



ELEMENT EIGHT

Complaint Processing Procedures

Reference: 29 CFR 37.54(d)(1)(vii)

Statement of Commitment

The Alaska Department of Labor and Workforce Development, as the recipient of Workforce Investment Act funding, has developed complaint processing procedures as required under §37.54 and §37.70 through 37.89.

The department shall assure that WIA recipients develop and publish complaint procedures as required. Evaluation of these procedures shall be part of the monitoring process. Recipients may adopt the the Employment Security Division or Division of Business Partnerships discrimination complaint procedures if desired.

Common Questions

Who may file a complaint alleging discrimination?

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or 29 CFR Part 37, may file a written complaint, either by him/herself or through a representative.

What forms of discrimination are prohibited?

29 CFR Part 37.5 states: No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title 1 – financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I – funded program or activity.

Alaska Statute 18.80.220 adds the following categories to this coverage: marital status, changes in marital status, pregnancy, or parenthood.

Where may a complaint be filed?



A complainant may file a complaint with the State EO Officer for the Job Center Network, or the State EO Officer for Grants and Contracts, as appropriate; or with the US DOL Civil Rights Center at the following addresses:

Jason Burke

EO Officer, Alaska Job Center Network
Department of Labor and Workforce Development
Employment Security Division
Employment & Training Technical Unit
1111 West 8th Street, Suite 210
P.O. Box 115509
Juneau, AK 99811-5509
Phone: (907) 465-1198 (Voice/TTY)
Fax: (907) 465- 8753
TDD/Alaska Relay: 1 (800) 770-8973
E-Mail: jason_burke@labor.state.ak.us
Web: <http://www.jobs.state.ak.us/eo/index.html>

Roger Foisy

EO Officer, Grants and Contracts
Department of Labor and Workforce Development
Division of Business Partnerships
Alaska Workforce Investment Office
3301 Eagle Street
Anchorage, AK 99503-4188
Phone: (907) 269-4647
Fax: (907) 269-4651
TDD/Alaska Relay: 1 (800) 770-8973
E-Mail: roger_foisy@labor.state.ak.us
Web: <http://www.jobs.state.ak.us/eo/index.html>

Or

Director, Civil Rights Center

200 Constitution Avenue, N.W.
Room N-4123
Washington, D.C. 20210
Voice: (202) 219-7026
TTY: (800) 326-2577
Fax: (202) 219-5658
E-mail: CRC-WIA@dol.gov
Web: <http://www.dol.gov/oasam/programs/crc/>



When must a complaint be filed?

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

What information must a complaint contain?

Each formal complaint must be filed in writing, and must contain the following information:

- The complainant's name and address (or another means of contacting the complainant);
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:
 - 1) CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - 2) The complaint was filed in time; and
 - 3) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or this part; and
- The complainant's signature or the signature of the complainant's authorized representative.

Is there a complaint form?

Yes. A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms which may be obtained either from the recipient, or from CRC.

Is there a right of representation in the complaint process?

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

What about complaints that do not allege discrimination?

For complaints about the services or lack of services provided, the complainant may use ESD Complaint Procedures Policy #280, or the DBP Appeals Process Policy #260, as appropriate.



Complaint Process

This complaint process is intended for use at any level at which a complaint is received. Local Equal Opportunity Coordinators will assure that complaints alleging discrimination are processed in accordance with the following procedures. State EO Officers or their designees are always available to assist with the complaint process.

Confidentiality

All information relating to a complaint is confidential and should be kept in a secure area. The complaint and any information gathered during the investigation may not be discussed or revealed to anyone not legitimately entitled to access (29 CFR Part 37.41). This includes the following:

- The fact that the complaint has been filed;
- The identity of the complainant(s);
- The identity of individual respondents to the allegations; and
- The identity of any person(s) who furnished information relative to, or assisting in, a complaint investigation.
- When consent has been provided for the release of the complainant's identity, program providers must ensure that such disclosure is made under conditions that promote the continued receipt of confidential information.

Intake

It is always best to try to resolve complaints and other such issues at the level at which they are received. Immediately upon notification that someone wishes to file a complaint, the staff member should attempt to discover the reasons for the complaint and try to resolve the issue. This may necessitate the involvement of a supervisor, manager or local EO Coordinator. The issue may be the result of miscommunication or misunderstanding and may not involve discriminatory acts. Many times such issues can be resolved to the complainant's satisfaction at this level and without filing a written complaint.

If the complainant wishes to file a written complaint, we *must assist them*.



Formal complaints **must be filed in writing**. It is best to use CRC's Complaint Information Form (Form DL 1-2014a) and Consent Form. ETA Form 8429, Employment Service Complaint/Referral Record may be used or the complaint may be hand written but must contain the following:

- The complainant's name and address (or another means of contacting the complainant);
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
- A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:
 - 1) CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - 2) The complaint was filed in time; and
 - 3) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or this part; and
- The complainant's signature or the signature of the complainant's authorized representative.

The complaint must be filed with the appropriate State EO Officer or the USDOL Civil Rights Center.

Each complaint must be entered in the local Complaint Log.

Alternative Dispute Resolution (ADR)

Once a complaint is received, the State EO Officer will offer alternative dispute resolution in the form of mediation immediately upon receipt of the complaint. The choice to use mediation rests with the complainant.

What Is Mediation?

Mediation is a voluntary process during which a neutral third party assists both parties (complainant and respondent) communicate their concerns and come to an agreement about how to resolve a dispute.

The mediator does not make decisions, rule as to who is right or wrong, take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can



reach an understanding about how to best resolve their differences.

Mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If mediation fails, the complaint will be processed through the recipient's standard complaint resolution process.

A party to any agreement reached under mediation may file a complaint with the Director, Civil Rights Center in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the Director, CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
- The Director, CRC must evaluate the circumstances to determine whether the agreement has been breached. If he or she 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 Director will waive the time deadline for filing such a complaint.

If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director, Civil Rights Center.

The complainant should contact one of the State EO Officers immediately if he or she wishes to use the mediation process. The State EO Officer will contact the complainant and make arrangements for the mediation process.

Written Notification

Immediately upon receipt of a written complaint the State EO Officer or designee will attempt to resolve the complaint and send written notice to the complainant. This written notice will contain:

- An acknowledgement that the recipient has received the complaint;
- Notice that the complainant has the right to be represented in the complaint process;
- A statement of the issue(s), including:
 - 1) A list of the issues raised in the complaint, and



- 2) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.

Jurisdiction

Any complaint alleging discrimination must meet the following criteria to be considered under this policy:

- That the individual making the complaint is a ‘covered individual’, and legally entitled to do so by being a member of one of the groups protected under the law;
- That the individual or entity against which the complaint is filed receives financial assistance under the Workforce Investment Act (refer to 29 CFR Part 37.4 for definitions of recipient, etc.);
- That the written complaint is filed within 180 days of the alleged discriminatory act. If received later than 180 days from when the discriminatory action took place, the officer may close the complaint as being untimely. (The Director, Civil Rights Center may extend the filing time if good cause is shown); and
- That the complaint is filed in writing, is signed by the complainant or their authorized representative, contains the complainants name and address (or gives other specific means of contact), identifies the respondent, and describes the complainant’s allegations in sufficient detail to allow the recipient to determine if the complaint has merit.

Notice of Lack of Jurisdiction

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

- A statement of the reasons for that determination, and
- Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

If the complaint does not involve a recipient as defined under 29 CFR Part 37.4, the EO officer will assist the complainant in forwarding the complaint to the most appropriate agency for resolution.



Fact Finding/Investigation

If tasked to respond to the complaint, the local EO Coordinator (EOC) has 30 days in which to resolve the complaint. During this time the EOC should gather all available information relating to the alleged discriminatory actions. At a minimum this fact finding should include:

- At length discussion with the complainant in order to record all elements of the complaint;
- Interviews with any witnesses or other who have knowledge of the issue involved;
- Review of written electronic files and records which pertain to the complaint and the alleged discrimination; and
- Interviews with the person(s) accused of the act (the respondent).

The EOC should take extensive notes during this process to ensure nothing is missed and to aid resolution of the complaint.

Resolution

Resolution means that legitimate complaints (those complaints with merit) are resolved to the satisfaction of the complainant. If the complaint is determined not to have merit the complainant must be notified immediately as explained under *Notice of Lack of Jurisdiction*. If the local EO Coordinator is tasked with complaint resolution, and is unable to reach resolution within 30 days the complaint and all information gathered during his or her investigation, the case must be passed to the State EO officer responsible for resolution.

Resolution may include such action as:

- Disciplinary action against the party found responsible for discriminatory action(s);
- Corrective actions required by the recipient; and
- Sanctions against the recipient of WIA funding, including the withdrawal of WIA funding.

Notice of Final Action

Within 90 days of the receipt of a complaint a written Notice of Final Action must be provided to the complainant. The Notice must contain the following information:

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



- The recipient's decision on the issue and an explanation of the reasons underlying the decision, or
- A description of the way the parties resolved the issue; and
- Notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

Due Process

During the process of attempting to come to resolution of the complaint, the state shall assure that all parties involved are given due process.

These due process elements include:

- Notice to all parties of the specific charges;
- Notice to all parties of the responses of those involved;
- The right of both parties to representation;
- The right of each party to present evidence, and to question others who present evidence; and
- A decision made strictly on the recorded evidence.

Determinations

At the conclusion of the investigation of the complaint, the investigating authority must take the following actions:

- Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37; and
- Notify the complainant, the respondent, and the Director, Employment Security Division, and/or Director, Division of Business Partnerships, and/or Assistant Commissioner, DOLWD in writing, of that determination.

Violation Found

If the investigating authority finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37, an Initial Determination must be issued. The Initial Determination must include:

- The specific findings of the investigation;
- The corrective or remedial action that the Department proposes to the respondent, under Element Nine of this MOA and 29 CFR Part 37.94;
- The time by which the respondent must complete the corrective or remedial action;



- Whether it will be necessary for the respondent to enter into a written agreement under Element Nine of this MOA and 29 CFR Part 37.95 and 37.96; and
- The opportunity to engage in voluntary compliance negotiations.

Violations Not Found

If the investigation authority determines that there is no reasonable cause to believe that a violation has taken place, a Final Determination must be issued. The Final Determination represents the Employment Security Division's final action on the complaint.

The Final Decision must:

- Be issued within the 90 day complaint resolution period;
- Give the investigating authority's decision on the issue and an explanation of the reasons underlying the decision; and
- Notice that the complainant has the right to file the complaint with the Director, Civil Rights Center.

Corrective Actions

If, during the course of investigating the complaint, discriminatory actions are discovered, corrective action will be taken immediately, regardless of whether the complaint is resolved at the state level or is filed with CRC. This process of corrective actions and sanctions is described in Element Nine.

Record Maintenance

The EO officer shall maintain records regarding complaints and actions taken for at least three years. Such records shall be maintained in a secure area and made available only to those with authorization.

Documentation for Element Eight

Please refer to Element One Documentation DOLWD Policy 01.01.003 for additional direction in complaint processing and monitoring procedures.

Employment Security Division Complaint Procedures Policy #280

Division of Business Partnerships Appeals Process Policy #260

