



Category/Subject: Nondiscrimination and Equal Opportunity Corrective Actions/Sanctions
Colorado Policy Guidance Letter#: ADM-2019-03
Revise/Replace PGL#: ADM-2002-02
Date: February 15, 2019
Distribution: CDLE Management/Finance, State/Local Workforce Directors & Staff, Partners

I. REFERENCE(S):

- 29 CFR Part 38, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014, specifically 29 CFR 38.54(c)(2)(vii).
- Section 188 of the Workforce Innovation and Opportunity Act of 2014

II. PURPOSE:

This Policy Guidance Letter (PGL):

Transmits information regarding the established Colorado Department of Labor and Employment's procedures for effecting corrective actions and applying sanctions, if needed, to ensure that resolution of any non-compliance of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014 can be enforced.

III. BACKGROUND:

Any recipient or sub-recipient of WIOA funds who fails to comply with regulations and provisions as described in 29 CFR 38 is subject to corrective and remedial actions designed to completely correct each violation. This action is necessary when a violation of the nondiscrimination and equal opportunity provisions of WIOA is identified as a result of a discrimination complaint, a monitoring review, or both. Violations may range in seriousness from a technical violation to discrimination. Technical violations may include failure to include required language in assurances, failure to post EO posters, etc. Discrimination violations include findings of disparate treatment, disparate impact and failure to provide reasonable accommodations.

IV. **POLICY/ACTION:**

Corrective actions are designed to end the discrimination and/or redress specific violation(s), as listed below.

Non-compliance Practices/Policies:

- A. Policies or procedures which discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with the Workforce Innovation and Opportunity Act of 2014.
- B. Programs, activities, or services that are inaccessible to individuals with disabilities or persons who are limited English proficient (LEP).
- C. Non-existent, incomplete, or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.
- D. Policies, practices, or procedures which are not in compliance with Section 188 of the Workforce Innovation and Opportunity Act of 2014, 29 CFR Part 38, or other civil rights legislation.
- E. Non-existence of a staff analysis by race, sex, and age. (**see Attach 1, Recommended Method for Analyzing Staff Adverse Impact**)
- F. Lack of implementation of procedure for resolving complaints alleging a violation of the WIOA, or relating to terms and conditions of employment.
- G. Lack of due process, protection of confidentiality, and fairness in the resolution of complaints as provided for under CFR Part 38.
- H. Complaint procedures that are not in compliance with 29 CFR Part 38.
- I. Failure to comply with equal opportunity directives issued by the Governor's liaison or the State EO Officer, as his designee, and with applicable laws and regulations. (As of January 2019, there are none that have been issued.)

Technical Violations: Provisions will be allowed to correct the specific violation identified, i.e., if the violation is failing to post the required notice, the corrective action to be taken would include ensuring the notice is posted in the future. Where appropriate, the corrective action may also include educating individuals responsible for implementing this requirement.

Discrimination Violations: Provisions will include making whole relief, to include where appropriate: retroactive relief (e.g., back pay, front pay, retroactive benefits, training, any service discriminatorily denied, etc.) or prospective relief (e.g., change of policy, training, development of new policy, training on policy communication).

Sanctions: When voluntary compliance to correct a violation cannot be achieved, imposition of sanctions will be considered for the non-complying recipient.

Procedures:

Corrective and Remedial Action

- A. The Local Workforce Board Chair and One-Stop Director are provided notification of identified deficiencies and recommendations for corrective action plan.
- B. Corrective action plans are to be submitted to the State EO Officer within 30 days of

receipt of notice. Training rosters and written assurances are required from the non-complying recipient regarding actions to correct violations.

- C. On-site follow-up may occur by the State EO Officer within 30 days of receipt and review of corrective action plan.
- D. The State EO Officer will send a letter of compliance notifying the Local Workforce Board Chair and One-Stop Director that a follow-up review could occur at any time to verify the corrective action.
- E. Corrective and remedial action documentation must be copied to the CDLE Executive Director.
- F. If all attempts to provide assistance and correction of deficiencies fail, the imposition of sanctions begin as described below.

Sanctions

Sanctions imposed for non-compliance will be reviewed on a case-by-case basis and may include any or all of the following:

- A. Warning of non-compliance.
- B. Recommendation of reduction of funding.
- C. Reduction of Funding.
- D. Disallowance of costs in inaccessible programs, activities, or services.
- E. Elimination of Funding.
- F. Legal action under applicable State or Federal laws or legal action under State law, based upon the sub recipient's assurance of compliance with WIOA, Federal Regulations and Governor's Directives.

Grievance Procedure

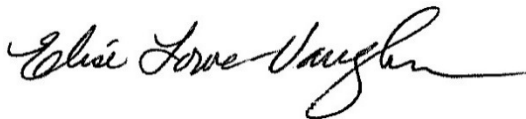
- A. In the case of non-compliance that cannot be voluntarily resolved, the grant applicant or recipient may request a hearing.
- B. This written request must be submitted to the State EO Officer within 30 days of receipt of notice.
- C. Failure to request a hearing within the 30-day time-frame, or to appear at a hearing for which a date has been set, waives the recipient's rights to a hearing.

V. IMPLEMENTATION DATE:

Upon receipt of this PGL.

VI. INQUIRIES:

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



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ATTACHMENTS:

1. Recommended Method for Analyzing Staff Adverse Impact