

Local EO Officer Training August 9-10, 2018

Employment Security Department
Commissioner's Conference Room
212 Maple Park Ave. SE
Olympia, WA 98501

Thursday, August 9

Time	Topic	Presenter
8:30 – 8:45	Welcome, Introductions, Agenda Review	Teresa
8:45 – 10:15	EO 101	Teresa
10:15 – 12:00	MOA Elements 1 - 3	Megan & Teresa
12:00 – 1:15	Lunch	All
1:15 – 3:00	MOA Elements 4 - 5	Kelly & Teresa
3:00 – 5:00	MOA Elements 6 – 7	Megan & Kelly

Friday, August 10

Time	Topic	Presenter
8:30 – 9:30	MOA Elements 8 – 9	Teresa
9:30 – 11:00	WorkSource EO training review	Megan & Kelly
11:00 – 12:00	EO monitoring instruments	Megan

Local EO Officer Training August 26-27, 2019

Employment Security Department
Kentucky Conference Room
640 Woodland Square Loop SE
Lacey, WA 98503

Monday, August 26	
<i>Topic</i>	<i>Lead(s)</i>
8:30 – 8:45 Welcome, Introductions, Agenda Review	Teresa Eckstein
8:45 – 10:15 EO 101 – USDOL CRC	Teresa
10:15 – 12:00 NDP Elements 1 - 3	Megan Eason & Kelly Moore
12:00 – 1:15 Lunch	All
1:15 – 3:00 NDP Elements 4 - 6	Megan & Kelly
3:00 – 5:00 NDP Elements 7 – 9 & Review	Teresa

Local EO Officer Training

Tuesday, August 27

<i>Topic</i>	<i>Lead(s)</i>
8:30 – 9:00 Review Monday’s Learning	All
9:00 – 11:00 EO Monitoring Guide and Tools	Megan & Kelly
11:00 – 11:30 ADA Guide	Megan & Kelly
11:30 – 12:45 Lunch	All
12:45 – 3:30 EO Training for WorkSource offices	Teresa, Megan & Kelly
3:30 – 4:00 Questions, discussion, wrap up	All

Local EO Officer Training January 7-8, 2020

Employment Security Department
 640 Woodland Square Loop SE
 Lacey, WA 98503

Tuesday, January 7 <i>Kentucky Conference Room – 1st Floor</i>	
<i>Topic</i>	<i>Lead(s)</i>
8:30 – 8:45 Welcome, Introductions, Agenda Review	Teresa Eckstein
8:45 – 10:15 EO 101 – USDOL CRC	Teresa
10:15 – 12:00 NDP Elements 1 - 3	Megan Eason & Kelly Moore
12:00 – 1:15 Lunch	All
1:15 – 3:00 NDP Elements 4 - 6	Megan & Kelly
3:00 – 5:00 NDP Elements 7 – 9 & Review	Teresa

Local EO Officer Training

Wednesday, January 8 <i>Marvin Gardens Conference Room - 2nd Floor</i>	
Topic	Lead(s)
8:30 – 9:00 Review Monday's Learning	All
9:00 – 11:00 EO Monitoring Guide and Tools	Megan & Kelly
11:00 – 11:30 ADA Guide	Megan & Kelly
11:30 – 12:45 Lunch	All
12:45 – 3:30 EO Training for WorkSource offices	Teresa, Megan & Kelly
3:30 – 4:00 Questions, discussion, wrap up	All



EO Officer Training

Elements of the Nondiscrimination Plan



Employment
Security
Department
WASHINGTON STATE

State EO Office
August 2019

Washington's Nondiscrimination Plan (NDP)

- ☆ Describes to USDOL how the state will implement and ensure compliance with the nondiscrimination provisions of WIOA
- ☆ Signed by the Governor
- ☆ Submitted to USDOL CRC every two years in December
- ☆ Maintained by State EO team with input from local areas
- ☆ Available on esd.wa.gov [EO page](#)



Elements of NDP

1. State-Level and Local EO Officers
2. Notice and Communication
3. Assurances
4. Affirmative Outreach
5. Disability Requirements
6. Data Collection
7. Monitoring for Compliance
8. Discrimination Complaint Process
9. Corrective Actions and Sanctions



Element 1: State-Level and Local EO Officer Designation

The nondiscrimination and equal opportunity provisions contained in 29 CFR 38.28 require that all recipients, except small recipients and service providers, designate EO Officers.



§ 38.28 Designation of Equal Opportunity Officers

- ❑ Every Governor must designate a State-level EO Officer who reports directly to the Governor (or designee) and is responsible for State Program-wide coordination of compliance with nondiscrimination requirements in WIOA.
- ❑ Local (Recipient-level) EO Officer must be appointed and report directly to the individual in the highest-level position of authority for the entity that is the recipient such as the Chief Executive Officer, the Chief Operating Officer, or an equivalent official.



§ 38.29 Recipients' obligations regarding Equal Opportunity Officers

- EO Officer must be able to fulfill the responsibilities of an EO Officer
- EO Officer's name, position title, address, and telephone number and WA Relay must be made available to the public
- Ensure the EO Officer's identity and contact information appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs
- Have sufficient authority, staff, resources, and support of top management to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part; and
- EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.



§ 38.30 Requisite skill and authority of Equal Opportunity Officer

- Senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently as described in this subpart
- EO Officer may, or may not, be assigned other duties.
- EO Officer must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer.



Examples of Conflict of Interest

- EO Officer makes judgments about possible equal opportunity wrongdoings of their boss.
- EO Officer also responsible for defending management actions and decisions against legal challenges (EEOC complaint position statements)
- Must have plan to mitigate potential conflicts of interest



State-level EO Officer From EO Training

Teresa Eckstein

- Responsible for State Program-wide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA
- Liaison to USDOL Civil Rights Center
- Provides training and technical assistance to local EO Officers
- Reviews LWDB and ESD programs to ensure nondiscrimination
- Discrimination complaints from customers and employees



Local EO Officer From EO Training

- Responsible for local area coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA
- Provides training and technical assistance to area staff
- Reviews LWDB programs to ensure nondiscrimination
- Discrimination complaints from area customers



Who are the EO Officers?

1. Benton-Franklin WDC – Cynthia Garcia
2. Eastern Partnership WDC - Vacant
3. Employment Security Department – Megan Eason
4. North Central WDC – Dave Petersen
5. Northwest Workforce Council – Malinda Bjaaland
6. Olympic WDC - Vacant
7. Pacific Mountain WDC – Craig Clark
8. Seattle-King County WDC – Marcelle Wellington
9. South Central Workforce Council – Amy Garcia-Hernandez
10. Spokane Area WDC – Dawn Karber
11. Workforce Central – Deborah Howell
12. Workforce Snohomish – Ismaila Maidadi
13. Workforce Southwest Washington – Amy Gimlin



Documented in NDP

- Designation letter
- Position description showing percentage of time spent on EO
- Organizational chart to show reporting relationship
- Info about others who help with EO duties
- Qualifications/training of EO Officer



Element 2: Notice and Communication

From EO Training

- ❑ In the WorkSource system, we must continuously notify customers and staff of their equal opportunity and nondiscrimination rights.
- ❑ How do we communicate these rights?
 - Display the **Equal Opportunity Notice** posters in English and Spanish, in resource rooms, classrooms, and places where we greet the public. Display in break rooms for staff.
 - WIOA participants review and sign the **Equal Opportunity Notice** in ETO and printed if paper files are maintained.
 - The **Equal Opportunity Tagline** is included on all communications that market WorkSource and WIOA Title 1 funded services.

(Name of LWDB, WorkSource or Service Provider) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.



§ 38.34 Recipients' obligations to disseminate equal opportunity notice

(a) A recipient must provide initial and continuing notice as defined in [§ 38.36](#) that it does not discriminate on any prohibited basis. This notice must be provided to:

- (1) Registrants, applicants, and eligible applicants/registrants;
- (2) Participants;
- (3) Applicants for employment and employees;
- (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;
- (5) Subrecipients that receive WIOA Title I financial assistance from the recipient; and
- (6) Members of the public, including those with impaired vision or hearing and those with limited English proficiency.

(b) As provided in [§ 38.15](#), the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals as described in [§ 38.9](#).



§ 38.35 Equal opportunity notice/poster

★ Must use exact language



**WE BELIEVE IN
EQUAL OPPORTUNITY**

Equal opportunity is the law

It is against the law for this recipient of federal financial assistance to discriminate on the following bases: against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), sex stereotyping, transgender status, and gender identity, national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Investment and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I financially assisted program or activity.

The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIOA Title I financially assisted program or activity; providing opportunities to, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. The means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

What to do if you believe you have experienced discrimination

If you think that you have been subjected to discrimination under a WIOA Title I financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either the recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW, Room N-4122
Washington, DC 20210

or, electronically as directed on the CRC Web site at www.dhs.gov/crc.

If you file your complaint with the recipient, you must wait after you file the complaint a written Notice of Final Action, or until 90 days have passed (whichever is sooner) before filing with the Civil Rights Center (see address above). If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC. Before receiving that Notice, however, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient). If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

WORKSOURCE
A proud partner of the [Fair Play Center](http://www.fairplaycenter.com) network

WorkSource is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Washington Relay Service 711.

State-Level ED Officer
Teresa Eckstein
Email: Eckstein@ed.wa.gov
Phone: 360-507-0990
Address: Employment Security Department
PO Box 9046
Olympia, WA 98507-9046

Local ED Contact

Per marc information

4-1807 (rev. 07/2016)



Employment
Security
Department

WASHINGTON STATE

§ 38.36 Recipients' obligations to publish equal opportunity notice

(a) At a minimum, the Equal Opportunity Notice required by [§ § 38.34](#) and 38.35 must be:

- (1) Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's Web site pages
 - ✧ Places people receive services – resource room, training rooms, lobby
 - ✧ Must be able to find it on the website
- (2) Disseminated in internal memoranda and other written or electronic communications with staff
- (3) Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available
- (4) Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.



§ 38.36 Recipients' obligations to publish equal opportunity notice (cont'd)

(b) The notice must be provided in **appropriate formats** to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with **visual impairments**. Where notice has been given in an alternate format ... [for people] with a visual impairment, a **record that such notice has been given must be made a part of the employee's or participant's file**.

- Examples: Large print, Braille, Email, Read Aloud, Voice Record

(c) The notice must be provided to participants **in appropriate languages other than English** as required in [§ 38.9](#)

- [Spanish](#), [Russian](#), [Ukrainian](#), [Vietnamese](#)



§ 38.38 Publications, broadcasts, and other communications

☆ Advertising Services – Must Include EO Tagline

☆ Brochures, flyers, notices, job postings, etc.

“(Name of LWDB, WorkSource or Service Provider) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.”

☆ When a phone number is listed must add:

“Washington Relay 711”

(a) Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an “**equal opportunity employer/program,**” and that “**auxiliary aids and services are available upon request to individuals with disabilities,**” in **recruitment brochures** and **other materials** that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient **may be reached by voice telephone,** the materials **must also prominently provide the telephone number** of the text telephone (TTY) or equally effective telecommunications system, such as a **relay service,** videophone, or captioned telephone used by the recipient, as required by [§ 38.15\(b\)](#).



§ 38.38 Publications, broadcasts, and other communications (cont'd)

★ **Media, Radio, TV other Promoting**

★ **Must use EO tagline**

★ (b) Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.



§ 38.38 Publications, broadcasts, and other communications (cont'd)

- ★ **No language excluding people of any protected group, or limiting access to a group, unless limited by program, such as Youth or Veterans**
- ★ **Ensure images and illustrations are inclusive**
- ★ (c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis specified in [§ 38.5](#), except as such treatment is otherwise permitted under Federal law or this part.



§ 38.39 Communication of notice in orientations

- ☆ During each **presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, in person or over the internet or using other technology**, a recipient must include a **discussion of rights and responsibilities** under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the **right to file a complaint** of discrimination with the recipient or the Director.
- ☆ This information **must be communicated in appropriate languages** as required in [§ 38.9](#) and in **formats accessible for individuals with disabilities** as required in this part and specified in [§ 38.15](#).



Element 3: Assurances From EO Training

- ❑ **All contracts, grants, cooperative agreements and other similar documents must include specific assurance language for nondiscrimination and equal opportunity.**
- ❑ **They must include either:**
 - **The exact language** found in 29 CFR Part 38.25 (a)(1)(i-ii):
 - “(i) As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions...”
 - **Or a citation** to the assurance language:
 - “The nondiscrimination assurances at 29 CFR Part 38.25 apply to this [contract/agreement/etc.]”



Element 4: Affirmative Outreach

From EO Training

- ❑ **Outreach to all populations** of eligible participants.
 - Use census data and information from other sources to ensure all populations are being reached.
- ❑ We must **demonstrate our effort** to reach representative:
 - Genders
 - Racial Groups
 - Ethnic Groups
 - Ages
 - Individuals with Disabilities
 - LEP Individuals
- ❑ **Provide equivalent levels of information about WorkSource services and activities to all populations of eligible participants**



§ 38.40 Affirmative Outreach

Recipients must take **appropriate steps to ensure** that they are **providing equal access** to their WIOA Title I-financially assisted programs and activities. These steps should involve **reasonable efforts to include members of the various groups** protected by these regulations including but not limited to persons of **different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups**. Such efforts may include, but are not limited to:

- (a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.



Element 5: Disability

Requirements From EO Training

Programs and services must be accessible to individuals with disabilities.

❑ Facilities

- Architectural accessibility
- Programs must be available at an accessible location

❑ Communication

- Must be as effective as communications with others
- Washington Relay Service number on flyers, brochures and all informational or marketing documents that include a telephone number

❑ Auxiliary Aids and Services

- Accessible workstations and assistive technology
- American Sign Language Interpreters



See CRC presentation

Section 188 - Individuals with disabilities



Reasonable Accommodation

From EO Training

Customers with disabilities must be provided, when needed:

- ❑ Reasonable accommodation in order to participate in programs, services or activities. Examples: Providing information in Braille, recorded materials, someone to read the material to an individual, sign language interpreters
- ❑ Reasonable modification in policies, practices or procedure. Examples: Creating a quiet work space outside of the resource room for someone with ADHD, allowing more time for someone with a learning disability to complete steps in a program, allowing a customer to take frequent breaks during a workshop to use the restroom if they need to
- ❑ We do not ask customers for medical documentation when the request an accommodation for WorkSource services.
- ❑ Ensure staff know to check with you before refusing to accommodate a customer with a disability.
- ❑ Reasonable accommodations for staff are handled by the employer HR department and have different regulations and requirements.



Service Animal

From EO Training

- ★ Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Trained miniature horses can be allowed.
- ★ Washington State Law Against Discrimination used to allow any trained animal, but was revised to specify only dogs.
- ★ The work or tasks performed by a service animal must be directly related to the individual's disability.
- ★ The training is more than just obedience training and the dog must be clean, groomed and under the control of the owner.
- ★ The provision of emotional support, well-being, comfort, or companionship, without more, do not constitute work or tasks, and they are not service animals.



Service Animal Examples

From EO Training

Some examples of how service animals might assist an individual with a disability:

- ❑ Assisting individuals who are blind or have low vision with navigation and other tasks
- ❑ Alerting individuals who are deaf or hard of hearing to the presence of people or sounds
- ❑ Pulling a wheelchair
- ❑ Assisting an individual during a seizure
- ❑ Alerting individuals to the presence of allergens
- ❑ Retrieving items such as medicine or the telephone
- ❑ Providing physical support and assistance with balance and stability to individuals with mobility disabilities
- ❑ Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.



Disability Information – Asking

From EO Training

- ❑ Disclosing a disability is voluntary, but customers might qualify for some services or programs if they are disabled and disclose their disability status.
- ❑ We are required to keep disability information confidential. We are also required ask every customer who registers or applies for services if they have a disability.
- ❑ Usually people register on their own in ETO and the question is part of the registration.
- ❑ If you are assisting a person to register or apply for services, you need to ask them if they are disabled and explain:
 - It is voluntary and will be kept confidential.
 - Services won't be affected if they provide the info or not.
 - We use the info to determine if they are eligible for special services or funding, to ensure accommodation needs are met, and for data analysis.



Disability Information – Sharing

From EO Training

- ❑ Confidentiality is of utmost importance
- ❑ Medical or disability related information must not be disclosed to employers
 - Whether referring or if the employer is considering hiring a customer
 - Only exception – customer asks staff to make the disclosure on their behalf
- ❑ It may be appropriate to discuss a person’s disability in limited circumstances at the customer’s request
 - With program supervisors or trainers to explain reasonable accommodations
 - With first aid and safety personnel – if the customer asks us to because the condition may require emergency treatment



Disability Information – Storing

From EO Training

Information that discloses a participant's medical condition or disability must be stored as a medical record.

- ❑ Consider the information most needed to help the customer advance through the program. This will generally be information on limitations caused by the disability and not the disability itself.
- ❑ If a customer brings you a medical note or other documentation about their disability, hand it back to them unless their participation requires documentation. Then put it in a medical file.
- ❑ Redact the medical and disability-related information from the participant file and insert “See confidential file”.
- ❑ Medical files must be maintained in a separate file for each individual and maintained in a separate locked cabinet.
- ❑ Access to the medical files must be very limited.



Element 6: Data Collection

From EO Training

WorkSource is required to collect and report customer equal opportunity demographic information to ensure all customers are accessing services.

- ★ Data we collect include:
 - ★ Race, Sex, Age, Disability Status, LEP and Preferred Language
- ★ Data may only be requested on a voluntary basis.
- ★ Data must be kept confidential to protect customer's privacy.
- ★ Data must be maintained for three years from the close of the program year, or from the date of final action of the complaint or compliance review.
- ★ We must provide data to the CRC upon request.



§ 38.41 Collection and maintenance of equal opportunity data and other information.

★ **Data must be collected and maintained consistently, to allow State EO and CRC to conduct data analysis and verify compliance**

(b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA or this part. **The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA and this part.**



§ 38.41 Collection and maintenance of equal opportunity data and other information (cont'd)

- ☆ Must collect and maintain EO data including:
 - Race/ethnicity, sex, age, disability status, LEP status and preferred language
- ☆ From applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment
- ☆ Must maintain confidentiality
- ☆ Only use for determining eligibility, reporting, data analysis, accommodating

(2) Such records must include, but are not limited to, **records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment.** Each recipient must record the **race/ethnicity, sex, age, and where known, disability status**, of every applicant, registrant, participant, terminee, applicant for employment, and employee. Beginning on January 3, 2019, each recipient must also record the **limited English proficiency and preferred language** of each applicant, registrant, participant, and terminee. Such information **must be stored in a manner that ensures confidentiality**, and must be **used only for the purposes of recordkeeping and reporting; determining eligibility**, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.



Adverse Impact Analysis

- ★ A substantially different rate of selection, in hiring, promotion, or other employment decision that works to the disadvantage of members of a race, sex, or ethnic group.
- ★ If a group's rate of selection is less than 80% of the most favored group, the group is experiencing adverse impact.



Element 7: Monitoring for Compliance

- ❑ The Local EO Officer uses State EO Monitoring Guide or tools approved by State-Level EO Officer
- ❑ Monitors WorkSource centers and service providers for compliance with the EO and nondiscrimination requirements including:
 - WIOA and/or LWDB Equal Opportunity Policies
 - Washington State Nondiscrimination Plan
 - Section 188 of the Workforce Innovation and Opportunity Act
 - Title VI of the Civil Rights Act of 1964, as amended
- ❑ The State-Level EO Officer monitors LWDBs and spot-checks their centers and service providers.



Element 7: Monitoring for Compliance

- ❑ Each annual monitoring review must include:
 - ❑(1) A statistical or other quantifiable analysis of records and data kept by the recipient under § 38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status;
 - ❑(2) An investigation of any significant differences identified in paragraph (b)(1) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and
 - ❑(3) An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan.



Element 8: Discrimination Complaint Process

★ See Complaint Handbook 1012

★ Process:

- Log complaint
- Determine jurisdiction
- Send notice of receipt
- Notify appropriate people
- Investigate
- Analyze & make determination
- Write report and NOFA
- Maintain records



§ 38.69 Complaint filing

(a) **Any person** or the person's **representative** who **believes that any** of the following circumstances exist may file a written complaint:

(1) A **person**, or any specific **class of individuals**, has been or is being **discriminated against** on the basis of **race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially assisted program or activity** as prohibited by WIOA or this part.

(2) Either the person, or any specific class of individuals, **has been or is being retaliated against** as described in § 38.19.



§ 38.69 Complaint filing (cont'd)

(b) A person or the person's representative may **file a complaint with either the recipient's EO Officer** (or the person the recipient has designated for this purpose) **or the Director**. Complaints filed with the Director should be sent to the address listed in the notice or filed electronically as described in the notice in § 38.35.

(c) Generally, a complaint **must be filed within 180 days of the alleged discrimination or retaliation**. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.



§ 38.70 Required contents of complaint

Each complaint must be **filed in writing, either electronically or in hard copy, and must contain the following information:**

- (a) The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant).
- (b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
- (c) 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:
 - (1) CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - (2) The complaint was filed in time; and
 - (3) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or this part.
- (d) The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.
- (e) A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer or from CRC. The forms are available electronically on CRC's Web site, and in hard copy via postal mail upon request. The latter requests may be sent to CRC at the address listed in the notice contained in § 38.35.



§ 38.71 Right to representation

- ★ Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.
- ★ If represented by a union, that is their sole representative.



Initial Written Notice

- (i) An acknowledgment that the recipient has received the complaint; and
 - (ii) Notice that the complainant has the right to be represented in the complaint process;
 - (iii) Notice of rights contained in § 38.35; and
 - (iv) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in §§ 38.4(h) and (i), 38.34, and 38.36.
- (2) A written statement of the issue(s), provided to the complainant, that includes the following information:
- (i) A list of the issues raised in the complaint; and
 - (ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.



Alternative Dispute Resolution (ADR)

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.

(2) The choice whether to use ADR or the customary process rests with the complainant.

(3) A party to any agreement reached under ADR may notify the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach; and

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

(4) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in § § 38.69 through 38.71.



Notice of Final Action (NOFA)

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

- (i) For each issue raised in the complaint, a statement of either:
 - (A) The recipient's decision on the issue and an explanation of the reasons underlying the decision; or
 - (B) A description of the way the parties resolved the issue; and
- (ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.



Customer Against WorkSource/Partner

From EO Training

- ★ If a customer tells you they are feeling discriminated against at WorkSource or by a One Stop partner, you must first give them their rights to file a formal complaint.
- ★ You can get a supervisor or your Local EO Officer, but can't make them wait for their rights if those people aren't available.
- ★ You can get the information from the EO poster.
- ★ A formal discrimination complaint under WIOA must be in writing and within 180 days from the last incident of alleged discrimination.
- ★ You can offer a complaint form, or they can write it another way. Forward written complaints to local EO officer right away.
- ★ After you notify them of their rights, you should continue to provide service.
- ★ You might be able to provide the service they were upset about, but you cannot determine if it was discrimination or not, and cannot resolve discrimination.
- ★ Keep the complaint confidential.



Customer Against Employer

From EO Training

- ★ If a customer tells you they are feeling discriminated against by their employer, give them their rights to file a complaint with:
- ★ Washington State Human Rights Commission
(File within 6 months)
- ★ U.S. Equal Employment Opportunity Commission
(File within 300 days)
- ★ You can also ask for assistance from your Local EO Officer, State EO Officer, Office Complaint Coordinator or the State Monitor Advocate.



Staff

From EO Training

- ★ Staff have the right to bring discrimination complaints to their supervisor or the EO Officer for his or her organization.
- ★ Staff are encouraged to resolve issues quickly, effectively, and informally at the lowest possible level.
- ★ Complaint procedures are developed by each partner organization for its own staff.
- ★ Discrimination complaints are confidential and it is illegal to retaliate against an employee that files or assists in an investigation for a discrimination complaint.



Staff Rights

From EO Training

- ☆ Staff may file a discrimination complaint using any or all of the following resources:
 - ☆ File a discrimination complaint using their employer's internal discrimination complaint process.
 - ☆ File a grievance under a Collective Bargaining Agreement, if represented.
 - ☆ File a discrimination complaint with a civil rights enforcement agency such as:
 - ☆ Washington State Human Rights Commission (6 month statute of limitations)
 - ☆ U.S. Equal Employment Opportunity Commission (300 day statute of limitations)
 - ☆ U.S. Department of Labor Civil Rights Center (180 day statute of limitations)



Element 9: Corrective Actions and Sanctions

From EO Training

- ❑ Voluntary Compliance:

If violations of non-discrimination requirements are found, the responsible agency is asked to voluntarily adhere to correction actions.

- ❑ Sanctions:

The Nondiscrimination Plan and section 188 WIOA provide procedures to implement corrective actions and apply sanctions if voluntary compliance is not achieved.



State EO Office seeks corrective action when:

- ★ The State-Level Equal Opportunity (EO) Officer's EO and nondiscrimination monitoring review using desk audits, on-site reviews or observations identify:
 - 1) a technical deficiency, 2) a failure to follow through on written assurances, or 3) a barrier to equal access to, or disparate impact in, programs or services.
- ★ The assessment of the circumstances surrounding a discrimination complaint and/or investigation, or other fact-finding tools reveals barriers to equal opportunity or equal access to WIOA, Employment Service, UI benefits or other state programs as defined at 29 CFR 38.4.
- ★ A recipient refuses to implement voluntary corrective actions, submit requested data or documentation, or provide access to premises or records during a compliance review.



Seek Voluntary Compliance

- ☆ **Level One** - If the need for corrective action is identified by the State-Level EO Officer, the recipient is notified in writing of the violation(s) with recommendations for voluntary corrective action.
- ☆ The recipient is given a due date to comply. When feasible, corrective action should be completed within 30 days from the date of initial notification of the violation.
- ☆ The State-Level EO Officer provides technical assistance and consultation on the specific action(s) to correct the violation(s).



Conciliation Agreement

- ☆ **Level Two** - If Level One fails, the recipient and the State-Level EO Officer enter into a conciliation agreement drafted by the State-Level EO Officer based on 29 CFR Part 38, specifying the commitment the entity will undertake to correct the violation(s), behavior and/or practice and to ensure it will not recur.

The conciliation agreement must: be in writing; address the legal and contractual obligations of the recipient; address each cited violation; specify the corrective action or remedial action to be taken within a stated period of time to come into compliance; provide for periodic reporting on the status of the corrective and remedial action; state that violation(s) will not recur; and provide for enforcement for a breach of agreement.

The State-Level EO Officer or designee conducts follow-up visits or monitoring if required.



Final Determination

- ★ **Final Determination Level Three** – After all efforts for voluntary compliance have been exhausted, the State-Level EO Officer notifies the ESD Commissioner in writing, specifying the following:
 - ★ Efforts made to achieve voluntary compliance, along with the areas of disagreement (if known);
 - ★ The apparent violation(s) and pertinent EO and nondiscrimination provision(s) of 29 CFR Part 38; and
 - ★ The corrective action the recipient must take to address the violation(s).
- ★ The ESD Commissioner may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. However, if voluntary compliance cannot be obtained, the Commissioner may issue a final determination.



Final Determination Notice

Final Determination Notice Includes the Following:

- ☆ Statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- ☆ A statement of the areas of disagreement;
- ☆ A list of any modifications to the findings of fact or conclusions that were set forth in the initial notice of findings by the State-Level EO Officer;
- ☆ A statement of the recipient's liability and, if appropriate, the extent of that liability;
- ☆ A description of the corrective or remedial actions that the recipient must take to come into compliance;
- ☆ A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, the recipient first will be given the opportunity for a hearing.



Sanctions

- ★ The Commissioner may apply the following sanctions:
 - Termination of future funding;
 - Disallowance of selected costs;
 - Restriction from bidding on competitive or discretionary funds; or
 - Reduction in funding.



Reference Info

- ☆ [Section 188 WIOA Nondiscrimination and Equal Opportunity Regulations \(29 CFR Part 38\)](#)
- ☆ [Washington State Nondiscrimination Plan](#)
- ☆ Equal opportunity posters (all files PDF): [English](#), [Spanish](#), [Russian](#), [Ukrainian](#), [Vietnamese](#)
- ☆ [Local EO Officer Contact List](#)
- ☆ State EO Office
 - Teresa Eckstein, teckstein@esd.wa.gov
 - Megan Eason, meason@esd.wa.gov
 - Kelly Moore, kmoore@esd.wa.gov
 - Group Email esdgpeo@esd.wa.gov



Equal Opportunity Laws 101

- *for the AJCs* -

Roger Ocampo

Chief, Office of Compliance and Policy

Civil Rights Center

U.S. Department of Labor

Civil Rights Center

The mission of the Civil Rights Center is to promote justice and equal opportunity by acting with impartiality and integrity in administering and enforcing various civil rights laws. These laws protect:

- * Department of Labor employees and applicants for employment, and
- * Individuals who apply to, participate in, work for, or come into contact with programs and activities that are conducted by or receive financial assistance from DOL, or, under certain circumstances, from other Federal agencies.

We carry out this mission by investigating and adjudicating discrimination complaints, conducting compliance reviews, providing technical assistance and training, and developing and publishing civil rights regulations, policies, and guidance.

Common Thread

* *...be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment...*

Civil Rights Act of 1964

An Act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Parts of the Civil Rights Act Important to AJCs

- * Title II Injunctive Relief Against Discrimination in Public Accommodations
 - * race, color, religion or national origin
- * Title III Desegregation of Public Facilities
 - * race, color, religion or national origin
- * Title IV Desegregation of Public Education
 - * race, color, religion or national origin
- * Title VI Nondiscrimination in Federally Assisted Programs
 - * race, color, religion or national origin
- * Title VII Equal Employment Opportunity
 - * race, color, religion, sex or national origin

Rehabilitation Act of 1973

An act to replace the vocational rehabilitation act, to extend and revise the authorization of grants to states for vocational rehabilitation services, with special emphasis on services to those with the most severe handicaps, to expand special federal responsibilities and research and training programs with respect to handicapped individuals, to establish special responsibilities in the secretary of health, education, and welfare for coordination of all programs with respect to handicapped individuals within the department of health, education, and welfare, and for other purposes.

Parts of Rehabilitation Act of 1973 Important to AJCs

- * Section 503 requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contracts of more than \$15,000.
- * Section 504 provides opportunities for children and adults with disabilities in education, employment and various other settings. It allows for reasonable accommodations such as special study area and assistance as necessary for each student.

Focus on Section 504

- * Each Federal agency that provides Federal financial assistance also has section 504 regulations.
- * Requirements common to these regulations include:
 - * reasonable accommodation for beneficiaries and employees with disabilities;
 - * programmatic accessibility;
 - * effective communication with people who have hearing or vision disabilities; and
 - * accessible new construction and alterations.
- * Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to court.

Age Discrimination Act of 1975

Title III - 42 USC 6101

- * Section 6101. Statement of purpose - It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.
- * Section 6102. Prohibition of discrimination - Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) of this title and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

Education Amendments of 1972

To amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act (creating a National Foundation for Postsecondary Education and a National Institute of Education), the Elementary and Secondary Education Act of 1965, Public Law 874, Eighty-first Congress, and related Acts, and for other purposes.

Part of Education Amendments Important to AJCs

Title IX—Prohibition of Sex Discrimination

SEC. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

Americans with Disabilities Act

(Americans with Disabilities Act Amendments Act)

An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability

- * Title I—employment
- * Title II—public entities (and public transportation)
- * Title III—public accommodations (and commercial facilities)
- * Title IV—telecommunications

Section 188(a)(1) of WIOA

- * **FEDERAL FINANCIAL ASSISTANCE.** — For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

Section 188(a)(2) of WIOA

- * PROHIBITION OF DISCRIMINATION REGARDING PARTICIPATION, BENEFITS, AND EMPLOYMENT. — No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

Room Discussion #1

Who are protected by these civil rights laws?

Theories of Discrimination

- * Disparate Impact - The adverse effect of a facially neutral practice that nonetheless discriminates against persons because of a prohibited basis (such as race, sex, national origin, age, or disability) where that policy or practice lacks a substantial legitimate justification
- * Disparate Treatment - Occurs when a person or persons are intentionally treated differently from others because of one or more of the protected bases

Room Discussion #1

For each law, what is/are the prohibited base(s)?

Prohibited Bases

- * Civil Rights Act
 - * Race, color, national origin
- * ADA/Rehabilitation Act
 - * Disability
- * Title IX
 - * Sex
- * Age Discrimination Act
 - * Any age
- * Section 188 of WIOA
 - * Race, color, national origin, sex, religion, disability, political affiliation or belief, age
 - * For beneficiaries only – citizenship or participation in any WIOA Title I program or activity
- * All Laws above
 - * Retaliation or reprisal

Room Discussion #2

What might discrimination look like in a AJC?

Section 188 of WIOA

- * Prohibits discrimination
- * Applies to programs and activities funded or otherwise financially assisted in whole or in part under this Act
- * Civil Rights Center oversees compliance
 - * Implementing regulations at 29 CFR part 38
 - * Recently revised – effective January 3, 2017

Quick Look at 188 Requirements

Quick Notes:

- * Governors have oversight responsibilities for their State Programs
- * Governor must develop and follow a Nondiscrimination Plan (formally the Methods of Administration)
- * Each Governor must have a State-Level EO Officer responsible for the plan's implementation and coordination
- * AJCs may have responsibilities under the Nondiscrimination Plan

Quick Look – Assurances

(29 CFR 38.25 – 38.27)

- * As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions
- * The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations
- * This assurance applies to the grant applicant's operation of the WIOA Title I–financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I–financially assisted program or activity

Quick Look - Equal Opportunity Officers

(29 CFR 38.28 - 38.33)

- * Governors must designate an individual as a State-level Equal Opportunity Officer, who reports directly to the Governor and is responsible for State Program-wide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA. The State-level EO Officer must have staff and resources sufficient to carry out these requirements.
- * Every recipient except small recipients and service providers, must designate a recipient-level Equal Opportunity Officer, who reports directly to the individual in the highest-level position of authority for the recipient. The recipient-level EO Officer must have sufficient staff and resources.

Quick Look – EO Officers Pt 2

- * The EO Officer must be a senior-level employee reporting directly to the individual in the highest-level position of authority for the recipient
- * EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) must be made public
- * Assign sufficient authority, staff, and resources, and support of top management
- * Ensure that the EO Officer and staff receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

Quick Look – EO Officers Pt 3

- * The EO Officer must be a senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently as described in this subpart.
- * The EO Officer may, or may not, be assigned other duties. However, the EO Officer must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer.

Quick Look – EO Officers Pt 4

- * Serves as a recipient's liaison with CRC;
- * Monitors and investigates the recipient and its subrecipients for nondiscrimination and equal opportunity
- * Reviews the recipient's written policies to make sure that those policies are nondiscriminatory
- * Develops and publishes procedures for processing discrimination complaints
- * Conducts outreach and education about equal opportunity and nondiscrimination requirements

Quick Look - Notice and Communication

(29 CFR 38.34 - 38.39)

- * Provide initial and continuing notice that it does not discriminate on any prohibited basis to:
 - * (1) Registrants, applicants, and eligible applicants/registrants; (2) Participants; (3) Applicants for employment and employees; (4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient; (5) Subrecipients that receive WIOA Title I financial assistance from the recipient; and (6) Members of the public, including those with impaired vision or hearing and those with limited English proficiency.

Quick Look – Notice Pt 2

- * Post and disseminate the specific wording in 29 C.F.R. 38.35
 - * AKA “**Equal Opportunity is the Law**”
 - * Posted prominently
 - * Disseminated in communications with staff
 - * Include in employee and participant handbooks/manuals
 - * Given to participants and employees (and made part of their file)
- * Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals

Quick Look – Notice Pt 3

- * Indicate that it is an “equal opportunity employer/program,” and that “auxiliary aids and services are available upon request to individuals with disabilities,” in recruitment brochures and other materials distributed to staff, clients, or the public, to describe programs or the requirements for participation. When using telephone numbers, also provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone.

Quick Look – Notice Pt 4

Ensure that publications and broadcasts state that it is an equal opportunity employer/program (or otherwise indicate that discrimination is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

- * Must not communicate any information that suggests, by text or illustration, that it treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently, except as such treatment is otherwise permitted under Federal law.

Quick Look – Notice Pt 5

- * During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I–financially assisted program or activity, in person or over the internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the right to file a complaint of discrimination with the recipient or the Director.
- * This information must be communicated in appropriate languages and in formats accessible for individuals with disabilities.

Quick Look - Data and Information Collection and Maintenance

(29 CFR 38.41 - 38.45)

- * Each recipient must collect and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment.
- * Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee.
- * Beginning on January 3, 2019, each recipient must also record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminee.

Quick Look – Data Pt 2

- * Records must be stored in a manner that ensures confidentiality, and must be used only for the purposes of reporting; determining eligibility, where appropriate, for WIOA Title I–financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I–financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

Quick Look – Data Pt 3

- * Any medical or disability-related information, including information that could lead to the disclosure of a disability, must be collected on separate forms.
- * All such information, whether in hard copy, electronic, or both, must be maintained, apart from any other information about the individual, and treated as confidential.
- * These files, electronic or hard copy, must be locked or otherwise secured (for example, through password protection).

Quick Look – Data Pt 4

- * Disability or medical condition can only be shared under limited circumstances:
 - * Program staff who are responsible for documenting eligibility, when disability is an eligibility criterion.
 - * First aid and safety personnel who need access to underlying documentation in an emergency.
 - * Government officials investigating compliance with Federal laws.
 - * Supervisors, managers, and other necessary personnel regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

Quick Look – Data Pt 5

Data and Information Collection and Maintenance (29 CFR 38.41 - 38.45)

- * Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I–financially assisted program or activity.

Quick Look – Data Pt 6

- * Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I–financially assisted program or activity.

Quick Look – Data Pt 7

- * Each recipient must maintain records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year:
- * Where a discrimination complaint has been filed or compliance review initiated, maintain records (related to the complaint or review) for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

Quick Look - Affirmative Outreach

(29 CFR 38.40)

- * Take appropriate steps to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups.

Quick Look – Outreach Pt 2

Affirmative Outreach (29 CFR 38.40)

- * Such efforts may include, but are not limited to:
 - * (a) Advertising the recipient’s programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
 - * (b) Sending notices about openings in the recipient’s programs and/or activities to schools or community service groups that serve various populations; and
 - * (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Quick Look - Complaint Processing

(29 CFR 38.72 - 38.73)

- (1) The initial written notice to the complainant must:
 - (i) Acknowledge that the recipient has received the complaint
 - (ii) Contain notice that the complainant has the right to be represented
 - (iii) Contain notice of rights contained in the EO Notice
 - (iv) Contain notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into non-English languages

Quick Look – Complaint Pt 2

- (2) A written statement to the complainant of the issue(s) that includes the following information:
- (i) A list of the issues raised in the complaint; and
 - (ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.
- (3) A period for fact-finding or investigation.

Quick Look – Complaint Pt 3

(4) A period during which the recipient attempts to resolve the complaint including the use of alternative dispute resolution:

(1) The complainant may attempt ADR at any time after the complainant was filed but before the Notice of Final Action

(2) The choice whether to use ADR rests with the complainant.

(3) CRC may be notified if any agreement reached under ADR is breached.

(4) If the parties do not reach an agreement under ADR, the complainant may file a complaint with CRC

Quick Look - Complaint Pt 4

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

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

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision; or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

Open Discussion

Where to get help

- * Copies of laws, regulations and technical assistance material – dol.gov/crc
- * Email questions and training requests to civilrightscenter@dol.gov

CRC Updates Section 188 WIOA Equal Opportunity Regulations

(29 CFR Part 38)

Overview for the Chicago Region

Roger Ocampo

Chief, Office of Compliance and Policy

Civil Rights Center

U.S. Department of Labor

For More Information....

- * In addition to asking questions today, you can and question and submit technical assistance requests to CRC at civilrightscenter@dol.gov
- * More information, and answers to frequently asked questions, may be found on CRC's website at www.dol.gov/crc/188rule.

What's New in the Final Rule

- * CRC has revised its regulations to implement the nondiscrimination and equal opportunity obligations under WIOA **Section 188**.
- * **Section 188** prohibits discrimination against individuals in any WIOA Title I–financially assisted program or activity, which includes job training for adults and youth and programs or activities provided by recipients at American Job Centers (one-stop centers).

- * These programs or activities may not refuse to offer or provide services to individuals because of their race, color, religion, sex, national origin, age, disability, or political affiliation or belief.
- * Discrimination on these bases is also prohibited against employees who are employed in the administration of, or in connection with, any WIOA Title I-financially assisted program or activity.

- * Beneficiaries, applicants, and participants – as defined by the Final Rule – cannot be denied covered services because of their citizenship status, and cannot be denied their rights because of participation in a WIOA Title I–financially assisted program or activity.

- * The rule applies to recipients of WIOA Title I financial assistance and to programs and activities that are operated by American Job Center partners (one-stop partners) as part of the American Job Center system (one-stop delivery system), such as Unemployment Insurance, Temporary Assistance for Needy Families, adult education, Trade Adjustment Assistance, and others.

The Final Rule ...

- * **Updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles.**
- * The rule captures developments since 1999 under the following laws, reflected in case law and in regulations issued by other Federal agencies, including the Departments of Justice and Education and the Equal Employment Opportunity Commission:
 - * Title VI and Title VII of the Civil Rights Act of 1964;
 - * Title IX of the Education Amendments of 1972;
 - * The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008; and
 - * Section 504 of the Rehabilitation Act of 1973.

The Final Rule ...


- * While the rule makes many substantive changes since 1999, the final rule does not impose significant new obligations on recipients.
- * The rule's updated provisions generally reflect obligations already imposed by changes to other nondiscrimination and equal opportunity laws.


The Final Rule ...

- * **Ensures protection from discrimination based on pregnancy.**
- * The rule makes clear that sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions, in accord with the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, and in accord with Title IX of the Education Amendments of 1972.

The Final Rule ...


- * **Safeguards meaningful access to the workforce system for persons with limited English proficiency (LEP).**
- * The regulations clarify that discrimination based on national origin includes failing to provide language services to someone with limited English proficiency.
- * As such, under the rule, recipients must take reasonable steps to ensure that individuals with LEP have meaningful access to aid, benefits, services, and training.

- 
- * These steps may include oral interpretation and written translation of both hard-copy and electronic materials into non-English languages.
 - * This ensures that individuals with LEP are informed about or able to participate in covered programs or activities.

- 
- * In addition, the rule clarifies which documents contain “vital” information and thus must be translated into languages spoken by a significant number or portion of the population eligible to be served or likely to be encountered.

- * “Vital” information means information, whether written, oral or electronic,
 - * that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training;
 - * necessary for an individual to obtain any aid, benefit, service, and/or training;
 - * or required by law.

- * The rule requires recipients to record the limited English proficiency and preferred language of applicants who seek to participate in the workforce development system to help ensure they have the necessary information to serve individuals with LEP effectively.

- 
- * Finally, an appendix to the LEP section of the rule describes promising practices to help recipients comply with their legal obligations and includes the components of a plan to facilitate meaningful access for individuals with limited English proficiency.

The Final Rule ...

- * **Ensures equal access to the workforce system for people with disabilities by bringing the regulations in line with updated disability rights law.**
- * The rule brings the CRC regulations in accord with the Americans with Disabilities Act Amendments Act of 2008 and the implementing regulations and guidance issued by the Department of Justice, as well as the implementing regulations and guidance issued by the Equal Employment Opportunity Commission.

- * The rule's updated language ensures that the definition of "disability" will be interpreted broadly, which will enable more individuals with disabilities to be effectively served within the workforce development system.
- * The rule also addresses accessibility requirements (such as for information and electronic technologies) and service animals.

The Final Rule ...

- * **Ensures that recipients and beneficiaries are aware of the full scope of their responsibilities and rights.**
- * CRC revised the equal opportunity notice or poster that recipients are required to display and distribute in order to ensure that they, and individuals participating in their programs and activities, are aware of the scope of the nondiscrimination and equal opportunity responsibilities and recent developments in law.
- * As the final rule explains, CRC will make translations of this notice available to recipients in the ten most frequently used languages in the U.S. (other than English).

- * Changes to the notice reflect, for example, that “sex,” as a prohibited basis for discrimination, includes pregnancy, childbirth, and related medical conditions; transgender status and gender identity; and sex stereotyping.
- * Similarly, the changes make clear that discrimination against persons with limited English proficiency is a form of national origin discrimination.

The Final Rule ...

- * **Outlines protections against sex discrimination.**
- * The rule states that discrimination on the basis of transgender status, gender identity,-and sex stereotyping are forms of sex discrimination, in accord with similar developments under other civil rights laws.

- * The rule specifically states that Section 188's prohibition of discrimination on the basis of sex includes, at a minimum, sex discrimination related to an individual's sexual orientation where the evidence establishes that the discrimination is based on gender stereotypes.
- * CRC anticipates that the law regarding sex discrimination will continue to evolve, and CRC will monitor legal developments in this area.

Questions & Parting Thoughts

- * The new WIOA Section 188 regulations were published in the Federal Register on December 2, 2016 and become effective on January 3, 2017.
- * They can be found through the links on our website: www.dol.gov/crc.

CONTINUING the CONVERSATION

2017 WIOA National Convenings



Innovation &
Opportunity
Network
Implementing WIOA



What You Need to Know about Section 188: Individuals with Disabilities

Presented by the U.S. Department of Labor, Employment and Training Administration

Moderator

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Supervisor, Workforce Systems Policy

U.S. Department of Labor

Office of Disability Employment Policy

Agenda

- Review of WIOA's Equal Opportunity Provisions (Section 188)
- Relationship between Section 188 and WIOA disability-related provisions
- Promising Practices with the Section 188 Disability Reference Guide
- State and local perspectives on improving access and equal opportunity
- Questions & Answers

Today's speakers

Lee Perselay

Senior Policy Advisor

Civil Rights Center, U.S. Department of Labor

Jamie Robinson

Manager, Financial Empowerment & Workforce

LEAD Center

National Disability Institute

Danielle Smith

State WIA Equal Opportunity Officer

Missouri Division of Workforce Development

WIOA's Equal Opportunity Provisions

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CONVERSATION
2017 WIOA National Convenings

Lee Perselay

Senior Policy Advisor

Civil Rights Center

U.S. Department of Labor

Section 188 Regulation Overview

- CRC is responsible for the regulations to implement the nondiscrimination and equal opportunity obligations under WIOA **Section 188**.
- **Section 188** prohibits discrimination against individuals in any WIOA Title I–financially assisted program or activity, which includes job training for adults and youth and programs or activities provided by recipients at American Job Centers (one-stop centers).

Section 188 Regulation Overview

- These programs or activities may not refuse to offer or provide services to individuals because of their race, color, religion, sex, national origin, age, disability, or political affiliation or belief.
- Discrimination on these bases is also prohibited against employees who are employed in the administration of, or in connection with, any WIOA Title I-financially assisted program or activity.

Section 188 Regulation Overview

CONTINUING the
CONVERSATION
2017 WIOA National Convenings

- Beneficiaries, applicants, and participants – as defined by the Rule – cannot be denied covered services because of their citizenship status, and cannot be denied their rights because of participation in a WIOA Title I–financially assisted program or activity.

Section 188 Regulation Overview

- The Rule applies to recipients of WIOA Title I financial assistance, including programs and activities that are operated by American Job Center partners (one-stop partners) as part of the American Job Center system (one-stop delivery system), such as Unemployment Insurance, Temporary Assistance for Needy Families, adult education, Trade Adjustment Assistance, and others.

§188 Regulation – Disability Provisions

- The Rule's requirements concerning individuals with disabilities generally parallel the requirements under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

Need to know: Including individuals with disabilities

- WIOA requires that AJCs serve individuals with disabilities, and not just automatically refer such individuals to the state vocational rehabilitation program.
- In addition, AJCs may not refuse to serve individuals with disabilities because the AJC has made a referral to VR. Individuals with disabilities have the right to choose not to go to VR and if eligible, instead receive services from AJCs and other recipients. [29 C.F.R. 38.12(c)]

Need to know: Including individuals with disabilities

- WIOA/Section 188 (and other federal laws) require AJCs to be accessible to, and useable by, individuals with disabilities.

Need to know: Definition of Disability

- Disability means, with respect to an individual:
 - A physical or mental impairment that substantially limits one or more major life activities of such individual;
 - A record of such an impairment; or
 - Being regarded as having such an impairment .
- “Substantially limits” is not meant to be a demanding standard.
- This is the same definition of disability as the ADA.

Need to know: Definition of Disability

- This definition was broadened under the ADA Amendments Act of 2008.
- Determination of disability must be made without regard to mitigating measures.
- Congress intended the focus to be on whether discrimination occurred, not an exhaustive analysis of whether the person has a disability.

Need to know: Qualified individual with a disability

- With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of such position;
- With respect to aid, benefits, services, or training, an individual who -- with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices, and procedures -- meets the essential eligibility requirements for such aid/benefit/service/training.

Need to know: Disability Discrimination

- Discrimination prohibited based on disability:
 - Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid/ benefit/service/training.
 - Providing a qualified individual with a disability with any aid/benefit/service/training that is not equal to what is offered to others or that is not as effective.

Need to know: Disability Discrimination

- Discrimination prohibited based on disability:
 - Providing different, segregated, or separate aid/benefit/service/training unless necessary to provide qualified individuals with disabilities with any aid/benefit/service/training that is as effective as those provided to others, and consistent with the requirements of the Rehabilitation Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment.

Need to know: Disability Discrimination

- Cannot require a qualified individual with a disability to participate in separate or different programs or activities instead of mainstream programs/activities. [slide 11 cite]
- Must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- Important to provide meaningful opportunities for seeking employment and work in competitive integrated settings.

Need to know: Specific Requirements

- Reasonable Accommodations
- Reasonable Modifications
- Auxiliary Aids and Services
- Accessible electronic and information technology
- Physical accessibility
- Programmatic accessibility

Need to know: Reasonable Accommodations

- With regard to any aid, benefit, service, training, and employment, a recipient must provide **reasonable accommodations** to qualified individuals with disabilities unless providing the accommodation would cause undue hardship.

Need to know: Reasonable Accommodations

- **Reasonable accommodation** means:
 - Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid/benefits/services/training/employment they desire; or
 - Modification or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid/benefits/services/training equal to that provided to qualified individuals without disabilities.

Need to know: Reasonable Modifications

- With regard to any aid, benefit, service, training, and employment, a recipient must make **reasonable modifications** in policies, practices, or procedures when the modifications are necessary to avoid discrimination, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

Need to know: Auxiliary Aids and Services

- A recipient must:
 - Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.
 - Furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in/enjoy the benefits of a service, program, or activity.
 - In determining what types of auxiliary aids and services are necessary, the recipient must give primary consideration to the requests of individuals with disabilities.

Need to know: Electronic and Information Technology

- When developing, procuring, maintaining, or using electronic and information technology, a recipient must use technology, applications, or adaptations which:
 - Incorporate accessibility features;
 - Are consistent with modern accessibility standards; and
 - Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits are provided in an equally effective and equally integrated manner.

Need to know: Physical Accessibility

- No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program or activity, or be subject to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.
- Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations that began construction after 1/26/92 comply with applicable federal design standards.
- Recipients that receive federal financial assistance must meet the accessibility obligations under Section 504 of the Rehabilitation Act and 29 CFR part 32.

Need to know: Programmatic Accessibility

- Programmatic accessibility means:
 - Providing reasonable accommodations;
 - Making reasonable modifications to policies, practices, or procedures;
 - Administering programs in the most integrated setting appropriate;
 - Communicating with persons with disabilities as effectively as others, including providing appropriate auxiliary aids or services.

Parting Thoughts

- The Section 188 regulations are 29 CFR part 38.
- They can be found through the links on our website:
www.dol.gov/crc.
- Questions and requests for technical assistance can be sent to: civilrightscenter@dol.gov

Jamie Robinson

Manager, Financial Empowerment & Workforce
LEAD Center
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Danielle Smith

State WIA Equal Opportunity Officer
Missouri Division of Workforce Development

Section 188 Disability Reference Guide

- On July 6, 2015, the Department of Labor released:
Promising Practices in Achieving Universal Access & Equal Opportunity: A Section 188 Disability Reference Guide
- <https://www.dol.gov/oasam/programs/crc/Section188Guide.pdf>
- The Reference Guide was jointly developed by:
 - Civil Rights Center (CRC)
 - Employment and Training Administration (ETA)
 - Office of Disability Employment Policy (ODEP)
 - With support and assistance from ODEP's LEAD Technical Assistance Center at the National Disability Institute.

Section 188 Disability Reference Guide

- The promising practices in the Guide relate to the nondiscrimination (equal opportunity) and affirmative outreach (previously “universal access”) requirements of Section 188:
 - Reference Guide does not create new legal requirements or change current legal requirements;
 - Promising practices do not preclude states and recipients from devising alternative approaches;
 - Adoption of promising practices will not guarantee compliance.

188 Guide:

SECTION 1 - UNIVERSAL ACCESS

- **Universal access to programs and activities:**
 - Understanding local needs
 - Marketing and outreach
 - Involving community groups and schools
 - Effecting collaboration, including partnerships/linkages
 - Intake, registration and orientation
 - Staff training
 - Assessments and screenings
 - Service delivery

188 Guide:

SECTION 1 - UNIVERSAL ACCESS

- **Recurring Themes of Promising Practices**
 - Partnerships with diverse disability groups
 - Resource mapping and coordination
 - Disability knowledge of staff
 - Training opportunities around disability
 - National/State/Local disability resources

188 Guide:

SECTION 2 - EQUAL OPPORTUNITY

➤ **Equal Opportunity:**

- Prohibits
 - ✓ Discrimination against people with disabilities
 - ✓ Discrimination in employment practices
- Requires
 - ✓ Reasonable Accommodations for people with disabilities
 - ✓ Reasonable Modifications of policies, practices, procedures
 - ✓ Programs and activities in most integrated setting appropriate
 - ✓ Effective communication with people with disabilities
 - ✓ Program, architectural, and information and communication technology accessibility

188 Guide:

SECTION 2 - EQUAL OPPORTUNITY

- **Recurring Themes of Promising Practices**
 - Interactive process and procedures for reasonable accommodations
 - Legal practices around Asking, Telling, Using, and Storing of disability-related information
 - Representation of people with disabilities in all AJC services and programs
 - Referrals of people with disabilities to separate programs are *not* automatic

188 Guide:

SECTION 3 - IMPLEMENTING

UNIVERSAL ACCESS & EQUAL OPPORTUNITY

- **Implementing Universal Access & Equal Opportunity**
 - Designation of Qualified Equal Opportunity Officer
 - Notice and Communication
 - Assurances
 - Data and Information Collection, Analysis, and Maintenance
 - Monitor for Compliance and Continuous Improvement
 - Complaint Processing Procedures
 - Corrective Actions/Sanctions

Section 188:

Missouri Workforce Pilot

Section 188 Missouri Workforce Pilot

- 2010 CRC monitored Missouri for EO Compliance
- MO DWD charged to revamp nondiscrimination and equal opportunity program
- Chose to focus on disability
 - Disability cuts across race, age, gender, sexual orientation and gender identity, ethnicity, religion and socio-economic status
 - AND...only minority group that anyone can join any time
- Use **Section 188 Disability Reference Guide** as a blueprint to improve equal opportunity

Section 188 Missouri

Workforce Pilot: LEAD Partnership

➤ Initial Action Plan:

- Education, Information and Call to Action for all Workforce Leadership
- Attendance at NASWA Equal Opportunity Conference
- Partnership with LEAD Center
- Climate Survey with Missouri Job Center Staff, Customers and Employers

Section 188 Missouri

Workforce Pilot: Survey Findings

- Local EOOs, workforce management/staff in need of Section 188 and disability-related training
- AJCs must be made accessible for ALL individuals
- Refresher training needed on assistive technology
- Cross training request with Vocational Rehabilitation
- Make Reasonable Accommodation policy/procedures more visible for all
- Employers want more information on recruiting and accommodating people with disabilities

Section 188 Missouri

Workforce Pilot: Action Steps

- Used **Section 188 Disability Reference Guide** to train EOOs, management and front line staff
- Reviewed Local Boards' Reasonable Accommodation policies and procedures
- Revised/trained on Case Note Policy statewide
- Local Boards charged with developing strategic outreach plans
- Annual surveys disseminated to determine training needs for workforce staff
- Business Reps and VR partnering with employers on recruiting people with disabilities

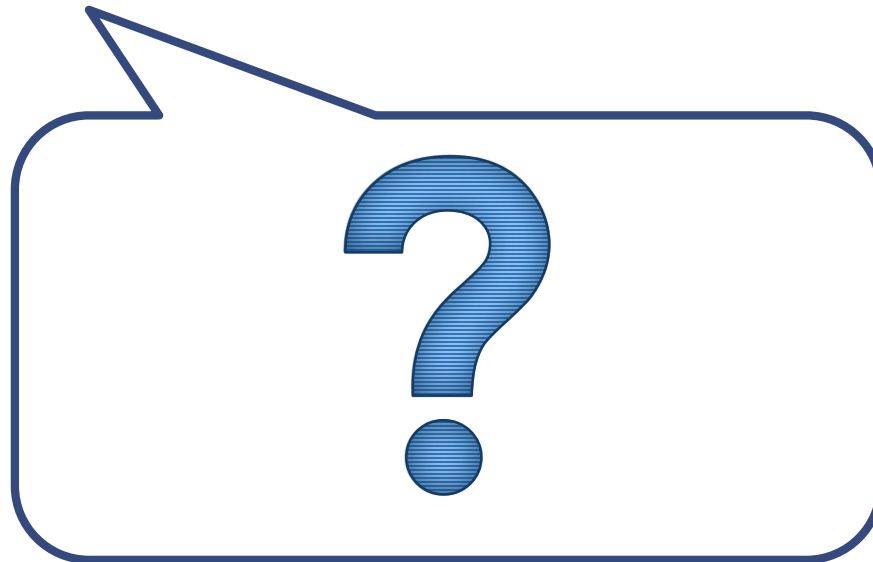
Section 188 Missouri Workforce Pilot: Moving Beyond Compliance

- Solidify partnership with State VR in Section 188 activities
- Re-vamp survey/assessment using relatable language and scenarios
- Implement collaborative training series with VR based on survey responses and statewide disability themes
- Engage local EOOs with local workforce center staff
- Assign 'Action Items' for staff to learn by engaging in promising practices around disability

Implementing Section 188: Lessons Learned

- Collaboration with Equal Opportunity Officers
- Ongoing surveying of staff, customers and businesses around disability
- Modeling collaboration between workforce and disability partners
- Developing hands-on staff training and practice opportunities with support
- Ensuring ongoing training opportunities for workforce system, including core partners, leadership and staff

Any Questions?



Implementing Section 188: Lessons Learned

- Website: www.leadcenter.org
 - Employment First: <http://employmentfirst.leadcenter.org/>
- Sign up for LEAD Center News: <http://eepurl.com/sQiHr>
- Follow the LEAD Center on...
 - Facebook: www.facebook.com/LEADCtr
 - Twitter: @LEADCtr
 - LinkedIn: [linkedin.com/groups/LEAD-Center-4828089](https://www.linkedin.com/groups/LEAD-Center-4828089)
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Contact Information

For questions regarding the information in presentation, send an email to*:

DOL.WIOA@dol.gov

*Please use *Special Session: What You Need to Know About Section 188: Individuals with Disabilities* as the subject line.

Thank you!