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Category: Legal
Subject: Compliance with Section 504 of the Rehabilitation Act of 1973, as amended
Source: State/Federal
Revise/Replace:
Contact: Equal Employment Opportunity Administrator
Distribution: All SDA/OSC, Financial Program and Administrative Staff
Colorado One-Stop System Policy Guidance Letter 02-08-L
Date: January 28, 2002

I. REFERENCE(S):

29 CFR Part 37, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, specifically 29 CFR 37.54 (d)(2)(vii).

II. PURPOSE:

This Policy Guidance Letter (PGL):

Provides the requirements set forth at 29 CFR Part 37, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act (WIA) of 1998 and 29 CFR Part 32 – Nondiscrimination on the Basis of Handicap [current term – disability] in Programs and Activities Receiving Federal Financial Assistance. The regulations at 29 CFR Part 32 implement Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 29 CFR Part 37 are consistent with both Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) of 1990.

III. BACKGROUND:

The Federal Department of Labor and Colorado Department of Labor and Employment are

committed to ensuring that programs, activities, services, benefits, and aids under the WIA are accessible to all qualified individuals with disabilities, which may include applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment. The federal requirements for fair and equitable services to individuals with a disability are not new. Individuals with disabilities, as well as any group represented by civil rights laws, represent a valuable resource to the labor market and to society. The Workforce Investment Act of 1998 presents new challenges to ensuring access and accommodation in federally funded employment and training programs. The increased use of self-directed, computerized services through a “virtual One-Stop” is one example.

Policymakers and program operators need to assess how the current employment and training infrastructure meets the requirements of equity and fairness for individuals with disabilities. Resources for self-assessment are readily available through a number of sources. Some of the resources can be found at various internet sites. The USDOL site at www.doleta.gov is a good start (click on the disability symbol at bottom of the home page). The Department of Justice at www.usdoj.gov/crt/ada/adahom1.htm is another basic site with links to other resources. In addition, attachments to this letter will also serve as an aid to ensuring access to your WIA Title I financially assisted facility.

While all of the definitions under WIA are important and must be reviewed, please pay special attention to the definitions found at 29 CFR Part 37, Section 37.4 for “Auxiliary services (page 61718),” “Disability (page 61718),” “Facility (page 61718),” “Financial assistance under Title I of WIA (page 61719),” “Fundamental alteration (page 61719),” “Illegal use of drugs (page 61719),” “Individual with a disability (page 61720),” “Reasonable accommodation (page 61720),” “Recipient (page 61721),” “Section 504 (page 61721),” “Undue hardship (page 61721),” and “WIA Title I-funded program or activity (page 61722).” The definitions at 29 CFR Part 37 are consistent with those found at 29 CFR Part 32 – the regulations implementing Section 504 of the Rehabilitation Act of 1973.

Requirements for nondiscrimination and Equal Opportunity in serving individuals with disabilities are found at Section 37.7 – What specific discriminatory actions based on disability are prohibited by this part (pages 61723 – 61724)?; Section 37.8 – What are a recipient’s responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities (page 61724)?; Section 37.9 – What are a recipient’s responsibilities to communicate with individuals with disabilities (pages 61724 – 61725)?

IV. POLICY/ACTION:

Instructions:

- It is the responsibility of all program administrative and operating staff to ensure that WIA Title I financially assisted programs, services, activities, benefits or aids are accessible to individuals with disabilities and that there is a general state of preparedness to accommodate the reasonable requests or needs of qualified individuals with disabilities. Accordingly, steps should be taken to review access to facilities (as defined

at 29 CFR Part 37.4), programs, services, activities, benefits or aids and to make modifications as necessary. Qualified individuals with disabilities may include applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment.

- Physical access to a facility includes but is not limited to driveways, walkways, passageways, parking lots, ramps, buildings, entrances, doors, stairs, elevators, bathrooms, meeting rooms, cubicles, furniture, computers/keyboards, telephones, and water fountains. If a convenience such as a public telephone or water fountain is in place, then it or a similar convenience should be available to individuals with disabilities.
- Program access includes but is not limited to computer software/internet access by individuals with a visual and/or hearing impairment, customer services, application process, benefit determinations, testing and assessment instruments and procedures, other selection criteria, counseling, hearings, classroom instruction, orientation sessions, and job placement services that take into account the needs of individuals with disabilities.
- Every staff person and guest agency or partner of a One-Stop, Workforce Center or local office, and local workforce investment area operating agency should be cognizant of the policies, procedures, and postings relative to not only Equal Opportunity but also to individuals with disabilities. Orientation to new employees will include access and accommodation issues.
- Maximum efforts must be made to administer and operate programs, activities, services, benefits, and aids in the most integrated setting possible so that participation by qualified individuals with disabilities is possible.
- Ensure that recruitment brochures and other materials routinely made available to the public include the statement “equal opportunity employer/program” and “auxiliary aids and services are available upon request to individuals with disabilities.”
- Reasonable accommodations should be made when requested by individuals with disabilities to enable their participation in self-services, core services, intensive services, training, and any other benefits or aids. Accommodations must result in the delivery of effective and, at minimum, qualitatively equivalent services, training, benefits, or aids. An automatic referral to a program/agency that is designed solely for individuals with disabilities may not suffice as a reasonable accommodation if the customer desires (and it is reasonable) to participate in “mainstream” services, activities, training, benefits or aids.
- An individual need not reference either ADA or Section 504 of the Rehabilitation Act when asking for an accommodation. Also, if it appears that an otherwise eligible or qualified individual may need an accommodation, a program official may ask the individual if he or she can participate in a specific activity with or without a reasonable accommodation. The individual’s response is controlling; if the individual indicates that an accommodation is not needed, further inquiries about the disability or accommodation

must cease.

- All applications related to services, activities, training, benefits or aids must indicate that any question regarding whether or not a person is disabled (yes or no answer) is for statistical purposes and to meet federal affirmative obligations. It should also be stated on application forms that a response to a question relating to disability status is strictly voluntary.
- Specific medical information gathered at a counseling session should be for arranging an accommodation for an otherwise qualified individual with a disability. Such medical information must be maintained in a separate, secure file that is only available to authorized individuals.
- Reasonable accommodation efforts or declination of same by the program for reasons of undue hardship must be documented to such an extent that an authorized review of these records will show that the civil rights of individuals with disabilities were not violated. When an accommodation is not granted because of undue hardship or fundamental alteration of a program, service, activity, training, benefit or aid, then a written statement to this effect must be provided to the individual for whom the accommodation was being considered. In either case, the program (to the maximum extent possible) must take any other action that would not result in either an undue hardship or fundamental alteration in order to provide an individual with a disability, a service, activity, benefit or aid.
- Universal access issues as described in 29 CFR 37, Part 37, Section 37.42 need to be addressed. These include but are not limited to outreach and recruitment efforts, which target the disabled community and contact with community-based organizations.
- Communications with individuals with disabilities must be as effective as communications with others. As necessary, this includes but is not limited to auxiliary aids or services, telecommunication devices or relay services, information about the existence and location of accessible services, activities, and facilities. The international signage for accessibility must be placed at the appropriate entrances to a facility that houses programs, services, activities, benefits or aids financially assisted by WIA Title I funds. Signs should be posted in public reception areas stating, "If you need assistance or an accommodation please alert one of the staff of this facility."
- Program management must ensure that vendors or service providers comply with the requirements set forth in this Equal Opportunity Bulletin and any other state and local policies regarding access and accommodation to individuals with disabilities.
- Recipients of WIA Title I financial assistance are not required to furnish personal services such as assistance in eating, toileting, and dressing.

Implementation Date:

The instructions and guidance contained in this Bulletin take effect immediately. The civil rights laws referred to in this Bulletin have been in effect prior to WIA, 29 CFR Part 37, which implements the Equal Opportunity provisions of WIA that has been in effect since July 1, 2000.

Inquiries:

Contact JoAnna Miller, CDLE Equal Opportunity Administrator, at 303-318-8206 or E-mail: joanna.miller@state.co.us or Patricia Moore, CDLE ADA Coordinator, at 303-318-8205 or E-mail: patricia.moore@state.co.us with your questions.

Vickie L. Armstrong
Executive Director

Attachment(s):

1. Training and Employment Information Notice No. 16-99, Final Rule and Accessibility Checklists for One-Stops at www.wdsc.org/disability.