

Nebraska Department of Labor

Procedures for Investigation & Resolution of Discrimination Complaints

Date: July 2017

Purpose

To provide procedures for investigating and resolving complaints that allege a violation of the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1982, as amended; Title II of the Americans with Disabilities Act of 1990, and Title I of the Workforce Innovation and Opportunity Act (WIOA), and their implementing regulations; and specifically, WIOA Section 188, 29 Code of Federal Regulations (CFR) Part 38, "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act".

Policy

Who May File

Any person, or any specific class of individuals, that has been or is being discriminated against participation in, denial of benefits of, discrimination in, or denial of employment in the administration of or in connection with any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of *race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), National origin (including, limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status.*

Where To File

The complainant may file with either the State of Nebraska EO Officer or the Civil Rights Center (CRC) in Washington DC. Written complaints may be mailed or emailed to the State EO Officer or mailed to the CRC at the addresses listed below:

State of Nebraska
Department of Labor
Equal Opportunity Officer
PO Box 94600
Lincoln, NE 68509-4600
NDOL.EOComplaints@nebraska.gov

The Director, Civil Rights Center
US Department of Labor
200 Constitution Ave., NW, Room N-4123
Washington, DC 20210
CRCEXternalComplaints@dol.gov

Complainants may request a meeting with the State EO Officer by calling 402-471-9000. Individuals with speech and/or hearing impairments may call 1-402-471-2786 or 1-800-833-7352.

Filing a complaint with the State does not affect the complainant's right to file a complaint with the CRC if he/she is not satisfied with the resolution provided by the State.

Timeliness for Filing and Requirements

To be accepted, a complaint must:

- (1) Be filed in timely fashion (within 180 days of the alleged violation) – except that the Director of the CRC may extend the filing time; and,
- (2) Fall under the State jurisdiction; and,
- (3) Have apparent merit; i.e. whether the allegation, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA Section 188.

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How To File

- (1) State EO Officer – A complaint may be filed at the state level by completing and submitting the Discrimination Complaint Information Form available at all American Job Center (AJC) one-stops, or from any AJC partner or affiliate, or from any NDOL Career Center or from the NDOL Administrative Office. The form is also available at <https://dol.nebraska.gov>.
- (2) CRC – A complaint may be filed by submitting CRC’s Complaint Information and Privacy Act Consent Forms, which may be obtained either from the CRC or by contacting the State EO Officer. Forms are available electronically on the CRC’s web site, <https://www.dol.gov/oasam/programs/crc/DL1-2014a-English.pdf> and in hard copy via postal mail upon request. The latter requests may be sent to CRC at the address listed above.
- (3) Complaints must be filed in writing and must contain the following information:
 - (a) The complainant’s name, mailing address, and if available, email address, and telephone number (or other means of contacting the complainant);
 - (b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination, i.e., WIOA program employer, employee, vendor, provider, training facility, etc.).
 - (c) A description of the complainant’s allegations. The description must include enough detail to allow the State EO Officer or the CRC to determine whether:
 - (i) State EO Officer or the CRC, as applicable, has jurisdiction over the complaint;
 - (ii) The complaint was filed in time; and
 - (iii) The complaint has 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 Section 188, 29 CFR, Part 38.
 - (d) The written or electronic signature of the complainant or the written or electronic signature of the complainant’s representative.
 - (e) If the complaint is for disability discrimination, include information that will identify complainant as an “individual with a disability”, which means:
 - (i) Has a physical or mental impairment which substantially limits one or more major life activities;
 - (ii) Has a record of such impairment;
 - (iii) Is regarded as having such impairment.

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Both the complainant and respondent have the right to be represented by an attorney or individual of their choice.

- (1) By federal regulation, the State EO Officer shall respond to the complaint within 90 days of receipt by issuing a Notice of Final Action.
- (2) Upon receipt of the discrimination complaint form, the State will provide written notice within 10 working days from the date of receipt. The notice will include the following:
 - (a) Acknowledgement that the discrimination complaint form has been received.
 - (b) Notice that the complainant has the right to be represented in the complaint process and other rights;
 - (c) Notice of rights contained in WIOA, Section 188, 29 CFR § 38.35;

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- (d) 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;
 - (e) A written statement of the issue(s) provided to the complainant, including the following information:
 - (i) A list of the issue(s) raised in the complaint;
 - (ii) A statement regarding each issue as to whether the State will accept or reject the issue(s) and reasons for each rejection;
 - (f) A period of fact finding or investigation of the circumstances underlying the complaint;
 - (g) An offer of Alternative Dispute Resolution (ADR) or mediation and an explanation of the ADR process. The choice whether to use ADR or the customary process rests with the complainant;
 - (h) Notice that if by the end of 90 days the State has not completed its processing of the complaint or failed to issue a Notice of Final Action signed by the State EO Officer, the complainant, or his or her representative, may within 30 days of the expiration of the 90 day period, file a complaint with the CRC.
- (3) The State's procedures for ADR are as follows:
- (a) The complainant may attempt ADR at any time after filing a written complaint, but before a Notice of Final Action has been issued.
 - (b) ADR will begin 15 calendar days after the mediator is assigned the case. The deadline may be extended with approval of the State EO Officer.
 - (c) Parties will receive notice of where and when the ADR will be conducted.
 - (d) A maximum of 3 calendar days will be allowed for the ADR session to achieve resolution. If the parties do not reach an agreement within the 3-day ADR session, a notice will be issued within 15 calendar days from the date of the session outlining the facts or circumstances relevant to the attempt to settle the issues.
 - (e) If the parties do not reach an agreement under ADR, the complainant will be advised in writing of the option to file a complaint with the CRC. The processing of the complaint by the State will be discontinued, pending the results of the ADR.
 - (f) A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached.
 - (g) The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
 - (h) The CRC will determine if the agreement has been breached. If determined the agreement has been breached, the complaint will be reinstated and processed in accordance with State procedures.
- (4) If ADR is not chosen, respondent and the career center, and/or other affected entities will be notified that a complaint has been filed. The notice will include:
- (a) A summary of the alleged discrimination;
 - (b) Notice that retaliation is against the law;
 - (c) The respondent will also be notified if ADR has been chosen as a means of resolution at any time prior to issuance of the notice of Final Action.
- (5) If the State EO Officer determines that it does not have jurisdiction over a complaint, Notice to the complainant must be provided in writing within 5 business days of making such determination. The Notice of Lack of Jurisdiction will include:

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- (a) A statement of the reasons for that determination; and,
 - (b) Notice that the complainant has the right to file a complaint with the CRC within 30 days of the date on which the complainant receives Notice.
- (6) A written Notice of Final Action will be provided to the complainant within 90 days of the date on which the complaint was filed, containing:
- (a) Each issue raised and a statement of either:
 - (i) The State's decision on the issue and an explanation of the reasons underlying the decision; or
 - (ii) A description of the way the parties resolved the issue; and
 - (b) Notice that the complainant has a right to file a complaint with the CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the final action on the complaint;
 - (c) The Notice will be translated into non-English languages.
- (7) All records are retained by the State for a period of not less than 5 years.
- (8) If the State fails to issue a Notice of Final Action within 90 days after the complaint was filed, the complainant may file a complaint with the CRC within 30 days of the expiration of the 90-day period.
- (a) The CRC may extend the 30-day time limit for filing a complaint:
 - (i) If the State does not include in its Notice of Final Action the required notice about the complainant's right to file with the CRC; or
 - (ii) For other good cause shown,
 - (b) The complainant has the burden of proving to the CRC that the time limit should be extended.