



Virginia Employment Commission  
Effective: December 2, 2016

## **DISCRIMINATION COMPLAINT POLICY**

### **PURPOSE**

To communicate the requirement of recipients to adopt and publish procedures providing for the prompt and equitable resolution of complaints alleging violations of discrimination and equal opportunity provisions.

### **REFERENCES**

29CFR Part 38, Department of Labor, Office of the Secretary, Implementation of Nondiscrimination and Equal Opportunity provisions of the Workforce Innovation and Opportunity Act: Final Rule, December 2, 2016.

Section 188 WIOA Nondiscrimination and Equal Opportunity Regulations - 29CFR Part 38 (a).

### **POLICY STATEMENT**

Recipients shall ensure nondiscrimination and equal opportunity in admission or access to, opportunity or treatment in, or employment, in the administration of or in connection with any program or activity funded in whole or in part with WIOA Title-I financially assisted program or activity, Unemployment Insurance and Wagner Peyser funds. Any person, who believes he or she has been subjected to discrimination based on race, color, religion, sex (including pregnancy, child birth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title-I financially assisted program or activity, Unemployment Insurance and Wagner Peyser has the right to file a complaint within 180 calendar days of the alleged discrimination.

The person has the right to file a complaint with the recipient's Equal Opportunity Officer, or directly with the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue, NW Rom N4123, Washington, DC 20210 ([www.dol.gov/crc](http://www.dol.gov/crc)). If the complaint elects to file a complaint with the recipient, the recipient shall have 90 calendar days to process a complaint and issue a decision. If the recipients does not provide a written decision within 90-

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calendar days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with CRC. Such complaint must be filed within 30 calendar days of the date the complainant received notice or should have received notice of the recipient's proposed resolution.

All recipients shall designate an Equal Opportunity Officer who will be responsible for adopting and publishing complaint procedures and ensuring that they are followed. To communicate the discrimination complaint policy, *"Equal Opportunity Is the Law"* posters in English and Spanish shall be placed in prominent locations, which are accessible to applicants, eligible applicants, participants, terminates, applicants for employment and employees, applicants for funding and other interested parties. The poster contains a nondiscrimination and equal opportunity statement, as well as, information about filing a complaint.

Recipients shall include in orientations to employees and/or participants a discussion of their rights under the non-discrimination and equal opportunity provisions of 29 CFR Part 38 and the right to file a complaint of discrimination with the recipient or CRC. Communication of policy shall be documented on a notification instrument for employees and applicants/participants and retained in individuals' files. Recipients shall ensure audio access is available in English and Spanish of *"Equal Opportunity is The Law"* for individuals with visual disabilities, as well as, persons who have difficulty reading and/or comprehending written materials.

Where a significant portion of the eligible population may need service or information in a language other than English or Spanish; the recipient shall provide the initial notice and other materials in the needed language to the extent possible.

#### **INTIMIDATION AND RETALILATION PROHIBITED**

Consistent with 29CFR Part 38.19, discharge, intimidation, retaliation, threatening, coercing or discriminating against any individual(s) for having filed a complaint opposing a prohibited practice, furnishing information, assisting or participating in any manner in an investigation, review, hearing or any other activity related to administration of, exercise or authority under, or privilege secured by the nondiscrimination and equal opportunity provisions of WIOA Title-I financially assisted program and activity, Unemployment Insurance and Wagner Peyser is prohibited. In accordance with 29CFR Part 38.19, complaints may be filed alleging intimidation and retaliation.

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## **FILING A DISCRIMINATION COMPLAINT AT THE RECIPIENT LEVEL**

A complaint of discrimination may be filed with the State-Level EO Officer, VCCS EO Officer, Local LWIB EO Officer or CRC. A complaint must be filed within 180 calendar days of the alleged discrimination. The complaint may be filed by the individual or on behalf of the individual by an authorized representative. A complaint must be filed in writing and signed by the complainant or by his or her authorized representative. It is recommended (but not required) that the complaint be filed on VEC Complaint form. An English and Spanish version can be found at

[www.vec.virginia.gov/equal-employment-opportunity](http://www.vec.virginia.gov/equal-employment-opportunity)

The complaint document must contain the following information (29CFR Part 38.70):

- Complainant’s name and address, and, if available, email address (or another means of contacting the complainant)
- The identity of their respondent (the individual or entity that the complainant alleges is responsible for the discrimination)
- A description of the complainant’s allegations, this description must include enough detail to allow the Director or the recipient, as applicable to decide whether:
  - recipient has jurisdiction of the complaint
  - timeliness of the complaint
  - specific prohibited basis or bases of the alleged discrimination (i.e., race, sex, etc.), and
  - apparent merit of the complaint

The State – level EO Officer and VCCS EO Officer is responsible for ensuring publication of the name, title, address, telephone number and TDD number of the person responsible for receiving complaints.

## **TIME FRAMES**

Recipients shall notify complainants, in writing, of the specific time frames for processing a complaint of discrimination as follows:

- If the complainant elects to file with the recipient, the recipient shall have 90 calendar days to process the complaint and provide a determination.

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- If the complainant elects to file with both CRC and the recipient, the complainant shall be informed that the recipient has 90-calendar days to process the complaint and that CRC shall not investigate the complaint until the 90-calendar day period has expired.
- If by the end of the 90-calendar days from the date on which the complainant has filed the recipient fails to issue a Notice of Final Action; the complainant may file a complaint with the Director of CRC within 30-calendar days of the expiration of the 90-calendar day period.
- Immediately upon determining that it does not have jurisdiction the recipient's EO officer shall notify the complainant in writing that he or she does not have jurisdiction over the complaint. Reasons for the determination and the complainant's right to file with the Director of CRC within 30 calendar days of the notice are to be included.
- The complainant shall be notified that if the complaint is not filed within 180-calendar days of the alleged discrimination or a complaint has not been filed with CRC with 30-calendar days of the receipt of the recipient's determination or expiration of the 90-calendar day period, the Director of CRC may extend the time limits for good cause shown.

## **PROCESSING A DISCRIMINATION COMPLAINT**

If the complainant elects to file with the recipient, the recipient shall have 90-calendar days to process the complaint and provide a determination. During the 90-calendar day period, complainants may elect to participate in mediation.<sup>1</sup> The choice whether to use mediation or the customary investigative process rests with the complainant.

Requests for mediation will be handled by the State-level EO Officer or the VCCS EO Officer. If the complainant elects mediation and there is no resolution, the complaint will be referred for investigation. If mediation is not elected the complaint shall be investigated in accordance with the Discrimination Procedure for Complaint Investigation<sup>2</sup>. Service providers must also follow this complaint processing procedures. Such complaint procedures shall include the following elements:

- Initial, written notice to the complainant, and a notice that the complainant has the right to be represented in complaint process,

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<sup>1</sup> See VEC Mediation Program Guidelines for specific information on the mediation process

<sup>2</sup> See VEC Discrimination Procedure for Complaint Investigation

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- A written statement provided to the complainant that contains a list of the issues raised in the complaint and, for each issue, a statement whether the recipient will accept or reject the issue and the reasons for each rejection.
- A period for fact-finding or investigation of the issues; and
- A period during which the recipient attempts to resolve the complaint through mediation, and
- A written Notice or Letter of Final Action provided to the complainant within 90 calendar days of the date on which the complaint was filed, that contains the recipient's determination.

## **DISCRIMINATION COMPLAINT INVESTIGATION PROCEDURE**

Within 90-calendar days of the date a discrimination complaint is filed, an investigation shall be conducted by State-level EO Officer, VCCS EO Officer or Local Level EO Officer or by a designee under the direction of the State-level EO or VCCS EO Officer consistent with the Discrimination Procedure For Complaint Investigation. This procedure shall be used for any discrimination complaint for which a written and signed complaint has been received.

All activities and record related to an investigation shall ensure the confidentiality of the complaint and any resulting actions. The investigation must be managed in a manner that does not have an adverse effect of the complainant or any other party related to the complaint.

## **RESPONDING TO A DISCRIMINATION COMPLAINT**

The recipient's EO Officer (*State-level, VCCS, or LWIA EO Officer*) or designee shall sign the investigation, including determination and recommendation. The EO Officer shall provide a written determination (*Notice or Letter of Final Action*) of the complaint and offer resolution with 90-calendar days of the date the complaint was filed and for each issue filed:

- Include the decision on the issue and an explanation of the reasons underlying the decision.
- Description of the way the parties resolved the issue; and
- Notice that the complainant has a right file a complaint with the Director of CRC within 30-calendar days of the Notice or Letter of Final Action if he/she is dissatisfied with the recipient's final action on the complaint.

**Determinations:** The State-level EO Officer or VCCS EO Officer shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation

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occurred. If an investigation results in a reasonable **cause findings**, the State-level EO Officer shall submit the signed investigative report including determination and recommendation to the Attorney General's Office for review with 60-calendar days of the filing date prior to determination being issued. The determination shall notify the complainant of the specific findings. The proposed remedial or corrective action and the time in which corrective action must be completed.

Where a **no cause finding** is made, the complainant shall be notified in writing. Such a determination represents the final action of the EO Officer. The State-level EO, VCCS EO Officer or local level EO Officer shall notify the complainant of his or her right to file a complaint (not an appeal) with the CRC, if he or she believes the resolution is unsatisfactory. The complainant shall be informed that this right must be exercised with 30-calendar days.

### **CORRECTIVE ACTION**

If discrimination is found through the process of a complaint investigation, the respondent shall be requested to voluntarily comply with the corrective action(s) or conciliation agreement to correct the discriminatory actions or conditions. Actions to correct discrimination deficiencies may include any of the following:

- Back pay, or other monetary relief (*Federal funds shall not be used to provide monetary relief*);
- Hire or reinstatement;
- Promotion;
- Benefits or other services denied; and
- Any other remedial or affirmative relief such as outreach, recruitment and training to ensure equal opportunity

### **RECORDKEEPING**

Recipients shall maintain an automated or manual log<sup>3</sup> of discrimination complaints to include, name and address of complainant, the basis of the complaint (i.e., race, sex, age, etc.), a description of the complaint, the date the complaint was filed, the disposition and date of disposition of the complaint and other pertinent information.

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<sup>3</sup> VEC Discrimination Complaint Log

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Records pertaining to discrimination complaints, investigations or any other such actions shall be retained for a period of not less than three (3) years from the date of final resolution of the complaint.

Information pertaining to the identity of any persons providing information related to, or assisting in, an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. In the event that it is necessary that a person's identity be disclosed, the person(s) shall be protected from retaliation.

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