**EQUAL OPPORTUNITY**

**Chapter 6.1: Corrective Actions and Sanctions (29 CFR 38.52)**

**Summary**
This chapter identifies DEED’s compliance with Element 6 of the Nondiscrimination Plan which requires that recipients of Workforce Innovation and Opportunity Act (WIOA) Title I funds establish procedures for carrying out corrective actions and applying sanctions, if needed, to ensure that recipients are complying and will continue to comply with the requirements of 29 CFR 38.52.

**Relevant Laws, Rules, or Policies**
[WIOA Section 188 (29 CFR 38)](https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-27737.pdf)

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**Policy**

The State of Minnesota and its Department of Employment and Economic Development (DEED) are committed to nondiscrimination as recipients of WIOA Title I federal financial funding. WIOA Title I program providers who violate their prescribed equal opportunity procedures, who do not comply with WIOA Final Rules and Regulations (29 CFR 38), or who are otherwise in violation of equal opportunity requirements, will be required to submit a written corrective action plan within thirty (30) days after a determination that there is reasonable cause to believe a violation has occurred. If necessary, if the recipient fails or refuses to correct a violation, sanctions may be imposed to ensure the resolution of any non-compliance. To the extent that corrective action is not completed, and compliance has not been achieved, DEED may impose sanctions that could include the suspension, termination, denial, or discontinuance of WIOA Title I financial assistance, in whole or in part.

**Responsibilities**

DEED’s Employment & Training Programs (ETP) division, in consultation with DEED’s Office of Diversity and Equal Opportunity (ODEO), provides oversight as it relates to WIOA Title I program providers and equal opportunity procedures within the Local Service Employment and Training Plan. Recipients of WIOA funding are responsible for actions taken, directly or indirectly, by service providers. It is expected that recipients will monitor their service providers and request corrective and remedial actions to correct any violations or deficiencies of WIOA Section 188 and 29 CFR 38. Recipients of WIOA funding must:

* Establish and implement procedures for resolving compliance problems either by achieving voluntary compliance or by imposing sanctions for violations that are not voluntarily corrected.
* Institute follow-up monitoring procedures to ensure that commitments to take corrective and remedial action are being fulfilled.
* Periodically review EO policies and the rate at which they serve significant population segments to ensure compliance with WIOA Title I Section 188.

Remedial action can include either:

* Retroactive relief (e.g., back pay, front pay, retroactive benefits, training, any service discriminatorily denied, etc.);
* Prospective relief (e.g. change of policy, training, development of new policy, training on policy, communication);
* or both.

*Note:* Any monetary relief cannot be paid from federal funds.

Taking corrective action requires identifying the violations(s) that must be corrected:

* Technical violations (such as a failure to include the required language in assurances or failure to include tag lines in a communication).
* Discrimination violations (include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations).

**Procedures**

*Corrective action* is required from a recipient when there is probable cause to believe a violation of the nondiscrimination and equal opportunity requirements of WIOA section 188 has occurred. Corrective actions and sanctions intend to guarantee equal access to all programs, activities, and employment opportunities provided by WIOA financially assisted organizations and to ensure that discrimination does not recur.

A WIOA Title I program provider that violates Equal Opportunity requirements is required to submit a corrective action plan in writing within thirty (30) days to DEED. If corrective action plans are not submitted to DEED within that time frame, staff will provide technical assistance. However, if within sixty (60) days, an acceptable plan has not been submitted to the State, or if the corrective action has not been voluntarily completed, DEED will sanction funds.

Corrective action requirements:

* Must be designed to completely correct each violation;
* Should be appropriate and reasonable given the violation(s) that occurred (such as re-issuing the communication in question with a tagline included).
* Establish a time frame that sets the minimum time necessary to completely correct the violation.
* Follow-up monitoring procedures to ensure that commitments to take corrective and remedial action are being fulfilled.

To correct a *discrimination violation*, appropriate corrective action may be to provide “make-whole” relief, that is, bringing the person to the condition he or she would be in if the discrimination had not occurred. Such relief might involve retroactive relief (including but not limited to back pay and benefits), and prospective relief (e.g., front pay, training, policy development, communication, or any service discriminately denied).

Documentation that corrective actions and prospective relief plans are being implemented and maintained is required. A written agreement or assurance should be provided to document the corrective action taken and the prospective relief that is planned where a technical violation has been (or can be) corrected immediately.

Retroactive relief: to include but not limited to back pay, front pay, retroactive benefits, training, and any service discriminatorily denied. Note: Any monetary relief cannot be paid from federal funds.

Prospective relief: curative and preventive steps voluntarily taken to ensure that a violation does not re-occur in the future. It may occur by:

* Changing policy, practice, or procedure that allowed for the violation;
* Developing a new policy;
* Communicating a change in policy;
* Educating/training those responsible for implementing the revised procedures;
* An explanation that the communication was reissued with the tag lines added.

*Conciliation Agreements*: in the case of a more serious violation, or of a deficiency/violation that cannot be corrected immediately a detailed written assurance, or Conciliation Agreement, is to be negotiated. The agreement must:

* Be in writing;
* Describe each violation;
* Specify the corrective or remedial action needed to come into compliance;
* State the time period in which the corrective or remedial action must be completed;
* Be sufficient in scope to ensure that the violation(s) will not recur;
* Institute periodic reporting by the recipient on the status of the corrective and remedial action;
* Institute enforcement procedures to be applied if the agreement is breached.

*Sanctions* must be imposed by the state when all attempts to assist in effective voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established. The sanction taken to correct a violation should be appropriate and reasonable given the violation.

Sanction procedures must:

* List the measures taken to achieve voluntary compliance up through the point when sanctions are imposed;
* Explain that the severity of the noncompliance will determine the sanctions imposed;
* Provide a table or listing of the potential sanctions that may be imposed;
* Detail the notification process including rights of the respondent, time frames involved, and provisions for a hearing;
* Identify the individuals who have responsibility for carrying out the various steps in the sanctions process and the role of the State-level EO Officer and local EO Officer in this process.

**Reporting Allegations of Discrimination**

On the day a WIOA Title I Program Provider is informed of the filing of an allegation or lawsuit charging discrimination that in any way involves a WIOA Title I program or personnel funded by WIOA Title I in any municipal, county, or district court, or with a local or State Human Rights Unit, a telephone report giving the details available must be made to the WIOA State-level EO Officer at 651.259.7097. This phone call must be followed with an immediate written report including a copy of the official documents of the case as soon as they come into the possession of the WIOA Title I Program Provider. The WIOA State-level EO Officer will immediately notify the Department of Labor (DOL), and the Civil Rights Center (CRC), of the complaint of discrimination.

Full available details must be immediately forwarded to the:

* Director, Office of Civil Rights, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW, Washington DC 20210

Further reports must be made to DOL as the case develops and/or is concluded.

* Office of Diversity and Equal Opportunity, State-level EO Officer, Minnesota Department of Employment and Economic Development, Great Northern Building, 180 East Fifth Street, 12th Floor, St. Paul, MN 55101.

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