



# Grievance and Complaint Resolution Procedures

Department: Office of Economic & Workforce Development

Effective Date: March 1, 2023

Directive #: WDD 23-21

Supersedes: 20-21

## **PURPOSE**

This policy provides the guidance and establishes the procedures regarding grievances and complaints alleging noncriminal violations of Workforce Innovation and Opportunity Act (WIOA) Title I requirements. This policy applies to all WIOA Title I recipients and subrecipients, and is effective immediately.

## **REFERENCES**

- [WIOA \(Public Law 113-128\) Section 181\(c\)](#)
- Title 20 Code of Federal Regulations (CFR) Sections [683.600](#) and [683.610](#)
- [Title 29 CFR Section 38.9](#)
- Title 22 California Code of Regulations (CCR) Division 1, Subdivision 2, Chapter 2, [Sections 5050 – 5070](#)
- [California Employment Development Department \(EDD\) WSD 18-05 WIOA Grievance and Complaint Resolution Procedures \(September 4, 2018\)](#)

## **BACKGROUND**

Under this directive, each local area is required to develop and maintain the procedures for participants to file grievances and complaints for alleged violations of WIOA Title I requirements. The procedures need to be provided to or made available to all participants, partners and service providers. The directive provides guidance on the process from receipt of the grievance to the hearing, resolution, and the appeals process. The procedures only apply to programmatic complaints alleging violations of the WIOA Title I requirements in the operation and administration of the WIOA program and activities.

## **POLICY AND PROCEDURES**

### **General Requirements**

These Grievance and Complaint Resolution Procedures shall be used by all Job Center sites, subgrantees, and service providers within the City and County of San Francisco to resolve complaints which arise in connection with programs operated under OEWD funding. This directive contains guidance regarding the receipt, hearing, resolution, and appeals process of WIOA Title I grievances and complaints at the local level in accordance with Title 20 CFR Sections 683.600 and 683.610.

Grievances or complaints must be filed within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.

Furthermore, all OEWD grantees and subgrantees must make reasonable efforts to ensure their policies and corresponding information will be understood by affected participants and individuals, including youth and individuals with limited English proficiency. These efforts must comply with the language requirements of Title 29 CFR Section 38.9.

All time frames specified in these procedures refer to consecutive calendar days including weekends and holidays.

“Grievance” or “complaint” means a written expression by a party alleging a violation of the Act, or regulations under the Act, recipient grants, sub agreements, or other specific agreements under the Act. The following procedures apply only to programmatic complaints alleging violations of WIOA Title I requirements in the operation/administration of WIOA programs and activities, and will guide the receipt, hearing and resolution of such complaints filed at the OEWD level.

Complaints may be brought by any individual or organization including, but not limited to: WIOA applicants/customers, service providers, subgrantees, collaborators, vendors (ITAS), staff of OEWD, subgrantees, or service providers, applicants for participation or financial assistance, labor unions, community-based organizations or any other interested persons.

A complainant who has not exhausted this procedure may appeal directly to the State, if OEWD has not rendered a decision **within 60 days** of the filing of the complaint specified in the procedures, or if the complainant believes OEWD’s complaint procedure is not in compliance with the WIOA.

### **Notice Requirements**

Service Providers must provide a copy of the local grievance and complaint procedures to each participant. This form is provided by OEWD.

The local grievance and complaint procedures must be posted in a public location and made available to any interested parties or members of the public.

Where a hard copy case file is maintained, staff must include a signed copy of an acknowledgement of receipt of the local grievance and complaint procedures in each participant’s case file. Where an electronic case file is maintained, staff must either: (1) enter a case note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it, or (2) scan a signed copy of an acknowledgement of receipt of the local grievance and complaint procedures and attach it to the participant’s case file.

Service providers have the responsibility to provide technical assistance to complainants, including those filing grievances or complaints against the Service Provider. Technical assistance includes, but is not limited to, providing instructions on how to file a complaint, and providing copies of relevant documents such as the WIOA, federal regulations, state laws and regulations, local procedures, and/or contracts. This does not require Service Providers to violate any rule of confidentiality or provide legal advice.

### **Filing A Grievance or Complaint**

The official filing date of a grievance or complaint is the date it is received by OEWD, AJCC partner, service provider, or subrecipient. The filing shall be considered a request for a hearing and OEWD

shall issue a written decision within 60 days of the official filing date. The organization that received the complaint (service provider or OEWD) shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, signed, and dated by the complainant. Complaints should include the following information, however, the absence of any of the requested information shall not be used as a basis for dismissing the grievance or complaint:

- The full name, mailing address and telephone number of the complainant;
- Clear and concise statement of facts and dates describing the alleged violation;
- The provisions of WIOA, regulations, grant or other agreements under WIOA believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

Complaints may be amended to correct technicalities at any time up to the start of the hearing. Grievances or complaints may not be amended to add new issues unless the complainant withdraws and resubmits the complaint. However, the one year time period in which a grievance or complain may be filed is not extend for grievances or complaints refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision.

If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant.

### **Level One - Filing with the Service Providers**

#### Informal Resolution of Program Issues Complaint

It is the policy of OEWD that complaints under WIOA should be resolved at the lowest level possible. Therefore, under the WIOA complaint resolution procedures, complaints under WIOA (with the exception of those involving discrimination) must first be filed with the designated EEO Complaints Officer at the service provider level.

The service provider must notify OEWD within **24 hours of the receipt of a written WIOA complaint**. The notification should be sent to:

Office of Economic and Workforce Development  
One South Van Ness Avenue  
San Francisco, CA 94103  
Attn: EEO Officer  
Telephone Number: (415)-701-4848  
Fax Number: (415) 701-4897  
Email: [workforce.development@sfgov.org](mailto:workforce.development@sfgov.org)

OEWD reserves the right to intervene in the processing of any WIOA complaint at the informal resolution stage in order to assist in resolution, clarify the issues, provide technical assistance, conduct the informal resolution meeting or schedule a hearing before an impartial hearing officer in

order to ensure due process and compliance with the 60-day time limit required for resolution pursuant to WIOA regulations.

Service providers have **10 days from the receipt** of the written complaint to schedule and conduct an informal complaint resolution meeting at its level.

After the complaint is received, the complainant will be notified by the service provider, in writing, of the date, time and place of the informal resolution meeting. At that meeting an attempt to resolve the complaint informally will take place. Respondents must make good faith efforts to resolve all grievance complaints prior to the scheduled hearing.

Failure on the part of any party in the grievance complaint to exert good faith efforts shall not constitute a basis for dismissing a grievance complaint, nor shall this be considered to be a part of the facts to judge in the resolution process. OEWD and its service providers must assure that every grievance complaint not resolved informally is given a formal hearing, regardless of the grievance complaint's apparent merit or lack of merit.

In the event of an informal resolution of the WIOA complaint at the first level, the service provider will provide a written settlement agreement to the complainant which describes the issues, provides the date of the informal resolution meeting, the attendees, and the terms of the agreement which has been reached by the parties as full and complete settlement of the complaint. The written agreement will be signed by the executive management of the agency or its authorized representative and the complainant. A copy of the signed settlement agreement will be maintained in the complainant's customer file, in the Complaints log of the agency, and at the OEWD level for audit purposes.

If the informal resolution leads to an impasse between the complainant and respondent, the complainant may choose to not proceed to a hearing. If this occurs, a notice of impasse must be sent to the complainant and entered into the complaint file. In the event of resolution or impasse, OEWD must request the complainant to provide a written withdrawal of the complaint within 10 days of receipt of the notice of resolution or impasse.

### **Review by OEWD**

#### Request for Administrative Hearing Before an Impartial Hearing Officer

If an informal resolution cannot be reached at the OEWD level, the complainant may request that an administrative hearing be scheduled before an impartial hearing officer. A complainant's request for an administrative hearing at the OEWD level should be made within **three (3) days** of the complainant's receipt of the written decision at the service provider level that an impasse has been reached in settling the complaint matter. The request should be sent to the OEWD EEO Compliance Officer at the address noted above.

The administrative hearing will be scheduled within **30 days** of the official filing date of the complaint. However, if time permits and the parties agree, OEWD may conduct an informal resolution meeting prior to scheduling the hearing.

### Conduct of Hearings

The hearing will be conducted by an impartial hearing officer appointed by OEWD. Written notice of the date, time, and place of the hearing, the manner in which it will be conducted, the issues to be decided and the rights of the parties will be sent to the complainant and respondent(s) by Certified Mail at least 10 days prior to the hearing. Other interested parties may also apply for notice by contacting the EEO/Compliance Officer. [For the purposes of this procedure, such other interested party is defined as a person or organization potentially affected by the outcome. The notice to other interested parties will include the same information furnished to the complainant and respondent and state whether such interested parties may participate in the hearing and, if applicable, the method by which they may request such a hearing].

Any request to withdraw a complaint must be in writing and received prior to the scheduled hearing.

**Requests to reschedule a hearing must also be made in writing and for good cause.** OEWD will make the final decision on such requests subject to acceptance of all parties of an extension of the 30-day requirement on scheduling a hearing and the 60-day requirement to have a final decision. Requests must be made at least **72 hours** prior to the scheduled hearing.

The hearing must be conducted in an informal manner and not be bound by strict rules of evidence. All hearings must follow any applicable procedures established by the Local Area. Both parties have the right to be represented at their own cost, present written and oral testimony, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing must be recorded electronically or by a court reporter.

The complainant may request that the employees and/or customers of the respondent who have knowledge of the pertinent facts in the complaint be available to testify at the hearing. Any requests for records, documents, and/or persons serving as witnesses must be made in writing and must first be submitted to the OEWD EEO/Compliance Officer at least **seven (7) days** prior to the date of the hearing. The request must specify which records; document and/or individuals are presumed to be relevant to the issue(s) set forth in the complaint. The hearing officer will have the discretion to determine issues of relevancy at the time of the hearing. Failure on the part of either party to supply information and/or make persons available who have been requested may result in sanctions imposed by the hearing officer and/or OEWD. If the failure is on the part of the Respondent (e.g., WIOA service provider) it may be considered a breach of the Respondent's WIOA contractual agreement with the City.

### Decision

Not later than **60 calendar days** after the filing of the grievance complaint, OEWD will notify the complainant and respondent in writing of the recommendation(s) of the hearing officer and the Final Determination of OEWD. The written decision will contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and the issues related to the alleged violations;
- A statement of the facts;
- The hearing officer's recommended decision and the reasons for the decision;
- The OEWD Director's review of the hearing officer's recommendation(s) and the Final Determination at the Local Workforce Development Area level;

- A statement of corrective action or remedies for violations, if any, to be taken; and,
- Notice of the right of either party to request, within **10 days** of the receipt of the decision, a review of the decision by the State Review Panel (SRP).

#### Appeals of OEWD-Level Decisions or Requests for EDD Review:

If OEWD has issued an adverse decision or failed to follow the procedures in this directive, the complainant may file an appeal with the state. Additionally, if OEWD has not issued a decision with the 60 day time limit, or if there has been any incident(s) of restraint, coercion, or reprisal at the local level as a result of filing a grievance or complaint, the complainant may file a request for EDD review.

A request for a State review of OEWD's decision must be filed in writing, signed, and dated by the complainant. Appeals must be filed or postmarked to the California Employment Development Department Compliance Review Office (CRO) at the below address within **ten (10) days** of the complainant receiving the adverse decision by OEWD. The state will attempt to obtain the following information. However, the absence of any of the requested information will not be used as a basis for dismissing the appeal or request for EDD review:

- The full name, telephone number, and mailing address of the complainant and the Local Area's administrative entity.
- A statement of the basis of the appeal or request for EDD review.
- Copies of relevant documents, such as the complaint filed with OEWD and their decision.

The Complainant may file a request with the State by submitting a written request to:

Chief, Compliance Review Office, MIC 22-M  
Employment Development Department  
P.O. Box 826880  
Sacramento, CA 94280-0001  
Attn: Division Chief

If an evidentiary hearing was held at the local level, the Compliance Review Office shall request the record of the hearing from OEWD and shall review the record without scheduling an additional hearing. OEWD is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. Within 10 days of receipt of the grievance or complaint, the Compliance Review Office shall notify the complainant and respondent of the opportunity for an informal resolution and proceed with the informal resolution process.

If an evidentiary hearing was not held at the local level, the Compliance Review Office shall instruct OEWD to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If OEWD refuses to hold a hearing within the required timeframe, the EDD shall schedule an evidentiary hearing before an impartial hearing officer within the 30-day timeframe.

#### **State Level Grievances and Complaints**

All grievances or complaints alleging noncriminal, state violations of WIOA Title I requirements, or grievances or complaints by individuals or interested parties affected by statewide workforce programs shall be filed in writing with the Chief of the Compliance Review Office. The official filing date of the grievance or complaint is the date it is received by the Compliance Review Office. The

filing shall be considered a request for a hearing and the State Review Panel shall issue a written decision within 60 days of the official filing date. The Compliance Review Office shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, dated, and signed by the complainant. The state will attempt to obtain the following information for all complaints. However, the absence of any of the requested information will not be used as a basis for dismissing the grievance or complaint:

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, federal regulations, state laws or regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The Chief of the Compliance Review Office or their designee shall review the grievance or complaint and notify the complainant and respondent of the opportunity for an informal resolution within 10 days of receipt. If the state cannot resolve the grievance or complaint informally, a hearing will be held.

#### EDD Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of the grievance or complaint. The complainant, respondent, and OEWD shall be notified in writing of the hearing at least 10 days prior to the hearing. The hearing shall be conducted by an impartial officer. The hearing notice shall contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

The EDD hearing shall be conducted in an informal matter without the application of strict rules of evidence. Both parties shall have the right to be represented, present written and/or oral testimony under oath and arguments, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing shall be recorded either electronically or by a court reporter.

Title 22 CCR regulates the responsibilities and processes of EDD administrative law judges and hearings and as such, applies to the EDD hearings and hearing officers described in this directive. Title 22 CCR Sections 5050 through 5070 outline all applicable state laws and must be adhered to by the EDD hearing officers. Examples of subjects addressed include: special hearing accommodation, electronic hearings, ex parte communications, and consolidation of similar cases. All references to “administrative law judge” hold the same meaning as “hearing officer” in regard to these regulations.

### State Review Panel

Following completion of the EDD hearing, the EDD hearing officer shall make a written recommendation to the State Review Panel. The hearing officer's recommendation shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The EDD hearing officer's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.

The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the local level hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained within the record. The State Review Panel may accept, reject, or modify the EDD hearing officer's recommendation or the decision of the Local Area, and shall issue a written decision to the concerned parties within 60 days of EDD's receipt of the local level appeal, request for EDD review, or grievance or complaint.

The State Review Panel shall send a written decision to both the complainant and the respondent by certified mail. The decision shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The State Review Panel's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.
- A notice of the right of either party to file an appeal with the U.S. Secretary of Labor (Secretary).

### Remanded Local Grievances and Complaints

Grievances or complaints filed directly with the state related to OEWD programs will be remanded to OEWD. Reviews that reveal a trial issue, such as the hearing officer being an interested party, will be remanded to OEWD for a retrial of the grievance or complaint.

### **Federal Level Appeal Process**

If the State Review Panel has issued an adverse decision regarding a grievance or complaint, or has not issued a decision within 60 days of receipt of a local level appeal, request for EDD review, or grievance or complaint, the complainant may file an appeal with the Secretary. This appeal process applies to grievances and complaints that originated at the local or state level.

Appeals of an adverse decision must be filed within **60** days of receipt of the adverse decision from the State Review Panel. In cases where the State Review Panel did not issue a decision, the complainant must file an appeal within 120 days of either of the following:

- The date on which the complainant filed the appeal of a local level decision or request for EDD review with the state.
- The date on which the complainant filed the grievance or complaint with the state.



All appeals to the Secretary must be sent to the DOL National Office via certified mail with return receipts requested. Copies of the appeal must simultaneously be provided to the DOL Employment and Training Administration (ETA) Regional Administrator and the respondent. Mailing addresses for the DOL National Office and ETA Regional Administrator are included below:

DOL National Office

Secretary of Labor  
Attn: Assistant Secretary of ETA  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

ETA Regional Administrator

Office of Regional Administrator  
U.S. Department of Labor  
P.O. Box 193767  
San Francisco, CA 94119-3767

Grievances or complaints filed directly with the Secretary that were not previously filed with OEWD and/or State will be remanded to OEWD or State, as appropriate.

The Secretary shall issue a Final Determination no later than 120 days after receiving the appeal.

**Remedies**

Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to the following:

- Suspension or termination of payments under WIOA Title I.
- Prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I.
- Reinstatement of an employee, where applicable, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment.
- Other equitable relief, where appropriate.

None of the above shall be construed to prohibit a complainant from pursuing a remedy authorized under another federal, state, or local law for a violation of WIOA Title I.

**Procedures for the Resolution of Discrimination Complaints**

This section covers the resolution of complaints alleging discrimination on the basis of race, color, national origin, age, sex (including pregnancy, gender identity, and sexual harassment), sexual orientation, religion, disability, political affiliation or belief, retaliation and citizenship, or status as a parent, where appropriate. Please see Directive 18-22 for OEWD's Nondiscrimination and EEO Policy.

Procedure for Discrimination Complaints Filed with OEWD

Any person who believes that he or she or any specific class of individuals has been, or is being, subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA regulations may file a written complaint or a representative may file the complaint on his or her behalf. Complaints may be filed with OEWD or directly with the Civil Rights Center (CRC) at the Department of Labor (DOL).

Complaints filed with OEWD should be mailed directly to:

Office of Economic and Workforce Development  
One South Van Ness Avenue  
San Francisco, CA 94103  
Attn: EEO Officer  
Telephone Number: (415)-701-4848  
Fax Number: (415) 701-4897

Complaints should be filed in writing using OEWD's Discrimination Complaint Form. All complaints must include the following information:

- Be signed by the complainant or his or her representative;
- Contain the complainant's name, address or other means of contacting him or her; Identify the Respondent; and,
- Describe the complainant's allegation in sufficient detail to allow OEWD staff to determine whether: (1) OEWD or the Civil Rights Center (CRC) of the U.S. Department of Labor has jurisdiction over the complaint; (2) the complaint was filed timely (i.e., **within 180 days of the occurrence**); and (3) the complaint has apparent merit (i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA.

A complaint filed, pursuant to 29 CFR Section 38.69, must be filed within **180 days** of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180 day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.

For complaints filed with OEWD, an investigation of the complaint shall be conducted and a written report shall be prepared and sent to the Complainant and the Respondent, and an attempt to resolve the complaint informally shall take place within **ninety (90) days** of filing of the complaint.

#### Alternate Dispute Resolution

The complainant must be offered ADR immediately upon receipt of the complaint. The choice to use Alternative Dispute Resolution (ADR) procedures rests with the Complainant. The preferred form of ADR is mediation.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in 29 CFR Sections 38.69 through 38.72.

A party to any agreement reached under the ADR may file a complaint with CRC in the event the agreement is breached. In such circumstance, the following rules apply:

- The non-breaching party may file a complaint with CRC within **thirty (30) days** of the date on which the non-breaching party learns of the alleged breach;
- The CRC will evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his/her original allegation(s) and the CRC will waive the time deadline for filing such a complaint.

If an informal resolution cannot be reached, the complainant may request an administrative hearing. The request for administrative hearing shall be made within **five (5) days** of the informal resolution meeting.

The administrative hearing shall be scheduled within **ten (10) working days** of the request for hearing. A Notice of Final Determination shall include notification of the right to file a complaint with the Department of Labor, Civil Rights Center (CRC).

If the complainant is dissatisfied with the resolution of the complaint, they may file a complaint with CRC within **thirty (30) days** of the date the complainant received the Notice of Final Determination from OEWD. If the complainant has not received notice of resolution within 90 days of filing, the complainant may file the complaint with CRC within 30 days of the expiration of the 90-day period (in other words, within 120 days of the date on which the original complaint was filed.).

If the complainant wishes to file a complaint with CRC, the complainant must wait until OEWD issues a decision or until **ninety (90) days** have passed since the filing of the original complaint with OEWD.

#### Discrimination Complaints filed with the Center of Civil Rights (CRC)

Complaints filed with the Civil Rights Center (CRC), may be submit via Postal mail:

Director  
Civil Rights Center (CRC)  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Room N-4123  
Washington, D.C. 20210

Complaints should be filed in writing and shall:

- Be signed by the complainant or his or her representative;
- Contain the complainant's name, address or other means of contacting him or her
- Identify the Respondent
- Describe the complainant's allegation in sufficient detail to allow the CRC, OEWD, as applicable, to determine whether: (1) the CRC or OEWD has jurisdiction over the complaint; (2) the complaint was filed timely (i.e., within 180 days of the alleged occurrence); and, (3) the complaint has apparent merit, (i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions).

Both the complainant and the respondent have the right to be represented, at their own expense, by an attorney or other individual of their own choice. Written notice from the complainant must be provided to CRC, identifying the representative.

#### **Actions by the Center for Civil Rights (CRC)**

The CRC evaluates all incoming complaints for CRC jurisdiction and timeliness filed pursuant to Title 29 CFR Section 38. When CRC accepts a complaint for investigation, it shall:

- Notify OEWD, the service provider or subgrantee and the complainant of the acceptance of the complaint for investigation; and,
- Advise OEWD, the service provider or subgrantee and complainant on the issues over which the CRC has accepted jurisdiction.

OEWD, the service provider or subgrantee, the Complainant, or a representative may contact the CRC for information regarding the complaint filed pursuant to Title 29 CFR Section 38.84.

When the complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been used to locate him or her, or the information is not furnished within **the timeline specified in the request for more information**, the complaint file may be closed without prejudice upon notice sent to the complainant's last known address.

The CRC may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done anywhere in the United States, at any designated time or place.

Where the CRC lack jurisdiction over a complaint, the CRC shall:

- Advise the Complainant, indicating why the complaint is not covered by the nondiscrimination and equal opportunity provisions outlined in WIOA or Title 29 CFR Section 38.80; and,
- Refer the complainant to the appropriate federal, state or local authority when possible.

The CRC will contact the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer the complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43 (c)(3).

If the complainant alleges more than one kind of complaint, "joint complaint", (e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc.), the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission (EEOC) for investigation and conciliation procedures for joint complaints at Title 29 CFR Part 1691. The CRC will advise the complainant, OEWD, the service provider or the subgrantee of the referral.

At the conclusion of the investigation, the CRC shall issue and Initial Determination. The Initial Determination shall notify the complainant and OEWD, the service provider or subgrantee, in writing of:

- Specific findings of the investigation;
- Proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- Whether it will be necessary for the LWIOA or subgrantee to enter into a written agreement; and,
- The opportunity to participate in voluntary compliance negotiations.

Where no cause determination is made, the complainant, OEWD, and the service provider shall be notified in writing. Such determination represents the final agency action of the Department.

### **INQUIRIES**

Inquiries should be addressed to the OEWD Director of Workforce Strategy at (415) 701-4848 or email [workforce.connection@sfgov.org](mailto:workforce.connection@sfgov.org).

Attachments:

- Equal Opportunity is the Law/What to do if You Believe You Have Experienced Discrimination
- Discrimination Complaint Form
- Reasonable Accommodation Policy and Procedure Guide

*OEWD and its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.*

**DISCRIMINATION COMPLAINT FORM  
LOCAL WORKFORCE DEVELOPMENT AREA**

**This form should be used by anyone who wishes to file a discrimination complaint against any person(s)/entity that discriminates against you in the workforce development community system. To file a discrimination complaint, complete this form, sign on page 4 and send to the Office of Economic and Workforce Development, Mr. Alfredo Fajardo, 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103**

**1. Complainant Information**

☐ Miss ☐ Ms. ☐ Mrs. ☐ Mr. ☐ Other Home Phone: \_\_\_\_\_

Work Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Email: \_\_\_\_\_ Cell: \_\_\_\_\_

**2. Complainant Contact Information**

When is it a convenient time during business hours (8am to 5pm) to contact you by phone about this complaint?

Day	Monday	Tuesday	Wednesday	Thursday	Friday
Time					
Phone					

**3. Contact Information for the Person(s) Who You Claim Discriminated Against You**

Provide the name of the entity where person(s) work(s): \_\_\_\_\_

Name of person(s) who discriminated against you: \_\_\_\_\_

Address of person(s)/entity: \_\_\_\_\_

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- Explain briefly what happened and how you were discriminated against.
- Provide the date(s) when the incident(s) occurred.
- Indicate who discriminated against you. Include the names and titles if possible.
- If other people were treated differently than you, tell us how they were treated differently.
- Attach any documents that you think might help us better understand your complaint.

[illegible]

Name	Address	Phone

## 15

- |   |   |
|---|---|
| <input type="checkbox"/> Age – <i>provide date of birth</i> | <input type="checkbox"/> Citizenship or status as alien US Worker |
| <input type="checkbox"/> Color                              | <input type="checkbox"/> Disability                               |
| <input type="checkbox"/> National Origin                    | <input type="checkbox"/> Political Affiliation                    |
| <input type="checkbox"/> Political Belief                   | <input type="checkbox"/> Religion                                 |
| <input type="checkbox"/> Gender – <i>Specify</i> _____      | <input type="checkbox"/> Race – <i>indicate race</i>              |

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☐ Status as a program participant under the Workforce Innovation and Opportunity Act of 2014 (WIOA)  
☐ Of Hispanic or Latino Origin ☐ Sexual Harassment  
☐ Not of Hispanic or Latino Origin ☐ Other - (*Specify*)

**7. Have you previously filed a complaint against this person(s)/entity?**    ☐ YES    ☐ NO

If **YES**, answer the questions below, if **NO** move to section 8.

- a.** Was your complaint in writing? ☐ Yes ☐ No
- b.** On what date did you file the complaint? \_\_\_\_\_

**c. Name of Office where you filed your complaint:**

Address:

City/State/Zip Code:

Phone number: \_\_\_\_\_ Contact Person (*if known*): \_\_\_\_\_

- d. Have you been provided a final decision or report?    ☐ Yes            ☐ No**  
**If you marked “YES”, please attach a copy of the complaint.**

**8. What corrective action or remedy do you seek? Please explain.**

[illegible]

## 9. Choosing a personal representative

- You may choose to have someone else represent you in dealing with this complaint. It may be a relative, friend, union representative, an attorney, or someone else.



- If you choose to appoint someone to represent you, all of your communication to you will be routed through your representative

Do you want to authorize a personal representative to handle this complaint? ☐ Yes

☐ No

If YES, complete the section below. If NO, go to Section 10.

#### **AUTHORIZATION OF PERSONAL REPRESENTATIVE**

I wish to authorize the individual identified below to act on my behalf as my personal representative, in matters such as mediation, settlement conferences, or investigations regarding this complaint.

Name:

☐ I am an attorney representing the complainant ☐ I am not an attorney representing the complainant

Mailing Address:

City/State/Zip Code:

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

*Signature of Authorized Personal Representative for Complainant*

#### **10. Alternate Dispute Resolution (ADR) also known as mediation**

**Notice** – You **must** indicate if you wish to mediate your case. The EEO Office cannot begin to process your complaint until you have made a selection. Please check **YES** or **NO** in the spaces below.

- Mediation is an alternative to having your complaint investigated.
- Neither party loses anything by mediating.
- The parties to the complaint review the facts, discuss opinions about the facts, and strive for an agreement that is satisfactory for both
  - Agreement to mediate is not an admission of guilt by the person(s)/entity that you claim discriminated against you.
  - Medication is conducted by a trained, qualified and impartial mediator.
  - You (or your Personal Representative) have control to negotiate a satisfactory agreement.
  - Terms of the agreement are signed by the complainant and the person(s)/entity that you claim discriminated against you.
  - Agreements are legally binding on both parties.
  - If an agreement is not reached, a formal investigation will start.
  - Failure to keep an agreement will result in a formal investigation.
  - A formal investigation will be opened if retaliation is reported.

- **Do you wish to mediate your complaint?**

(Please check only one box)

☐ **YES**, I want to mediate

☐ **NO**, please investigate

**If you select “YES” you will be contacted within five business days with more information**

#### **11. Complainant’s signature**

**You must sign this form for your complaint to be processed!**

- Faxed or otherwise electronically delivered complaints will be logged into our system. However, an official investigation cannot begin until the original, signed copy is received.

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**Signature:**

**Date:**



## **Office of Economic and Workforce Development Workforce Development Division**

### **REASONABLE ACCOMMODATION POLICY AND PROCEDURE GUIDE**

#### **I. Introduction**

The purpose of this guide is to assist OEWD funded programs, in processing reasonable accommodation requests. Each entity will ensure that reasonable accommodations are provided to qualified individuals with disabilities to enable them to:

- Be considered for the aid, benefits, services, training or employment as desired; and/or
- Perform the essential functions of their jobs; or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; and/or
- Enjoy benefits and privileges of the aid, benefits, services, training, or employment equal to those that are enjoyed by other similarly situated individuals without disabilities unless providing such accommodation would impose an undue hardship.

The requirement to provide reasonable accommodations applies to disabilities that are known to this local area. The reasonable accommodation process, including a description of key terms, is set forth below and should be implemented immediately.

#### **II. Key Terms**

##### **A. Reasonable accommodation means any of the following:**

- 1) Modifications or adjustments to an application/registration process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual desires.
- 2) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.
- 3) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

**B. Qualified individual with a disability** means any of the following:

- 1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question.
- 2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

**C. An applicant** is an individual seeking federally-assisted aid, benefits, services, or training. An individual is considered an "applicant" at the point in which they submit personal information in response to a request by the program for such information.

**D. A participant** is an individual who is receiving aid, benefits, services or training from a WIOA Title I, Department of Labor, Community Development Block Grant, or General Funded program.

**E. A disability** means, with respect to an individual:

1) "Medical condition" includes the following:

- (a) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
- (b) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
  - (i) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
  - (ii) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

2) "Mental disability" includes, but is not limited to, all of the following:

- (a) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities that limit a major life activity. For purposes of this section:
  - (i) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

- (ii) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
- (iii) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

Any other mental or psychological disorder or condition not described in paragraph (a) that requires special education or related services.

- (b) Having a record or history of a mental or psychological disorder or condition described in paragraph (a) or (b), which is known to the employer or other entity covered by this part.
- (c) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
- (d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (a) or (b).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

3) "Physical disability" includes but is not limited to all of the following:

- (a) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
  - (i) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
  - (ii) Limits a major life activity. For the purposes of this section: "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
    - A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

"Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

- (b) Any other health impairment not described in paragraph (a) that requires special education or related services.
- (c) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (a) or (b) which is known to the employer or other entity covered by this part.
- (d) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

- (e) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (a) or (b).
- (f) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

**F. Essential eligibility requirements** are such criteria that can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

**G. Essential functions** means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

- 1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
  - (a) The function may be essential because the reason the position exists is to perform that function.
  - (b) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
  - (c) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- 2) Evidence of whether a particular function is essential includes, but is not limited to the following:
  - (a) The employer's judgment as to which functions are essential.
  - (b) Written job descriptions prepared before advertising or interviewing applicants for the job.
  - (c) The amount of time spent on the job performing the function.
  - (d) The consequences of not requiring the incumbent to perform the function.
  - (e) The terms of a collective bargaining agreement.
  - (f) The work experiences of past incumbents in the job.
  - (g) The current work experience of incumbents in similar jobs.

**H. Fundamental alteration** means a change in the essential nature of a program or activity, or a cost that the program can demonstrate would result in an undue burden. Factors to be considered in determining whether a requested modification would result in a fundamental alteration are referenced in Step 3 of this process (described later in the *Step by Step Process* section of this guide.)

**I. Major life activities** mean functions such as the following:

- Caring for one's self;
- Performing manual tasks;
- Walking;
- Seeing;

- Hearing;
- Speaking;
- Breathing;
- Learning; and/or
- Working.

**J. Undue hardship** means an action requiring significant difficulty or expense, when considered in light of the following factors:

- 1) The nature and cost of the accommodation needed.
- 2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
- 3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
- 4) The type of operations, including the composition, structure, and functions of the workforce of the program.
- 5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

### **III. Effective Communication and Other Assistance**

Each program shall be responsible for ensuring effective communication between the qualified individual with a disability and program staff throughout the reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. In addition, the program shall also be responsible for providing such other reasonable assistance as is requested throughout the reasonable accommodation process, as well as through the process of any necessary appeals.

### **IV. Confidentiality**

**A. All OEWD Funded programs must maintain confidentiality.** All documentation and information concerning the medical condition or history of an individual with a disability requesting an accommodation must be collected on forms separate from other forms related to that individual, and must be maintained by the program in separate medical files. The information shall be treated as confidential medical records, and access to the records must be limited, except to the extent that:

- 1) The program management must be informed about work restrictions or reasonable accommodations;
- 2) The first-aid and safety personnel need to be informed if the disability may require emergency treatment; and
- 3) Government officials investigating compliance with law are required to be provided with relevant information upon request.

***What Accommodations Are Reasonable?***

The reasonableness of an accommodation will depend upon the circumstances of each case. For additional clarification as to what are reasonable accommodations in the employment context, refer to 29 CFR Part 32. Reasonable accommodations include, but are not limited to:

- Making facilities that are not otherwise required to comply with Federal accessibility standards physically accessible to and usable by people with disabilities (*e.g.*, providing ramps, restroom grab bars, signage, etc.);
- Restructuring of job or training tasks (*e.g.*, reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks, etc.);
- Modifying schedules (*e.g.*, permitting alternative starting and ending times to avoid standing and jostling on subways);
- Providing or modifying equipment, devices or materials (*e.g.*, raising a desk on boards for a person who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print, etc.);
- Providing qualified readers, interpreters, or other support services for all aspects of programs and activities including the application, interview, and testing processes, and during training and employment-related activities.

Reasonable accommodation may also include permitting the individual with a disability to use aids or services that the program is not otherwise required to provide. For example, although a program generally would not be required to provide a motorized scooter to an individual with mobility impairment, reasonable accommodation may include providing an area to stow such a mobility aid, if necessary.

The providers are not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute a reasonable accommodation.

Where more than one possible reasonable accommodation exists, the provider should give primary consideration to the individual's preference in determining what accommodation it will provide.



As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the individual identifies any requested accommodation with specificity. For example, an employee who is deaf and routinely uses a text telephone (TTY) can readily identify a job-related limitation, as well as the accommodation needed. Where it is obvious that providing the TTY will enable the individual to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3 (described later in the *Step by Step Process* section of this guide.) In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

Accommodations may be considered “unreasonable” only if they impose an undue hardship for the specific program in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees. The factors listed in the definition of “undue hardship” in 29 CFR 37.4 must be considered in making this determination.

Where the program determines that the accommodation requested by the individual would impose an undue hardship, or the modification requested would result in a fundamental alteration, after consultation with the individual with a disability (or individuals with disabilities), the program *must* propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the program.

## **REASONABLE ACCOMMODATION POLICY AND PROCEDURE**

### ***Step by Step Process***

#### **Step 1: Individual with a Disability Requests Reasonable Accommodation:**

##### Initial Consultation:

The individual with a disability should submit a reasonable accommodation request to the designated staff. If a request for reasonable accommodation is made to facilitate the application process, the program manager supervising the application process should assist where requested and, in conjunction with the program staff, process the request for accommodation. The program manager receiving the request shall acknowledge each request in writing. The current request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the program of the need for an accommodation. Reasonable accommodation must be provided for disabilities that are known. Nevertheless, once the program is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the program manager supervising the application process may ask the individual to provide documentation in support of the request. For example, if the individual with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination, that individual may be asked to provide documentation in support of that request.

Similarly, if an individual with a mental disability requests a flexible schedule to attend psychotherapy during the work day, the individual may be asked to provide documentation from the treating professional in support of that request.

After acknowledging a request for accommodation, the program manager should either:

- 1) Provide or implement the request and document the accommodation, and
- 2) Proceed to Step 2 of this procedure.

#### **Step 2: Consult with the Individual Requesting a Reasonable Accommodation**

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the individual's limitations and the program's resources, such as adjusting desk height to permit wheelchair access. Other situations are more complex, however, and require

structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the program should consult with the individual requesting the accommodation to assess the limitations of the disability and how the individual may best be involved in the accommodation process.

Using a collaborative, open and flexible approach, the program should consider how any limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. Other possible resources to consult with throughout this process include, but are not limited to, the following:

- [OEWD's](http://oewd.org/jobs-centers) Specialized Access Points (SAP) that work with individuals with disabilities (<http://oewd.org/jobs-centers>)
- The Mayor's Office of Disability – ADA Coordinator (415)554-6789, [mod@sfgov.org](mailto:mod@sfgov.org) or <http://sfgov.org/mod/>

The California Committee on Employment of People with Disabilities at the Department of Rehabilitation. They can be reached at: (855) 894-3436 or via email at: [CCEPD@dor.ca.gov](mailto:CCEPD@dor.ca.gov).

The program must consider the individual's preferences, along with what is reasonable and does not impose an undue hardship.

The circumstances, in which documentation can be requested, as well as the procedure for requesting such documentation, are as follows:

- A. When the disability and/or the need for accommodation are not obvious, the program may ask the individual for reasonable documentation about his/her disability and functional limitations.

Reasonable documentation means that the program may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. However, the program, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The program may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of function limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologist, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation the program should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the program to submit a list of specific questions to vocational professional. The program must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.

- 1) It is unlawful except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
  - 2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.
  - 3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.
  - 4) It is unlawful except as provided in paragraph (5), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make an inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
  - 5) Notwithstanding paragraph (4), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.
- B. If a person provides insufficient documentation of a disability in response to the program's initial request, the program may require the person to go to a health care professional of the program's choice. However, the program should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

Please note that under the Federal disability nondiscrimination law, the program cannot ask for documentation under the following circumstances:

- 1) Both the disability and the need for reasonable accommodation are obvious, or
- 2) The person has already provided sufficient information to substantiate they have an actual, current disability and need the reasonable accommodation requested.

If the individual's disability or need for reasonable accommodation is not obvious, and they refuse to provide the reasonable documentation requested by the program, then they are not entitled to reasonable accommodation. On the other hand, failure by the program to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

### **Step 3: Program Management and/or Designated Staff Analyzes the Request for Reasonable Accommodation**

After consulting with the individual with a disability, the entity should examine the request and determine if the requested accommodation is feasible and does not create an undue hardship or result in a fundamental alteration. **Please note:** Where a request is denied on the basis of undue hardship or fundamental alteration, the program must take any other action that would not result in such hardship and propose, in consultation with the individual with a disability (or individuals with disabilities), an alternative accommodation/modification that will ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the program.

It is unlawful for an employer or other entity covered by the WIOA, Section 188, 29 CFR part 38, the W-P Act, the Americans with Disabilities Act (ADA), and the Fair Employment and Housing Act (FEHA), to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

The factors to be considered in determining whether an accommodation would impose an undue hardship or in determining whether the cost of a modification would result in a fundamental alteration include the following:

- A. The nature and net cost of the accommodation/modifications needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation/modification;
- B. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation/modification, including:
  - 1) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and

- 2) The effect the accommodation/modification would have on the expenses and resources of the facility or facilities.
- C. The overall financial resources of the program, including:
  - 1) The overall size of the program,
  - 2) The number of persons aided, benefited, served, trained, or employed by the program, and
  - 3) The number, type and location of the program's facilities;
- D. The type of operation or operations of the program, including:
  - 1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the program, and
  - 2) Where the individual is seeking an employment-related accommodation/modification, the composition, structure and functions of the program's workforce; and
- E. The impact of the accommodation/modification upon the operation of the facility or facilities including:
  - 1) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
  - 2) The impact on the facility's ability to carry out its mission.

It is unlawful for an employer or other entity covered by the WIOA, Section 188, 29 CFR part 38, the W-P Act, ADA, and the FEHA, to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this document shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

#### **Step 4: Select and Implement an Appropriate Reasonable Accommodation**

Within 10 business days of receipt of a request for reasonable accommodation, the program to where it was submitted shall either grant or deny the request in writing. Provisions of this accommodation should commence immediately. Where the request is denied on the basis of undue hardship or fundamental alteration, the program must, in consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship or fundamental alteration, but would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the program (29 CFR Section 38.14[a][3]).

Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the individual requesting a reasonable accommodation. In all instances, however, the program shall act as expeditiously as possible to provide reasonable accommodations.

Where further supporting documentation has been sought from the individual requesting a reasonable accommodation, the grant or denial of a request for reasonable accommodation shall be rendered as noted below:

- A. For those cases in which medical documentation is necessary in order to understand the individual's limitations and what accommodations are possible, the grant or denial shall be issued within 10 business days of receipt of the requested documentation.
- B. For those cases in which the documentation is being requested merely to verify the information provided by the individual with a disability, the grant or denial shall be issued within 5 business days of receipt of the requested documentation.
- C. For those cases in which the individual refuses to provide reasonable requested documentation, the grant or denial shall be issued within 5 business days of the notification of refusal.

Where the program determines to deny a request for accommodation, or to provide an accommodation other than the individual's expressed preference, the program shall first consult with the individual requesting the reasonable accommodation. The program will document the determination in writing. Where the determination is to deny the request on the basis of undue hardship or fundamental alteration, the proposed alternative accommodation or modification will also be documented.

***What if an Appropriate Reasonable Accommodation cannot be identified?***

Sometimes, the program, or the individual requesting the reasonable accommodation, cannot identify possible reasonable accommodations. In those instances, the program should consult with appropriate resources e.g., those listed in Step 2 of these instructions. The program will seek to facilitate effective communication between the parties with the goal of identifying and implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation.

Throughout the Step 2 consultation process, the individual, and the program may seek technical assistance or clarification of each component of the reasonable accommodation process from appropriate resources.

## **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; political affiliation or belief; or against any beneficiary of, applicant to, or participant in, programs financially assisted under Title I of the *Workforce Innovation and Opportunity Act* (WIOA), 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 in, 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. This 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 OEWD's Equal Opportunity Officer – Mr. Alfredo Fajardo at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103; or the Director, Civil Rights Center (CRC), U.S. Department of Labor 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210; or electronically as directed on the CRC website at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written *Notice of Final Action*, or until 90 days have passed (whichever is sooner), before filing with the CRC (see the 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*.