

SUBJECT: DISCRIMINATION COMPLAINT PROCESSING

NOTE:

This Discrimination Complaint Processing Policy applies to both represented and non-represented employees.

This topic is covered in Article 2 of the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees (WFSE) which applies to represented employees. Represented employees should refer to the CBA for guidance.

PURPOSE:

This policy complies with applicable federal and state equal opportunity and nondiscrimination laws. The policy applies to employees, job applicants and clients of ESD programs and services.

POLICY:

It is the policy of the Employment Security Department to provide equal opportunity and nondiscrimination in all aspects of employment and service delivery. It is a violation of this policy to discriminate in employment and service delivery based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, marital status, sexual orientation or gender identity, or honorably discharged veteran or military status. It is further a violation of this policy to discriminate in service delivery based on citizenship or participation in a WIA Title I-financially assisted program or activity.

1. INTIMIDATION AND RETALIATION PROHIBITED

It is a violation of this policy to intimidate or retaliate in any manner against any individual for filing a discrimination complaint or for assisting or participating in the investigation of a discrimination complaint.

2. RESOLUTION AT LOWEST POSSIBLE LEVEL

ESD supports employees and clients in resolving all disputes informally at the lowest possible level. However, all ESD employees are responsible for protecting employees' and clients' rights. The complainant must be informed of the right to file formal discrimination complaints alleging violations of this policy.

3. RIGHT TO FILE A DISCRIMINATION COMPLAINT

Anyone who believes he or she has been subjected to discrimination or retaliation for participating in the discrimination complaint process may file a discrimination complaint. The discrimination complaint form (Attachment A) may be used.

4. RIGHT TO OTHER PROCESSES

ESD employees and clients of ESD programs and services may have the right to other discrimination complaint processes:

[Washington Federation of State Employees](#)

In accordance with the procedures established in the CBA, Article 2, it is the right of represented ESD employees to file a grievance alleging discrimination.

[Client Discrimination Complaints against the Workforce Investment Act \(WIA\) of 1998 funded Programs](#)

The following WIA clients may file a discrimination complaint under WIA Title I-B Policy 3450 – Equal Opportunity Discrimination Complaint Processing Policy and Procedures: applicants; registrants for aid, benefits, services or training; eligible applicants or registrants; participants; applicants for employment in WIA services; service providers and eligible service providers; customers; clients; and, contractors.

Complaints should be filed with the local [Workforce Development Council Equal Opportunity Officer](#) under WIA policy 3450 or a local policy.

Further, it is the right of every ESD employee or client to file a discrimination complaint directly with an external state or federal agency with jurisdiction over the alleged complaint. The following agencies have jurisdiction over ESD employee and client discrimination complaints:

[Civil Rights Center, U.S. Department of Labor \(CRC\)](#)

CRC enforces federal laws that prohibit discrimination by recipients of U.S. Department of Labor financial assistance. Discrimination is prohibited in employment and service delivery based on race, color, religion, sex, national origin, age, disability, and political affiliation or belief. For beneficiaries of services, discrimination is also prohibited based on citizenship and participation in a WIA Title I-financially assisted program or activity.

CRC's jurisdiction covers Title VI of the Civil Rights Act of 1964, as amended, Section 188 of the Workforce Investment Act, Section 504 of the Rehabilitation Act of 1973, as amended, Title II of the Americans with Disabilities Act of 1991, as amended and Title IX of the Education Amendments of 1972, as amended.

Equal Employment Opportunity Commission (EEOC)

EEOC enforces federal laws that prohibit discrimination in employment on the basis of race, color, national origin, sex, religion, age (40 or above), and disability. EEOC jurisdiction covers violations of Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 and Title I of the Americans with Disabilities Act of 1990, as amended.

Office of Civil Rights, U.S. Department of Education (OCR)

OCR enforces federal laws that prohibit discrimination in education-related employment and service delivery based on sex. OCR's jurisdiction is over violations of Title IX of the Education Amendments of 1972.

Washington Human Rights Commission (HRC)

HRC enforces state law that prohibits discrimination in employment and places of public accommodation based on race, creed, color, national origin, sex, sexual orientation and gender identity, marital status, age (40 or above) disability and honorably discharged veteran or military status. HRC's jurisdiction is the Washington Law Against Discrimination – RCW 49.60.

RESPONSIBILITIES:

1. ESD EMPLOYEE RESPONSIBILITIES

- Maintain a nondiscriminatory work and customer service environment.
- Be aware of applicable equal opportunity and nondiscrimination laws, and these procedures.
- Cooperate in the investigation and resolution of discrimination complaints.
- Respond immediately to discrimination complaints from clients. Employees who receive complaints from clients alleging a violation of this policy are required to take immediate action. The discrimination complaint should be forwarded to their supervisor, the State EO Officer, or the local Workforce Development Council EO Officer.
- Maintain confidentiality.

2. ESD MANAGER RESPONSIBILITIES

- Maintain a nondiscriminatory work and customer service environment;

- Inform all employees of the applicable equal opportunity and nondiscrimination laws and these procedures. Ensure proper understanding and full adherence.
- Cooperate and assist in the investigation and resolution of discrimination complaints;
- Ensure that the “We Believe in Equal Opportunity” poster is displayed in a location visible to ESD employees, applicants, clients, and service providers. Ensure that CRC discrimination complaint forms are available at their site (Attachments A-D); and
- Maintain confidentiality.

3. STATE EQUAL OPPORTUNITY (EO) OFFICER RESPONSIBILITIES

- Arrange investigations of all discrimination complaints filed with ESD;
- Arrange for Alternative Dispute Resolution services for discrimination complaints when requested.

RECORD KEEPING:

The State EO Officer will maintain a log of discrimination complaints. Records pertaining to discrimination complaints, investigations, or any other such actions shall be retained for a minimum of three (3) years from the date of resolution.

PROCEDURES:

1. Filing a Discrimination Complaint

- **A client** may bring a discrimination complaint in person or over the telephone to any employee in the department. Employees who receive discrimination complaints from clients are required to immediately forward the complaint to their supervisor, the State EO Officer or their local WDC EO Officer.
- **An employee** may file a discrimination complaint with either the State EO Officer or any supervisor, manager, or Human Resource Services Division staff. Supervisors, managers, or human resource staff who receive discrimination complaints from employees are required to immediately notify and forward the complaint to the State EO Officer.
- The State EO Officer or designee is responsible for determining if the department has jurisdiction over the complaint.
- Complaints filed under this policy must be filed in writing **within 180 calendar days** of the alleged discrimination. It is recommended, but not required, that the complaint be filed on the USDOL/CRC Complaint Information Form and Privacy Act Consent Form (Attachment A). The complaint document, whether the form is used or not, must contain the following information:

- Complainant's name and address, or other means by which the complainant can be contacted;
- Identification of individual(s) or organization(s) responsible for the alleged discrimination; and
- A description of the complainant's allegations, which must include enough details so that the State EO Officer can determine:
 - a) ESD's jurisdiction of the complaint;
 - b) If the complaint was filed timely (within 180 days);
 - c) Specific prohibited basis of the alleged discrimination (i.e., race, sex, etc.);
 - d) Apparent merit of the complaint; in other words, whether the allegations, if true, would violate this policy and,
 - e) Complainant's signature or the signature of his/her authorized representative.
- An individual wishing to file a discrimination complaint must be given the option of filing the complaint with the State EO Officer and/or with the Director of the Civil Rights Center (CRC), U.S. Department of Labor:

State Equal Opportunity Officer
Human Resource Services Division
Employment Security Department
P.O. Box 9046
Olympia, WA 98507-9046

Director, Civil Rights Center
U.S. Department of Labor
Room N-4123, Frances Perkins Bldg.
200 Constitution Avenue NW
Washington, D.C. 20210

2. Processing a Discrimination Complaint

- Upon receipt of a signed, written discrimination complaint, the State EO Officer or designee will log the complaint in the discrimination complaint log.
- If the department has jurisdiction over the complaint, the complainant must immediately be notified in writing. This 'Notice of Lack of Jurisdiction' must include the reason for the determination.

The Notice of Lack of Jurisdiction must advise the complainant of the right to file a complaint with the CRC Director. The complaint must be filed within thirty (30) calendar days of when the notice was received. This, however, does not apply to discrimination complaints based on marriage, sexual orientation, gender identity, or honorably discharged veteran or military status. CRC does not have jurisdiction over these bases.

- If the department has jurisdiction over the complaint, the State EO Officer or designee will send a Notice of Receipt to the complainant. This Notice of Receipt will be sent within ten (10) working days and will include:
 - The date the complaint was received.
 - The complainant has the right to be represented by an attorney or another individual in the complaint process.
 - A list of each issue raised in the complaint and whether the issue is accepted for investigation or not. If not, the reason for the rejection of an issue.
 - The total time allowed for processing the discrimination complaint is ninety (90) calendar days from the date the complaint was received. If additional information is needed before the discrimination complaint can be accepted, then ninety (90) days from that date.
 - If the complainant files with both CRC and ESD, ESD has ninety (90) days to process the complaint. CRC will not investigate the complaint until the ninety (90) days has expired.
 - An invitation to participate in Alternative Dispute Resolution (ADR). The complainant must respond within ten (10) calendar days of receipt. The response must also include the relief the complainant is seeking as a result of participating in ADR.
- The complainant or designated representative has ten (10) calendar days to respond to the invitation to Alternative Dispute Resolution (ADR). If there is no response within ten (10) calendar days, the complainant will be considered to have waived the right to ADR and an investigation will be conducted.
- The State EO Officer will either conduct the investigation or ensure that an investigation of the complaint is conducted.
- The State EO Officer will issue a Notice of Final Action within ninety (90) days from the date the complaint was filed. If the complainant is dissatisfied with the determination, the complainant can file a complaint with the CRC Director within 30 days of receiving the Notice of Final Action.
- If the department fails to issue a Notice of Final Action within 90 days, the complainant may file a discrimination complaint with the CRC Director. The discrimination complaint with CRC must be filed within thirty (30) calendar days of the expiration of the ninety (90) days.

3. Alternative Dispute Resolution (ADR) Process

ADR allows disputes to be resolved in a less adversarial manner. Mediation is a form of ADR. Mediation is a process in which a neutral or impartial person listens to

the concerns of both parties and assists them in arriving at a solution. The State EO Officer or designee will contract with a pre-approved mediator or obtain a trained mediator if mediation is selected.

ADR consists of other similar models where individuals meet with a third party to assist them in resolving their dispute. The ADR process is as follows:

- The State EO Officer or designee will send an invitation to participate in ADR to the complainant. The invitation must be received within ten (10) days from acceptance of the complaint.
- A written confirmation identifying the date, time and location of the ADR meeting will be sent to all parties. Parties to the complaint will be advised of their right to representation in the ADR meeting.
- A consent form will be signed by all parties at initiation of the ADR process affirming that the contents of the ADR or mediation process will be kept confidential.
- If both parties agree to a resolution under ADR, a written agreement will be developed and signed by both parties. The signed ADR agreement is binding.
- If an agreement reached under ADR is breached, the non-breaching party can file a complaint with the CRC Director within 30 days after learning of the breach. This does not, however, apply to discrimination complaints based on marriage, sexual orientation, gender identity, or honorably discharged veteran or military status as CRC does not have jurisdiction over these bases.
- If at all possible, the ADR process should be completed within thirty (30) calendar days of acceptance of the complaint. This will assist in keeping within the ninety (90) day timeframe of the written Notice of Final Action if ADR is not successful.

4. Notice of Final Action

A written Notice of Final Action will be provided to the complainant within ninety (90) days of the date the complaint was filed. The Notice of Final Action will contain:

- The disposition of each issue raised in the complaint. Also, the reason for the determination.
- How the parties resolved the issue(s). If the complaint was resolved by Alternative Dispute Resolution, a copy of the agreement will be attached to the Notice of Final Action.
- The complainant has the right to file a complaint with CRC if the complainant is dissatisfied with the outcome. This complaint must be filed within thirty (30) days of the date the Notice of Final Action is issued. If the department fails to issue a Notice of Final Action within ninety (90) days after the complaint is filed, the

complainant may file a complaint directly with CRC. This must be filed within thirty (30) days of the expiration of the 90-day period.

5. Corrective Action

If there is probable cause to show that discrimination occurred, corrective action(s) will be taken to end the discrimination and prevent its reoccurrence.

6. Extension of Time Limits

For complaints sent to CRC, the Director of CRC may extend the time limits for good cause if:

- a) The complaint was not filed within 180 calendar days of the alleged discrimination;
- b) A complaint has not been filed with CRC within thirty (30) calendar days of receipt of the Notice of Final Action; or
- c) If the complainant did not receive a Notice of Final Action, the complainant failed to file a complaint with CRC within thirty (30) days after the expiration of the ninety (90) day period.

LAWS/RULES/REGULATIONS:

RCW 49.60 and WAC 162; Section 188 of the Workforce Investment Act of 1998 and 29 CFR Part 37; Title VI of the Civil Rights Act of 1964 and 29 CFR Part 31; Section 504 of the Rehabilitation Act of 1973 and 29 CFR Part 32; and, Title IX of the Education Amendments of 1972 and 34 CFR Part 106.

COLLECTIVE BARGAINING AGREEMENT (CBA):

Article 2 of the CBA between the State of Washington and the Washington Federation of State Employees (WFSE)

RELATED POLICIES:

P & P 0013-1 Nondiscrimination on the Basis of Disability in Departmental Programs and Activities
P & P 0014 Harassment Prevention
P & P 0021 Equal Opportunity/Affirmative Action
WIA Policy 3450 – Equal Opportunity Discrimination Complaint Processing Policy and Procedures.

SUPERSEDES:

Policy & Procedure No. 0013 dated 10/19/06

DIRECT INQUIRIES TO:

State Equal Opportunity Officer
Employment Security Department
Human Resource Services Division
Phone: (360) 902-9530
TDD: (360) 902-9569

ATTACHMENTS:

Attachment A - CRC Complaint Information Form (English version)
Attachment B - CRC Complaint Information Form (Spanish version)

10. Why do you believe these events occurred?

14. Do you have an attorney?

Yes No

If yes, please provide name, address and phone:

15. Have you filed a case or complaint with any of the following?

- Civil Rights Division, U.S. Dept. of Justice
- U.S. Equal Employment Opportunity Commission
- Federal or State Court
- Your State or local Human Relations/Rights Commission

11. What other information do you think is relevant to our investigation?

16. For each item checked in #15 above, please provide the following information:

Agency: _____

Date Filed: _____

Case or Docket Number: _____

Date of Trial or Hearing: _____

Location of agency or Court: _____

Name of Investigator: _____

Status of Case: _____

Comments: _____

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Agency: _____

Date Filed: _____

Case or Docket Number: _____

Date of Trial or Hearing: _____

Location of agency or Court: _____

Name of Investigator: _____

Status of Case: _____

Comments: _____

Signed (Complaint NOT VALID unless signed)

Date

10. ¿Por qué cree usted que aconteció esta(s) acción(es) discriminatoria?

14. ¿Tiene usted un abogado?

___ SI ___ NO

Si tiene, indique el nombre, dirección y teléfono:

11. ¿Qué otra información cree usted nos ayudaría en la investigación de su queja?

15. ¿Ha sometido usted una queja con alguna de las siguientes entidades?

- ___ División de Derechos Civiles, Departamento de Justicia (Civil Rights Division, U.S. Dept. of Justice)
- ___ Comisión de Igualdad de Oportunidad de Empleo (U.S. Equal Employment Opportunity Commission)
- ___ Corte Estatal o Federal (Federal or State Court)
- ___ Comisión Estatal de Derechos/Relaciones Humanas (State Civil Rights or Human Rights Commission)

16. Para cada entidad identificada en el # 15 arriba provea la siguiente información:

Agencia: _____
Fecha en que se sometió la queja: _____
Número asignado a la queja: _____
Fecha del juicio o vista: _____
Localización de agencia o corte: _____

12. ¿Que remedios satisfacciones desea usted para considerar solucionada su queja?

Nombre del investigador: _____
"Status" del caso (condición legal): _____

Comentarios: _____

13. Indique las personas testigos compañeros de trabajo supervisores o otras con quienes debemos comunicarnos para obtener mas información sobre su queja

Nombre Dirección Teléfono _____

Fecha en que se sometió la queja: _____
Número asignado a la queja: _____
Fecha del juicio o vista: _____
Localización de agencia o corte: _____

Nombre del investigador: _____
"Status" del caso (condición legal): _____

Firma (ESTA QUEJA NO ES VALIDA SIN SU FIRMA)

Fecha

Comentarios: _____