

1407-4 Customer Relations, Appeals, and Hearings Procedure – Equal Opportunity; Discrimination Complaints

1. 29 CFR Part 37-Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Final Rule, is the basis for the Department's Equal Opportunity policy and procedures. Complaints alleging discrimination must be filed within 180 days of the alleged discriminatory act.
2. Recipients of financial assistance under WIA Title I (for purposes of this policy, the Department is the "recipient") are prohibited from discriminating against members of the public, applicants for services, registrants, participants, claimants, applicants for employment within the WIA job system, and WIA financed-employees on the basis of color, race, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I financially assisted program or activity.
3. 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 the nondiscrimination and equal opportunity provision as set forth in Section 188 of WIA Title I and the Department of Labor implementing regulations at 29 CFR 37, may file a written complaint, either by him/herself or through a representative.
4. The complainant may file with either the Department EO Officer or the Civil Rights Center (CRC) in Washington DC. Filing a complaint with the Department does not affect a complainant's right to file a complaint with the CRC if he or she is not satisfied with the resolution provided by Department. Complainants may request council with the Department EO Officer by calling (801) 526-4390 or 1-800-331-4341. Written complaints may be mailed to either the Department or the CRC at the addresses listed below. Individuals with speech and/or hearing impairments may call the State Relay system at 1-800-346-4128.

Equal Opportunity/Customer Relations	The Director, Civil Rights Center
Department of Workforce Services	U.S. Department of Labor
P.O. Box 45249	200 Constitution Ave. NW, Room N-4123
Salt Lake City, UT 84145-0249	Washington, DC 20210

5. Complaints must be filed in writing and must contain the following information:
 - A. The complainant's name, address, and telephone number (or other means of contacting the complainant);
 - B. The identity of the respondent (the individual or entity that the complainant alleged is responsible for the discrimination, i.e.: employer, DWS employee, DWS vendor {provider, training facility, etc.});
 - C. A description of the complainant's allegations. The description must include enough detail to allow the CRC or DWS to determine whether:
 - 1) DWS or the CRC as applicable has jurisdiction over the complaint;
 - 2) The complaint was filed in time;
 - 3) The complaint has merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or 29 CFR, Part 37;
 - 4) The complainant's signature or the signature of the complainant's authorized representative. (Reference 29 CFR Part 37, Section 37.73)
6. Forms Used to File a Complaint.
 - A. Department - An individual may file a complaint at the state level by completing and submitting the Department's Discrimination Complaint Information Form 495, which are available at all Employment Centers, from the EO Officer, or from a Customer Relations Specialist.
 - B. CRC - An individual may file a complaint by completing and submitting the CRC's Complaint Information and Privacy Act Consent Form, which may be obtained from the CRC (by contacting them in writing), or from the Department EO Officer.
7. Right to Representation. Both the complainant and respondent have the right to be represented by an attorney or other individual of their choice.

8. By federal regulation, the Department shall respond to the complaint within 90 days of receipt. A complainant will be offered the option to participate in mediation or follow the customary complaint process.
9. Mediation - The choice of mediation or customary investigative process rests with the complainant. The Departments' procedures for mediation are as follows:
 - A. If mediation is elected, the session will begin no later than 15 calendar days after the mediator is assigned the case.
 - B. Parties will receive notice of where and when the mediation will be conducted.
 - C. A maximum of two (2) calendar days will be allowed for the mediation session to achieve a resolution. If the parties do not reach an agreement within the two-day mediation session, a notice will be issued within 15 calendar days from the date of the session, outlining the facts or circumstances relevant to the attempt to settle the issues.
 - D. If the parties do not reach an agreement under mediation, the complainant will be advised, in writing of the option to file the complaint with the CRC. DWS will not investigate a complaint, once it has been referred for mediation.
 - E. A party to any agreement reached under mediation may file a complaint with the CRC in the event the agreement is breached
 - F. The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
 - G. The CRC will determine if the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon the original allegations and the CRC will waive the time deadline for filing such a complaint. (Reference 29 CFR part 37, section 37.76)
10. To be accepted, a complaint must:
 - A. Be filed in a timely fashion (within 180 days of the alleged violation);
 - B. Fall under the Department's jurisdiction; and,
 - C. Have apparent merit; i.e. whether the allegation, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.
11. Upon receipt of the discrimination complaint form, DWS will provide written notice within 10 working days from the date of receipt, to the complainant that contains the following:
 - A. Acknowledgment that the discrimination complaint form has been received. Respondent and the affected EC will be notified that a complaint has been filed;
 - B. Notice that the complainant has the right to be represented in the complaint process;
 - C. A written statement of the issue(s) provided to the complainant, including the following information:
 - 1) A list of the issue(s) raised in the complaint; and
 - 2) A statement regarding each issue as to whether the recipient will accept or reject the issues and reasons for rejection.
 - D. A period of fact-finding or investigation of the circumstances underlying the complaint.
 - E. An offer of mediation. An explanation of the mediation process will be included. The option to mediate rests with the complainant. The complainant will be advised to notify DWS within 10 working days of receipt of the written notice if they choose to participate in mediation.
 - F. A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, containing for each issue raised, a statement of either:
 - 1) DWS' decision on the issue and an explanation of the reasons for the decision, or
 - 2) A description of the way the parties resolved the issue;
 - G. Notice that, if by the end of the 90 days DWS has not completed its processing of the complaint or failed to issue a Notice of Final Action signed by the EO Officer, the complainant, or his or her representative may, within 30 days of the expiration of the 90 day period, file a complaint with the CRC. If the investigative process is not completed when the 90 days ends, the complainant will be notified that they may file with the CRC.
12. Respondent will be notified that a complaint alleging discrimination has been filed and is being processed. The notice will include a summary of the alleged discrimination and a notice that retaliation is against the law. The Respondent will also be notified if the complainant, as a means of resolution, has chosen mediation.

13. If a determination is made that the Department does not have jurisdiction over a complaint, the complainant will be immediately notified in writing (referred to as a Letter of Non Jurisdiction). The Letter of Non Jurisdiction will inform the complainant of his or her right to file with the CRC within 30 days of the date on which the complainant receives the Notice. The CRC address shall be included in the Letter. Non jurisdiction will result from one or more of the following:
 - A. The basis for the complaint is not covered by the prohibitions set forth by 29 CFR part 37;
 - B. The complaint was not filed within the prescribed 180 days of the alleged violation;
 - C. The complaint is against an entity that is not a recipient or participant of WIA Title I financially assisted program or activity as defined under 29 CFR part 37.
14. Notice of Final Action. The complainant shall allow the Department 90 days from the date filed to process the complaint and issue a written Notice of Final Action. The complainant, respondent, and entity the complaint was filed against will be notified of the decision. The following will be covered in the notice:
 - A. An explanation of each issue accepted for investigation and the resolution for each;
 - B. The respondent will be notified if action needs to be taken, what the action is and when the action needs to be completed;
 - C. If mediation was used successfully, a description of the resolution will be provided, and a copy of the signed settlement agreement will be provided to the complainant and respondent;
 - D. If the Notice of Final Action is issued during the 90-day period, and the complainant is dissatisfied with the decision, the complainant, or his or her representative, has the right to file a complaint with the CRC within 30 days from the date on which the complainant receives the Notice of Final Action. Only the Director of the CRC may extend the 30- day time limit for good cause shown. The complainant has the burden of proving, to the Director, of the CRC, that the time limit should be extended;
 - E. If by the end of the 90 days DWS has not completed its processing of the complaint or failed to issue a Notice of Final Action, DWS will, in writing, advise the complainant or his or her representative, that they have 30 days from the expiration of the 90 day period to file a complaint with the CRC. In other words, the complaint must be filed with the CRC within 120 days from the date on which the complaint was filed with DWS; and,
 - F. If a settlement agreement has been reached through mediation, the Notice of Final Action will contain the provision that gives notice of rights to both parties that if the agreement is breached by one of the parties to the agreement, then the non-breaching party may file a complaint with the CRC within 30 days of learning the agreement was breached.
15. Record Retention. All records are retained in the EO Officer's complaint file for a period of not less than 3 years.