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Owner: *Teresa Rainey: Equity and Inclusion Officer*
Area: *Human Resources - 0201-0300*
References:

Language Access Procedure - PR-0802

1. Purpose

This procedure is intended to provide direction to agency managers and employees in implementing and executing the Oregon Employment Department Language Access Policy.

Note: The procedures for providing American Sign Language interpreting are not included here. Sign language interpreting is considered a reasonable accommodation for a disability and is covered under federal and state disability laws. Please refer to the agency Universal Access and Reasonable Accommodations for Customers Policy and Procedure for additional information.

2. Application

On May 29, 2003, the U.S. Department of Labor (USDOL) published revised guidance on program and service accessibility for Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964, as amended, and Section 188 of the Workforce Innovation and Opportunity Act (WIOA). This guidance did not create new legal requirements or change existing requirements; rather it clarified the existing requirement to ensure access to USDOL financially-assisted programs and services by eligible LEP persons.

USDOL requires its financial assistance recipients to take reasonable steps in providing meaningful access to its programs and activities; the Oregon Employment Department is a recipient of USDOL financial assistance. This requirement is designed to be flexible and dependent upon the facts of the situation. In order to meet this minimum requirement, the agency would conduct an individualized assessment that balances the following four factors from the USDOL:

Four-factor Analysis

Factor 1: The number or proportion of LEP persons served or encountered in the eligible service population.

Factor 2: The frequency with which LEP individuals come into contact with the program.

Factor 3: The nature and importance of the program, activity, or service provided by the recipient.

Factor 4: The resources available to the recipient and the costs.

For Factor 1, the agency adopts Department of Justice standards for vital document translation to be used in assessing all language services. This standard is 5% or 1000 individuals in the LEP group, whichever is less. This standard is meant as general guidance and is not meant to limit the language services provided in any division where management has determined that more language services should be provided to meet

business needs.

Any of the first three factors may take on added importance depending on the facts involved. As a result, a program, area, or site may determine that different language services are sufficient for different programs, services or activities. However, the obligation to provide accessibility based on limited English proficiency remains.

How the Oregon Employment Department behaves and conducts business is crucial to the success of our agency and the entire workforce system. In addition to identifying minimum requirements, agency employees will also incorporate the agency's values of integrity, respect, and community and the following strategic goals when making decisions regarding access to services for LEP individuals:

- Continually advance our partnerships and systems to provide innovative services to Oregon's diverse people and businesses
- Engage with communities across the state to maximize awareness and use of public workforce resources
- Foster an inclusive and fair work environment where employees feel valued and supported in reaching their full potential
- Invite and retain talented, diverse people to help us exceed our customers' expectations

3. Definitions

See Policy for definitions.

4. Roles and Responsibilities

- Division Managers: Consult with the Universal Access Coordinator as needed to ensure equitable customer service for every language group.
- Employees: All new employees shall complete online training on the agency's Language Assistance Policy and Procedures, sections 1-3, within the first 30 days of their employment. All employees are strongly encouraged to engage in ongoing training and development around serving LEP customers, including by attending equity and inclusion trainings and diversity conferences.
- Hiring Managers: Coordinate with the Universal Access Coordinator to identify the business need to have bilingual duties performed; add language proficiency to position descriptions and as a special qualification in open recruitments as needed.
- Human Resources Recruitment and Compensation Partner: Implement Pay Differential Procedure – PR-0209.J for qualified bilingual employees; check that bilingual proficiency is correctly listed as a special requirement for bilingual positions; assist with sourcing bilingual candidates.
- Universal Access Coordinator: Coordinate with hiring managers to identify the business need to have bilingual duties performed; review LEP signage; review vital documents to determine translation need; provide consultation for division and hiring managers; coordinate language proficiency assessments for bilingual employees and applicants; maintain a federal and state resource list pertaining to LEP policy guidelines, the US Civil Rights Commission, and USDOL Employment & Training Administration data for employees.

5. Procedures

A. New Programs

1. Division managers shall notify the Universal Access Coordinator of any new programs offered to customers to ensure meaningful access to services.

- a. New programs offered through the agency may include, but are not limited to: websites, local programs, resources, and written and electronic services to the public and/or collaborative activities.
 1. Written documents sent to Communications and Research are automatically sent to the Universal Access Coordinator for vital document assessment and translation as needed.

B. Training

1. New employees shall complete online training on the agency's Language Access Policy and Procedure within the first 30 days of their employment. Employees are encouraged to attend ongoing training regarding diversity, equity, and inclusion to learn best practices in providing meaningful access to LEP customers.

C. Customer Interaction

1. All customers have the right to receive language assistance. This applies even when customers seem to be proficient in English. The agency shall affirmatively notify customers of their right to receive free interpretive services and provide meaningful access upon request.
 - a. Examples of affirmatively notifying customers of their right to receive interpretive services:
 1. For all customers who call the Unemployment Insurance Contact Center claims line and are transferred to the English line, agency employees may say at the beginning of the call, "Would you like an interpreter?" to help ensure meaningful access. Alternatively, the initial automated message to callers may include the following statement, "At any time during your call, you may request a free interpreter in your language."
 2. If at any point during a call with the Unemployment Insurance Contact Center, if it seems that the customer does not understand the employee, the agency employee may say, "Just to check before we continue, would you like to have a free telephone interpreter?" to help ensure meaningful access.
 3. For all customers walking in to WorkSource Oregon centers, greeters may point to the language chart and say, "Would you like an interpreter?" to help ensure meaningful access.
 4. If it seems that a WorkSource Oregon customer does not understand the employee, the employee may point to a desk copy of the language chart and say, "Just to check before we continue, would you like to have a free telephone interpreter?" to help ensure meaningful access.
 2. Upon request for language services, employees shall contact a qualified bilingual employee in their office or contact center system to assist the customer.
 - a. If this would result in the customer waiting longer than other customers, employees shall contact the contracted telephonic or video interpretation service provider.
 1. If the language service provider is unable to provide the requested language, employees or their supervisor shall contact the Universal Access Coordinator for additional assistance in seeking suitable interpretive services to meet the need of the LEP customer. See also section F.2.a.
 - b. At no time shall children under the age of 18 be asked to provide interpretation or communicate on behalf of their family members.
 - c. If a customer requests that another adult, such as a friend or family member, communicate on their behalf, the customer must sign a waiver to that effect or give verbal consent if over the

phone. The waiver must be either translated into their requested language, interpreted by telephonic or video interpretation, or explained by a qualified bilingual employee using a standard template developed by the agency. The waiver is available in multiple languages on the [agency intranet](#) and in the Attachments section below.

3. If an employer uses an agency worksite to conduct interviews for a job or jobs, an individual job seeker may request an interpreter for the interview, and the agency will provide the interpreter. If the employer holding interviews at an agency worksite requests an interpreter for one or more interviewees, the agency may still coordinate and schedule a third party interpreter; however, the employer must pay the cost directly to the third party interpreter.

D. Outreach

1. This section pertains to the Workforce Innovation and Opportunity Act programs supported by the Oregon Employment Department. As indicated in Oregon's 2019-2021 Nondiscrimination Plan, offices with a significant LEP population (as defined by the four-factor analysis), shall conduct outreach activities using a variety of media outlets and methods to target these populations to assure they are provided with equitable access to services and employment opportunities.
 - a. Managers shall review their language access services every three years and note any changes in activities or populations. The Universal Access Coordinator will assist managers by providing a report of the number of LEP customers collected from the agency registration system and local office service areas as requested. The Universal Access Coordinator will work in conjunction with the Communications and Research division to find the most current information. The report will include:
 1. Compliance verification of mandatory "Essential Language" posters, signage, and materials offered in languages other than English.
 2. If outreach plans include marketing in LEP communities, the report should include information about the purchase of advertising space, job fair booths, sponsorships, and special events.
 - b. Managers will coordinate efforts to promote awareness of language services and may consult with the Universal Access Coordinator as needed. Activities may include:
 1. Distributing posters, brochures, and pamphlets regarding programs and services within appropriate local LEP communities.
 2. Including the agency's Equal Opportunity tagline in communications to the public such as brochures, booklets, and electronic communications.
 3. Collaborating with community-based organizations and other stakeholders to inform LEP persons of programs and activities.
 4. Providing notices in language-specific local newspapers.
 5. Airing notices in language-specific radio and television stations.
 6. Conducting presentations at schools and religious organizations.
 7. Within local facilities, notices include:
 - a. Using "I Speak" cards or other language identification measures.
 - b. Posting language assistance signs in selected languages in reception areas, customer intake/interview areas such as cubicles, and other entry points.

- c. Using telephone voice menus in appropriate languages.

E. Qualified Bilingual Employees vs Employees with Language Proficiency

1. Qualified bilingual employees are employees who have been assessed by an independent third party as able to conduct agency business in English and an additional language and provide meaningful access to LEP customers. The agency understands that bilingual employees often require additional time to work with LEP customers, as it usually takes longer to explain agency-specific concepts and phrases in languages other than English.
2. Many agency employees have some proficiency in more than one language but are not completely bilingual. They may be able to greet an LEP customer in their native or preferred language but not conduct agency business in that language. There may also be agency employees who are not assessed for bilingual proficiency (and therefore do not receive the bilingual pay differential) because there is not a measured need for the language in their geographic area. These distinctions are critical to ensure meaningful access and appropriate allocation of resources.
 - a. Employees who are not deemed qualified bilingual employees may conduct informal conversations with LEP customers in order to help them feel comfortable working with the agency. However, when the conversation shifts to agency business, including eligibility, rules, and policies, communication must be carried out by qualified bilingual employees or interpreters to ensure meaningful access.
 1. Examples of an employee who is not deemed qualified bilingual using their speaking skills:
 - a. *Appropriate*: Customer has finished an appointment in a WorkSource center and comes to the front desk speaking Amharic. The front desk employee has not been tested as proficient but does speak Amharic. The customer asks about the bus schedule out front. The employee can assist in Amharic to provide the bus schedule.
 - Inappropriate*: The customer above now starts asking about other agency programs that they may be eligible to receive. At this point, the front desk employee assisting would either need to find a qualified Amharic-speaking coworker to assist or call a phone interpreter to continue the conversation.

F. Use of Interpreters vs. Use of Qualified Bilingual Employees

1. The use of qualified bilingual employees is to provide the same services to LEP customers as the agency provides to English-proficient customers. It does not involve interpretation (oral) or translation (written) between two languages. As valuable as bilingualism can be, interpretation and translation require additional specific skills and assessments.
2. Use of an interpreter involves:
 - a. Immediate communication of meaning from one language (the source language) into another (the target language).
 - b. An interpreter conveys meaning orally, while a translator conveys meaning from written text to written text. As a result, interpretation requires skills different from those needed for translation. Interpreting is a complex task that combines several abilities beyond language competence in order to enable delivery of an effective professional interpretation in a given setting. For example, it requires choosing an expression in the target language that fully conveys and best matches the meaning of the source language. Consequently, extreme care must be exercised in hiring interpreters and interpreting duties should be assigned to individuals within their performance level.

- c. From the standpoint of the user, a successful interpretation is one that faithfully and accurately conveys the meaning of the source language orally, reflecting the style, register, and cultural context of the source message, without omissions, additions or embellishments on the part of the interpreter. In many circumstances, using a professional interpreter or translator will be both necessary and preferred.
 - d. Professional interpreters and translators are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language. Those using the services of interpreters and translators should request information about certification, assessments taken, qualifications, experience, and training.
 - e. If qualified bilingual employees are asked to interpret or translate, they should be qualified to do so. Qualifications should include assessment of ability and training on interpreter ethics and standards.
3. Examples of a qualified bilingual employee using their speaking skills:
- a. *Appropriate:* A Business and Employment Specialist asks an available coworker who is a qualified bilingual employee to explain to a customer that the customer needs to call the Unemployment Insurance Contact Center to get more information about their claim. The bilingual employee may use their own words to explain this to the customer. This is appropriate as long as it is a conversation between the bilingual employee and the customer, not the bilingual employee actually interpreting what the Business and Employment Specialist is telling them to say to the customer.
 - b. *Inappropriate:* A WorkSource center manager asks a qualified bilingual employee to interpret while a new employee is meeting with a customer as part of the new employee's training. This is not appropriate if the qualified bilingual employee is not a certified interpreter who has been assessed in interpretation skill and trained in interpreter ethics and standards. In these situations, it would be appropriate to have the qualified bilingual employee explain to the customer that an interpreter is going to be called for their meeting with the new employee.
 - c. *Appropriate:* A Chuukese-speaking, LEP customer calls the Unemployment Insurance Contact Center to request Chuukese interpretation of a letter they received from the center. A qualified bilingual (Chuukese) employee who has not been assessed as an interpreter or translator explains to the customer in Chuukese that the employee will need to call a certified Chuukese interpreter to interpret (see link in H.1. or Universal Access Tools Homepage link in Attachments) the document during the call. This is appropriate if this employee is not a certified interpreter or translator.
 - d. *Inappropriate:* An LEP customer calls the Unemployment Insurance Contact Center to discuss the findings from their adjudication. The adjudicator conferences in a qualified bilingual employee who is not a certified interpreter to interpret the adjudicator's explanations of the findings and the customer's questions for the adjudicators. This is not appropriate as the bilingual employee is not a certified interpreter who has been assessed in interpretation skill and trained in interpreter ethics and standards.

G. Hiring Bilingual Employees

- 1. Each division is responsible for coordinating with the Universal Access Coordinator to identify the business need to have bilingual duties performed by qualified bilingual employees based on the four-factor analysis and the level of proficiency required for the position. The position description should display the percentage the employee will be required to use their language skills to perform normal

work duties. If there is a business need to have bilingual duties performed for an open recruitment, this should be listed as a special qualification in the job announcement.

2. Sample language for a job announcement:

- a. "Special Qualifications: This position is bilingual English/Spanish. You must be proficient in reading, writing, and speaking in English and Spanish to meet the special qualifications of this position."

3. Example of using the four-factor analysis:

- a. A manager is planning for a new recruitment. They check the census data for their region and determine that people who speak Vietnamese make up 1%, or 1,500, of the individuals in their region. Of the registered customers in the manager's area, only .3%, or 10 individuals, speak Vietnamese as their primary language. The manager oversees a program that provides essential services to job seekers and employers through both written and verbal formats. The manager has sufficient funds available to pay a bilingual differential to a new employee.

1. According to Factor 1, the 1,500 individuals in the manager's area indicate a need for at least one bilingual employee.

2. According to Factor 2, the relatively low percentage of Vietnamese-speaking customers as compared to the percentage living in the region indicates a potential need for increased bilingual outreach to this community.

3. According to Factor 3, the program provides essential services, indicating a need to provide meaningful access to LEP individuals.

4. According to Factor 4, the manager has sufficient resources to pay a bilingual differential to at least one new employee.

5. After reviewing the four-factor analysis with the Universal Access Coordinator, the manager includes the special qualification of verbal and written bilingual proficiency in Vietnamese in their new recruitment. The manager updates the position description to reflect an estimated 5% of time using bilingual skills (both verbal and written) in the office and 10% of time doing community outreach to the Vietnamese community. The manager also schedules a 6-month review with the Universal Access Coordinator to determine if there is a need for a second bilingual position.

- a. For example, if after 6 months more Vietnamese-speaking customers have started using agency services and they are all able to receive the services they need without additional wait times, there may not be a need to hire more bilingual employees. However, if an increase in these customers has led to longer wait times for them based on the current number of bilingual employees, then the manager may decide to hire one or more additional bilingual employees.

4. All employees who receive a bilingual pay differential will be assessed by an independent third party to ensure language proficiency in speaking, writing, listening, and/or reading per the essential functions listed in the position description. When bilingual proficiency is listed as a special qualification in the job announcement, the final candidate's language proficiency or previous testing results must be assessed prior to the final employment offer being made.

5. Depending on business needs, such as qualified bilingual employees being on leave or the assignment of a special project, a manager may ask a current employee who is bilingual but not a qualified bilingual employee if they will take the language proficiency assessment(s) in order to be

assigned bilingual duties and have the pay differential added to their position, either temporarily or permanently.

6. While bilingual employees will communicate in English with other employees and customers who are English speakers, they may wish to speak in their native or primary language to other employees or customers who also speak that language. This should not be discouraged as bilingualism is a skill that must be continually honed and practiced, and the agency is committed to fostering an inclusive and fair work environment where employees feel valued and supported in reaching their full potential. When speaking with one another in their native or primary language, bilingual employees have the option to both hone their bilingual skills and promote an inclusive environment for nearby employees who do not speak their language by informally interpreting into English.
 - a. According to Equal Employment Opportunity Commission Regulation 29 CFR 1606.7(a), "a rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore, the Commission will presume that such a rule violates title VII and will closely scrutinize it."

H. Requesting Interpretive Services

1. The agency has a statewide contract with various interpreting contractors. Instructions for requesting interpreters are located for all employees in the agency's [intranet](#) (see Universal Access Tools Homepage link in Attachments)

I. Written Communications

1. The agency contracts with certified translators to provide written translations. Vital documents used in the delivery of agency services will be reviewed by the Universal Access Coordinator to determine translation requirements for document development and other LEP obligations.
 - a. If a qualified bilingual employee is in a position that includes written proficiency and would otherwise communicate information in an informal manner through email, text messaging, benefit notices, or similar communication, they may do it in the target language as well.
 - b. Formal written communications such as forms, newsletters, or hearings documents should always be sent for translation and not be done by bilingual employees, unless the bilingual employee is a qualified translator with translation duties included in their position description.
 - c. If a qualified bilingual employee is in a position that does not include written proficiency, any written communications in the target language need to be sent for translation or given to an employee who is a qualified translator with translation duties included in their position description.
2. A document will be considered vital if it contains information that is critical for obtaining services and/or benefits or is required by law. Vital documents include, but are not limited to, applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP individuals of the availability of free language assistance; and written tests that do not assess English language competency, but rather competency for job skills and other skills for which English competency is not required; and letters or notices that require a response from the beneficiary or customer (Federal Register/Vol. 65, No. 159/Notices 50123).

3. All written communications sent to customers regarding agency services and programs shall include multi-language service information offering language services at no cost to the LEP customer.
 - a. Information on how to seek assistance will be offered in at least ten languages (English, Spanish, Simplified Chinese, Russian, Vietnamese, Romanian, Lao, Khmer, Mien, and Hmong). Information on how to contact the department will be made available to customers who do not understand the information received in the English language or would prefer further language assistance.

6. Review Schedule

This procedure will be reviewed every **two years** or more often as needed.

7. Exceptions

There are no exceptions to this procedure.

8. Compliance

Failure to comply with this procedure may result in disciplinary action up to and including dismissal from state service. Please consult with a manager, division or deputy director, or human resources if you are unsure about compliance.

9. References

Federal Title VI of the Civil Rights Act of 1964

Executive Order 13166

10. Attachments and Links

[Universal Access Tools Homepage on EDweb](#)

[Training: OED - LEP - Online Training: Language Assistance Policy and Procedures](#)

Federal LEP Interagency Guidance: <http://www.lep.gov/>

Federal Register Volume 68, Number 103, pg 32294: <https://www.govinfo.gov/content/pkg/FR-2003-05-29/pdf/03-13125.pdf>

Notice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons: <https://www.federalregister.gov/documents/2002/06/18/02-15207/guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against-national>

US DOL Civil Rights Center (CRC): <http://www.dol.gov/oasam/programs/crc/>

LEP Toolkit: <http://www.dol.gov/oasam/programs/crc/lepcnt.htm>

Waiver Form: Interpretation Authorization

[Spanish](#)

[Vietnamese](#)

[Russian](#)

[English](#)

11. Questions or Training

Questions or Complaints: Eric Villegas, Universal Access Coordinator, 503-947-1794, or eric.l.villegas@oregon.gov

Training: <https://ilearn.oregon.gov//DL.aspx?id=32C295185883449C9BC7AAA8B6EB1E65>

12. Approved

Approved

Attachments

[FORM110_0919_RU.pdf](#)

[FORM110_0919_Vi.pdf](#)

[FORM110_0919.pdf](#)

[FORM110sp_0919.pdf](#)

Approval Signatures

Approver	Date
David Gerstenfeld: Acting Director	06/2020
Jessica Pranke: Public Affairs Specialist	05/2020
Anne Friend: Policy Coordinator	05/2020
Anne Friend: Policy Coordinator	05/2020
Anne Friend: Policy Coordinator	05/2020
Teresa Rainey: Equity and Inclusion Officer	05/2020
Sharon Tietsort: Human Resources Director	05/2020
Anne Friend: Policy Coordinator	05/2020
Teresa Rainey: Equity and Inclusion Officer	05/2020