



Category/Subject: Processing Discrimination Complaints
Colorado Policy Guidance Letter#: ADM-2002-04 (prior #02-06-L)
Revise/Replace PGL#: N/A
Date: January 24, 2002
Distribution: CDLE Management/Finance, State/Local Workforce Directors & Staff, All SDA/OSC, Financial Program and Administrative Staff

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 procedures that must be followed when any person files a complaint that he/she or another person/group has been or is being subjected to discrimination. The regulations at 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 identify the grounds or basis upon which a complaint may be filed.

III. BACKGROUND:

Recipients of financial assistance under WIA Title I are prohibited from discriminating against members of the public, applicants for services, registrants, participants, claimants, applicants for employment (with the Workforce agency or One-Stop) and employees on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief. In addition, it is prohibited to discriminate against any individual or beneficiary of WIA programs based on the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States. Finally, it is prohibited to discriminate against any individual or beneficiary of WIA programs based on his or her participation in any WIA Title I financially assisted program or activity.

A complainant has a right to file a complaint within 180 days of the alleged act(s) of discrimination. This complaint must be filed at either the local level or with the Director, Civil Rights Center (CRC), USDOL, 200 Constitution Avenue NW, Room N4123, Washington, D.C. 20210. The recipient, which may in this instance mean the state or a local entity, must issue a written notice of Final Action on discrimination complaints within 90 days of the date on which the complaint was filed. The complainant may file again with CRC if he or she is dissatisfied with the Notice of Final Action or if a Notice of Final Action is not issued within the 90-day period. In this regard, the complainant has 30 days from the date of Notice of Final Action or from the end of the 90 days to file with CRC.

Only the USDOL-CRC has the authority to accept complaints filed beyond the 30 days discussed above. The CRC may extend this time limit if the Notice of Final Action did not provide complete filing instructions or for other good cause shown by the complainant. The same authority rests with the CRC when a complaint is filed beyond the above-mentioned 180-day period.

IV. POLICY/ACTION:

Instructions:

The EO notice, Equal Opportunity is the Law, provides complainants with basic instructions on filing complaints of discrimination. The following are instructions for processing discrimination complaints.

When anyone alerts the agency or entity that he or she (or they) wants to file a discrimination complaint, steps should be taken to connect the complainant with the Local EO Officer, in the absence of a Local EO Officer, refer the individual to the State EO Officer. The names of the officer appear on the EO Notice poster and flier. If the Local EO Officer is not available immediately, the manager should arrange a face-to-face meeting with the complainant and the local EO Officer at the earliest possible date. The agency manager should contact the State EO Officer if the Local EO Officer will not be available for an extended period.

In all possible instances, the Local EO Officer should personally meet with the complainant(s) in an area of the agency's offices that ensures confidentiality.

At this meeting, the EO Officer should explain the process and if the complainant(s) intends to file a formal complaint, provide the complainant(s) with a copy of the Complaint Information Form (CIF). A Copy of this form in English and Spanish is attached. If the complainant(s) does not complete the CIF during this meeting, the EO Representative should minimally obtain the following information:

- Complainant's address and means for contacting him or her.
- Basis of complaint (see above).
- Detailed description of allegation(s).
- Date(s) of alleged event(s) of discrimination.

- Program area representative(s) against whom complaint is being filed (respondent).
- Location of program area.
- Signed consent statement.

Once the information is gathered using the CIF or other written statement(s), the document(s) should be signed and dated by the complainant or the complainants authorized representative. The signed/dated consent statement should indicate that the complainant allows the Local EO Representative or Officer to disclose the complainant's identity if necessary to investigate his or her complaint. In addition, a copy of the written complaint will be provided to the complainant and to the State EO Officer.

Below is the procedure to follow after the discrimination complaint has been filed:

After receiving the completed CIF or complaint information, the Local EO Officer should ask the complainant whether he or she would like the complaint processed through:

- Alternative Dispute Resolution (ADR)
- Investigation by the Local EO Officer or by the State EO Officer in complaints dealing with CDLE programs
- Investigation by USDOL-Civil Rights Center in Washington, D.C. The full address appears on the EO notice: Equal Opportunity is the Law.

The complainant's decision should be indicated on the signed CIF or other complaint document. The EO Officer should stress that the ADR process is the most expeditious and informal processing method. It should also be explained that if ADR fails, the complaint could still be filed with CRC.

The choice to use ADR rests with the complainant. If the complainant elects to resolve the complaint using the ADR process, the Local EO Officer (as appropriate) will provide both parties with a Confidential Agreement form for signature. Once the agreements are signed, the Local EO Officer will immediately forward the complaint and signed agreements to the State EO Officer,

The State EO Officer will assign a facilitator and schedule an ADR conference. If ADR is successful, a settlement agreement is prepared at the end of the conference and signed by the involved parties. If ADR is unsuccessful, the complainant is apprised of his or her rights to file the original complaint with USDOL CRC within 30 days after the issuance of a Notice of Final Action.

Cases when ADR is not appropriate include complaints that are high profile, involve legal issues, involve policy, precedent setting, and impact others in a protected group. The State EO Officer must make this determination.

If the complainant elects to have his or her complaint investigated locally, jurisdiction regarding who will conduct the investigation will be based upon the agency against which the complaint has been filed. Specifically, the State EO Officer/staff will have exclusive investigatory responsibility for all CDLE agencies including Division of Employment and Training and Unemployment Insurance complaints. The Local EO Officer will principally investigate complaints involving local Workforce Investment Area (LWIA) administrative entities, subrecipients and other partners, unless an agreement is established with partners to restrict jurisdiction to the complaint process of the agency of issue.

Before any complaint can be investigated, the Local EO Officer or State EO Officer, as appropriate, should make a determination immediately regarding jurisdiction or lack of jurisdiction. The complainant should be advised of this determination and informed that a written letter acknowledging the receipt of the complaint and establishing jurisdiction or lack of jurisdiction will be forthcoming. This acknowledgement should be mailed within 5 business days “return receipt requested.” When providing an immediate written response while the complainant is present, the Local EO Officer should secure a signed receipt.

Based on the information provided by the complainant, a Local EO Officer may declare that he or she has no jurisdiction over the complaint for one or more of the following reasons:

- The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 37 (see above bases covered in the Background section of PGL).
- The complaint was not filed within the prescribed timeframes – within 180 days of the date that the discriminatory act(s) allegedly occurred.
- The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIA Title I financial assistance as defined in 29 CFR Part 37.4. The EO Officer may provide the address and phone number of the appropriate agency with jurisdiction over the complaint such as a regional office of the Colorado Division on Civil Rights.

A Notice of Lack of Jurisdiction (with one or more of the above reasons) should be provided in writing and inform the complainant that he or she has 30 days from the date of receipt of the final notice to file a complaint with the CRC. Send the original, signed complaint (keep a copy for the local file) to the complainant along with the Notice.

If the Local EO Officer determines the discrimination complaint is within his or her jurisdiction, the acknowledgement letter to the complainant should contain the following:

- Notice that the complaint has been received.
- Assignment of a complaint number.
- Restatement of the issues raised in the complaint.
- Notice of which issues have been accepted for investigation.
- Explanation, if necessary, of issues not being investigated.
- Notice of the complainant's right to representation by any individual he or she chooses during the complaint process. Legal fees (if an attorney is selected) and the responsibilities of the complainant.
- Notice that complaint processing will be completed within 90 days of the date that the complaint was filed at the local level and a Notice of Final Action issued.
- Notice that the complainant has the right to file (again) his or her complaint within 30 days of the date of the Notice of Final Action is issued with the USDOL, if the complainant is unsatisfied with such notice, or within 30 days of the end of 90 days cited above, if the Local EO Officer fails to issue the notice within that period.

In addition, the Local EO Officer must: contact and write to (return receipt requested) the respondent identified in the complaint; advise the respondent that a complaint alleging discrimination has been filed and is being processed; provide a summary of the complaint and notice that any form of retaliation or intimidation is against the law.

Complaint investigation or fact-finding includes the following elements:

- Holding an interview(s) with complainant to gather facts.
- Collecting any evidence the complainant may have to support allegation(s).
- Interviewing the respondent; obtaining a signed position statement, and any evidence supporting the response to the complaint.
- Inspecting location of where alleged discrimination occurred (this applies specifically to allegations of sexual harassment and inaccessibility to individuals with a disability).
- Interviewing witnesses, if any, and obtaining signed statements.

- Reviewing documents: data, reports, correspondence, contracts, plans, personnel or participant records, policies/procedures related to activity(ies) which gave rise to allegation(s) of discrimination.
- Preparing an investigatory report that includes statement of basis of complaint, specific allegations, respondent(s) response and witness statements, findings of fact, rationale and conclusion (probable cause or no probable cause that respondent may have discriminate) and appeal rights.
- Maintaining a complaint file with reference number.

It should be especially noted that the State EO Officer is available for technical assistance at any time during the local investigation process. Such assistance can be obtained immediately by calling the State EO Officer at 303-318-8206.

A Notice of Final Action must be provided to the complainant with a copy to the respondent and State EO Officer within 90 days of the date that the complaint was filed with the Local EO Officer. The Notice must provide the recipient's decision and explanation on each issue of discrimination that was accepted for procession and resolution. Clearly state what specific action has been taken or will be taken (and when) to complete the resolution.

All Notices of Final Action must be submitted in draft form to the State EO Officer within 70 days of the date of receipt of complaint for review to insure evidence of a thorough investigation and a decision that is supported by findings of fact. The State EO Officer will provide feedback in a timely manner to insure adherence to the 90-day requirement to issue the Notice of Final Action. The draft Notice should be sent to the following address:

Scott Bowers
 Colorado Department of Labor and
 Employment Equal Opportunity Team
 Manager
 633 17th Street
 Suite 1200
 Denver, CO 80202
 FAX: (303) 318-8201

If the complainant is dissatisfied with the Notice of Final Action, he or she has 30 days from the date the final notice is issued to file with the CRC. If a Notice is never issued, the complainant has 30 days from the date that the Notice should have been issued to file with the CRC.

V. IMPLEMENTATION DATE:

Upon receipt. Equal Opportunity Officers are to become familiar with these procedures and to share this information with directors, managers, and supervisors within his or her jurisdiction.

VI. INQUIRIES:

Inquiries concerning this PGL should be directed to Scott Bowers, (303) 318-8206 or scott.bowers@state.co.us.

Elise Lowe-Vaughn, Director
Workforce Programs, Policy, and Strategic Initiatives