's choice is ADR, the local EO Officer will:

* Choose an impartial mediator who is a neutral and impartial third party, acceptable to both parties, and will assist the parties in resolving their dispute.
* Determine the location of the ADR;
* Schedule the date and time of ADR;
* Notify both parties of the ADR location, time, and date;
* Develop a consent form to be signed by all parties at the initiation of the ADR process affirming that the contents of the mediation will be kept confidential and that both parties agree not to involve the mediator in any litigation; and
* Document the agreed-upon resolution.

**ADR results**

If a resolution/settlement is achieved through ADR, the mediator will prepare a settlement agreement that includes a description of how the parties resolved the issue. This agreement becomes the "Documentation/Notice of Final Action." The parties will be asked to sign the agreement and a copy of the signed agreement will be given to the parties. The agreement must contain the names of the parties; the date of the agreement; any time limits; and the terms of the agreement. Note: There should be no other written record or other recording made of the meeting, except as required on the complaint log.

In the event the settlement agreement is breached, the non-breaching party may file a complaint directly with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach. If the CRC Director determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.

If no satisfactory resolution is attained through ADR:

* The WIOA Title I program provider must issue a written notice to the complainant that includes a clear concise statement of the issues and the length of time, manner, and place (address) in which an appeal against this decision may be filed.
* The complainant may, within ninety (90) days of the initial filing of the written complaint at the WIOA Title I program provider level, request the local EO Officer to resume the investigatory process.
* Time permitting, the local EO Officer will, within ninety (90) days of the initial filing of the written complaint, conduct the investigation and issue a decision.
* If time will not allow the investigation to be completed at the local level, a complaint may (1) be filed with the State-level EO Officer to conduct the investigation or (2) be filed directly with the CRC.
* The complainant may file a complaint with the CRC Director.

**Investigative track**

Provide a statement that if the complainant chooses the investigatory process, the complainant is entitled to a decision, or Notice of Final Action, within ninety (90) days after initial receipt of the written complaint. If the local level fails to provide a Notice of Final Action within ninety (90) days, the complainant may contact the State-level EO Officer.

If the complainant's choice is the investigatory process, the Local EO Officer will begin the investigation. The investigator is required to:

* Prepare and maintain a complete file on the case.
* Acknowledge the complaint by sending a letter to the complainant and correspond with the complainant as required.
* Provide notice to all parties who have a legitimate interest in the complaint.
* Keep the identity of every complainant confidential to the greatest extent possible.
* An individual whose identity must be disclosed must be protected from retaliation.
* Perform an investigation. The local EO Officer can and should attempt to negotiate a resolution of the issue at any time before the conclusion of the investigation.
* Decide on as to the substance of the allegation and suggest remedial action if necessary. Decisions should be made strictly based on the evidence gathered.
* Provide a Notice of Final Action to the complainant within ninety (90) days of the date on which the complaint was filed.
* The local EO Officer will gather details from the complainant and the respondent regarding specific background and action(s) surrounding the allegation and take statements from those individuals identified by the complainant and the respondent.
* The complainant and the respondent will be given an opportunity to question the information of others who present evidence.
* The local EO Officer will review the initial findings orally with the complainant. This will allow the complainant to provide additional information or clarification.
* The local EO Officer must issue a written Notice of Final Action (decision), transmitted to the complainant, within forty (40) days of the date on which the complaint was filed. This 40-day requirement is intended to allow for an appeal to the State-level EO Officer, and if appealed, provide the DEED EO Officer forty (40) days to review, investigate, and issue its Written Notice of Final Action (resolution) within the regulatory ninety (90) days of the date on which the complaint was filed.

**The Notice of Final Action must contain:**

A clear and concise statement of the issues.

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 based on the material and the applicable section of WIOA Section 188 and/or its regulations; or
* A description of the way the parties resolved the issue.
* Findings of fact based strictly on the evidence gathered during the investigation.
* Conclusion(s) based on the findings of fact.
* Notification that the complainant has a right to appeal to the State-level EO Officer within ten (10) days of the date the decision was issued at the local level if he/she is dissatisfied with the final action. This notification must also indicate how and where to appeal the decision and that the appeal must be in writing.
* Notification that the complainant has a right to appeal to the CRC within thirty (30) days of the date the local-level decision was issued if he/she is dissatisfied with the final action. This notification must also indicate how and where to appeal the decision to the CRC.

*Note:* Throughout the investigation, the local EO Officer should attempt to resolve the complaint.

**State-level EO Officer Decision**

A complainant may file an appeal with the State-level EO Officers if:

1. The complainant is dissatisfied with the local EO Officer’s decision; or
2. The ADR process was unsuccessful, and the complainant appealed to the State-level EO Officer to investigate; and
3. The complainant submits an appeal to the State-level EO Officer within ten (10) days of the date the decision was issued at the local level.

Local EO Officer responsibilities for the appeal process shall include, but are not limited to providing DEED with:

* A completed copy of the complaint file; and
* A copy of any investigative finding.

All appeals to DEED must contain the following information:

* The name, address, and telephone number of the person making the complaint;
* The name and address of the respondent (the individual/entity) against whom the complaint is made;
* A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

The State-level EO Officer shall:

* Promptly log and initiate a review or investigation of the complaint.
* Provide notice to all parties of the specific charges.
* Inform both parties of their right to present evidence.
* Provide for an impartial decision.
* Within ninety (90) days of the date the appeal is received at the department level, perform one of the following:
* Issue a Written Notice of Lack of Jurisdiction;
* Refer the complainant to another federal grant-making agency for investigation where there is dual jurisdiction; or
* Issue a Written Notice of Final Action (resolution).
* Copies of the State-level Equal Opportunity Officer's resolution shall be sent to the complainant and the local Equal Opportunity Officer. This resolution will contain a synopsis of the facts, reasons for the decision, and remedy if applicable.

**Complaint to Director, Civil Rights Center (CRC)**

The complainant or their representative may file a complaint with the Director of the CRC within thirty (30) days if:

1. The State-level EO Officer issues a Written Notice of Lack of Jurisdiction. In this case, the thirty (30) days are counted from the date of receipt of the notice.
2. The State-level EO Officer issues and the complainant is not satisfied with, the decision in the Written Notice of Final Action. In this case, the 30 days is counted from the date of receipt of the notice.
3. State-level EO Officer fails to issue a Written Notice of Lack of Jurisdiction, a Written Notice of Final Action, or a referral to another federal grant-making agency for investigation in case of dual jurisdiction, by the end of 90 days (this is the combined time allowed at both the local and state levels) after receipt of the complaint. In this case, the 30 days to file an appeal with the CRC is counted at the end of the initial 90-day period.
4. An ADR process fails to produce an agreement. In this case, the thirty (30) days are counted from the date on which the ADR process terminates.
5. A party to an agreement breaches the agreement. In this case, thirty (30) days are counted from the date the complainant learns of the alleged breach.

The complaint filed with the CRC should contain:

1. The full name, address, and telephone number of the person making the complaint.
2. The full name, address, and telephone number of the respondent against whom the complaint is made.
3. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.
4. Where known, the provisions of WIOA Title I, regulations, grant, or other agreements under WIOA Title I are believed to have been violated.
5. A statement disclosing whether proceedings before any federal, state or local authority involving the subject of the complaint have been commenced or concluded, and if so, the date of such commencement or conclusion, and the name and address of the authority.
6. A statement of the date the complaint was filed with DEED and the date on which DEED should have issued a decision.

A complaint will be considered to have been filed when the CRC receives from the complainant a written statement sufficiently precise to evaluate the jurisdiction of the complaint. Only the CRC Director may extend the complainant's thirty (30) day complaint timeframe and an extension will only be allowed if the complainant shows good cause that merits the extension.

**Contact Information for Filing a Complaint**

**State-level EO Officer**

Heather Stein, State-level WIOA EO Officer
Minnesota Department of Employment and Economic Development
First National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
651-259-7097
Heather.Stein@state.mn.us

**OR**

Department of Labor, Civil Rights Center (CRC)

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210
202-693-6500
TTY: 1-800-877-8339

FAX: 202-693-6506 Attn: Office of External Enforcement (limit of 15 pages)
CRCExternalComplaints@dol.gov

**Complaint Log/Retention**

Each program provider must maintain and submit to the State-level EO Officer a log of complaints alleging discrimination. All complaints, whether processed by investigation or ADR, must be entered on DEED's "WIOA Title I Discrimination Complaint Log."

All records regarding complaints and actions taken on complaints (including logs) must be maintained by the local EO Officer for a period of not less than six (6) years from the date of the resolution of the complaint (Minnesota Statute 16C.05 subd. 5).

**Notice to the Public**

Per WIOA Final Rules and Regulations (29 CFR 38), a recipient must provide initial and continued notice that it does not discriminate on any prohibited ground. "Notice to the Public" posters are available on DEED’s policy website and are available in English as well as in Chinese, Hmong, Laotian, Russian, Somali, Spanish, and Vietnamese. See WIOA EO Policy Manual Chapter 3 – Notice and Communication.

Alternate formats are available to individuals with disabilities by calling 651-259-7094 or by emailing DEED.ODEO@state.mn.us