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| <b>State of Oregon</b><br>Governor's Office of Education<br>and Workforce Policy<br>Salem, Oregon 97310 | Classification: MOA |
|   | Date: June 5, 2001  |

## Oregon Workforce Letter No. 3-01

TO: ALL LOCAL AND REGIONAL WORKFORCE BOARDS  
 ALL ONE-STOP LEADS  
 ALL STATE WORKFORCE AGENCIES  
 ALL WORKFORCE GRANT RECIPIENTS/FISCAL AGENTS

FROM: Annette Talbott  
 Governor's Workforce Policy Coordinator

SUBJECT: Processing Equal Opportunity/Discrimination Complaints

1. Purpose.

This notice provides the procedures that must be followed when any person believes and 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 complaints may be filed.

2. References. The Workforce Investment Act, Section 188; 29 CFR part 37; OAR 151-0010-0015.

3. 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 WIA-financed 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 WIA Title I financially assisted program activity.

A complainant has 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 USDOL Civil Rights Center (CRC) in Washington, DC. The recipient's EO Officer must process the complaint and issue a Notice of Final Action, in accordance to the instructions set forth below, within 90 days of the date the complaint was filed. The complaints may file

again with CRC if he or she is dissatisfied with the Notice of Final Action issued at the local level. The complainant has 30 days to file with the CRC after receiving this Notice, or if a Notice is never issued, 30 days from the date that the Notice should have issued to the complainant.

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 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.

#### 4. Description.

The EO notice, Equal Opportunity is the Law, provides complainants with basic instructions on filing complaints of discrimination (requirements of posting the notice is outlined in OWL 1-01). The following instructions for processing discrimination complaints are for Equal Opportunity Coordinators (EOC) and agency Equal Opportunity Officers (EOO).

#### Processing a Complaint

When anyone alerts a recipient that he or she (or they) wants to file a discrimination complaint, steps should be taken to connect the complainant with the EOC (his or her name should appear on the EO Notice poster or flier). If the EOC is not available immediately, arrange for the soonest available date to hold a meeting, preferably a face-to-face meeting.

In all possible instances, the EOC should personally meet with the complainant(s) in an area of the office that ensures confidentiality. At this meeting, the EOC should conduct a preliminary interview to determine:

- Complainant's address and means for contacting him or her.
- Basis of complaint (see above).
- Detailed description of allegation.
- Date of last alleged event of discrimination.
- Program area representative(s) against whom complaint is being filed (respondent).
- Location of program area.

The above information should be gathered by using the Oregon's version of the USDOL-Civil Rights Center's (CRC) Complaint Information (CIF) and Privacy Act Consent Forms. Supplies of these in English and Spanish languages will be provided to the EOC. Once the information is gathered, the documents should be signed and dated by the complainant. The signed/dated forms should indicate whether the complainant allows the EOC to disclose the complainant's identity if necessary to investigate his or her complaint.

### Processing Protocols

At any time in the complaint process, letters mailed to complainants should be sent to them “return receipt requested.” When providing written responses to a complainant in person, the EOC should secure a signed receipt.

Be sure to assign the complaint a number that specifies the workforce region or area number, the year and the sequential number for the specific complaint (e.g. A-01-01 - is Region A's complaint, in year 2001 and is the first complaint it has received).

### Inform Complainant of Rights

After gathering the above, the EOC shall inform the complainant he or she has the right to have the complaint handled by the USDOL- Civil Rights Center in Washington, D.C. The full address for the CRC appears on the EO notice: Equal Opportunity is the law.

The complainant must be offered alternative dispute resolution immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation.

The complainant must be notified that he or she has the right to representation by an individual he or she chooses during the complaint process. Any legal fees (if an attorney is selected) are the responsibility of the complainant.

The complainant must be notified that they are entitled to an interpreter if English is not their primary language.

The complainant must also be notified that auxiliary aids and services are available upon request to individuals with disabilities.

### Notice of Lack of Jurisdiction

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

- The basis for the complaint is not covered by the prohibitions set forth 29 CFR Part 37 (see above “basis” covered by the regulations).
- 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 EOC may provide the address and phone number of the appropriate agency which may have with jurisdiction over the complaint, if known.

A Notice of Lack of Jurisdiction (with one or more of the above reasons) should be provided in writing immediately upon the EOC discovering the he or she lacks jurisdiction. At this time, the EOC shall also inform the complainant that he or she has 30 days from the date of receiving the notice to file a complaint with the CRC.

#### Fact Finding/Investigation

The local-level EOC has 30 days in which to resolve the complaint. During this time the EOC should gather all available information relating to the alleged discriminatory actions. At a minimum this fact finding should include:

- Hold a preliminary interview with complainant to gather statement.
- Collect any evidence the complainant may have to support allegation(s).
- Interview the respondent; document respondent(s) statement(s); and any evidence supporting the response to the complaint.
- Inspect location of where alleged discrimination occurred (this applies specifically to allegations of sexual harassment and inaccessibility to individuals with a disability).
- Interview witnesses, if any, and document the witness' statements.
- Review documents: data, reports, correspondence, contracts, plans, personnel or participant records, policies, and procedures related to activity (ies) which have rise to allegation (s) of discrimination.
- Prepare fact-finding report with conclusion (reasonable cause or no reasonable cause that respondent may have violated the nondiscrimination law) and maintain file (include complaint number on report and file-jacket).
- Send a copy of fact-finding report to State agency EOO, who will forward a copy onto the state EO.

#### Resolution

At the conclusion of the investigation of the complaint, the investigating authority must take the following actions:

- Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37; and
- Notify the complainant and respondent, in writing, of that determination.

### *Violation Found*

If the investigating authority finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37, an Initial Determination must be issued.

The Initial Determination must include:

- the specific findings of the investigation;
- the corrective or remedial action that the Governor's Office and State EO Officer's proposes to the respondent, under Element Nine of this MOA and 29 CFR Part 37.94;
- the time by which the respondent must complete the corrective or remedial action;
- whether it will be necessary for the respondent to enter into a written agreement under Element Nine of this MOA and 29 CFR Part 37.95 and 37.96; and
- the opportunity to engage in voluntary compliance negotiations.

### *Violation Not Found*

If the investigating authority determines that there is no reasonable cause to believe that a violation has taken place, a Final Determination must be issued. The Final Determination represents the Governor's Office and State OE Officer's final action on the complaint.

The Final Determination must:

- Be issued within the 90 day complaint resolution period;
- Give the investigating authority's decision on the issue and an explanation of the reasons underlying the decision; and
- Notice that the complainant has the right to file the complaint with the Director, Civil Rights Center.

If the local-level EOC is unable to reach resolution within 30 days the complaint and all information gathered during the local-level investigation must be passed to the State EOO responsible for resolution. An extension may be requested by the local EOC, with the permission of the Agency EOO and in consultation with the State EOO, to facilitate resolution.

Resolution may include such actions as:

- Disciplinary action against the party found responsible for discriminatory action(s);
- Corrective actions required by the recipient; and
- Sanctions against the recipient of WIA funding, including the withdrawal of WIA funding.

## Notice of Final Action

Notice of Final Action must be provided to the complainant (copy to respondent and Statewide EOO) within 90 days of the date that the complaint was filed with the recipient/local EOC. The Notice must contain the following information:

For each issue raised in the complaint, a statement of either:

- The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
  - A description of the way the parties resolved the issue; and
  - Notice that the complainant has a right to file a complaint with USDOL CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.
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- If alternate dispute resolution was used successfully, provide a description of how the parties resolved the complaint. Attach copy of signed settlement agreement. If ADR efforts did not result in an agreement, then advise the complainant that he/she may file the original complaint with the USDOL-CRC within thirty (30) days of the date that the Notice of Final Action was issued. Similarly advise the complainant if the regular complaint process was used.
  - If a settlement agreement has been reached through ADR, provide notice that if the agreement is breached by one of the parties to the agreement, then the nonbreaching party to the agreement may file a complaint with the USDOL-CRC within 30 days of learning that the agreement was breached.

5. Implementation. Immediate

6. Action Required.

- a) Follow procedures in this letter;
- b) Maintain ample copies of the Oregon version of the complaint form; and
- c) Maintain records relating to complaints for at least three years.

7. Inquiries.

Contact Annette Talbott, Governor's Workforce Policy Coordinator, at 503-378-3921, x 24 or Janie McCollister, Equal Opportunity Officer, at 503-947-1324.