

EMPLOYERS' TRAINING RESOURCE
1600 E. Belle Terrace
BAKERSFIELD, CA 93307

POLICY BULLETIN: #ETR 19j-20

TO: All ETR and ETR Providers of Service

FROM: Teresa Hitchcock 
Assistant County Administrative Officer

DATE: July 15, 2020

SUBJECT: **Grievance or Complaint Procedure, Including Discrimination Complaints**

**This Policy Bulletin Supersedes Any Previously Issued Policy Statements
Concerning Grievance Procedure**

References: Workforce Innovation and Opportunity Act (WIOA) Section 181(c)
Title 20 CFR Part 683.600
Title 29 CFR Part 38
Workforce Services Directive (WSD) WSD18-05 WIOA Grievance and Complaint
Resolution Procedures

Attachment: Kern, Inyo and Mono Workforce Development Area Complaint Form

ETR will offer the best customer service possible by attempting to resolve customer issues as quickly as possible. If ETR staff is not able to resolve the issue, they should bring the customer's issue to the attention of their supervisor or an America's Job Center of California (AJCC) supervisor at their location. If the supervisor is not able to resolve the issue, a Program Coordinator or Deputy Director may be asked to assist. After those attempts to resolve an issue for the customer are made, the customer may still not be satisfied. Filing a formal complaint/grievance is the final step in good customer service.

The grievance/complaint procedures outlined in Sections A through E of this policy bulletin, apply to program complaints [WIOA Section 181(c)] and do not address the procedures for processing complaints alleging discrimination under WIOA Section 188 and/or Title 29 Code of Federal Regulations (CFR) Part 38. Complaints alleging discrimination are covered in Sections F through J. For complaints involving allegations of fraud, abuse or other criminal activity see ETR Policy Bulletin **"Fraud or Abuse Reporting Procedure"**.

NOTE - For any WIOA Grievance, including discrimination complaints, that is tied to WIOA programs funded by La Cooperativa Campesina de California (LCCDC), Employer's Training Resource (ETR) will notify LCCDC within 24 hours of receipt of a written WIOA complaint at the address below. This ETR Policy Bulletin regarding "Grievance or Complaint Procedure, Including Discrimination Complaints" will be followed for complaints regarding LCCDC funded programs.

***EEO/Compliance Officer
La Cooperativa Campesina de California
1107 9th Street, Suite 420
Sacramento, CA 95814***

The procedures set forth in this document shall be used for resolving an issue alleging a violation of the WIOA, regulations, grant, or other agreements under WIOA (including terms and conditions of participant's employment). This grievance procedure is authorized under WIOA Title I, the governing regulations, 20 CFR Section 683.600 and 29 CFR 38 of the Federal Register.

The procedures are for resolving issues arising in connection with WIOA Title I grant programs operated by the Local Workforce Development Area (LWDA) or its subrecipients. Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by AJCC partners and service providers, has the right to file a grievance/complaint with the LWDA.

A. TYPES OF VIOLATIONS COVERED

Section 683.600 will be used only to resolve complaints alleging violations of:

- the Act,
- regulations,
- grant, or
- other agreements under the Act.

B. WHO MAY FILE A COMPLAINT

Complaints may be filed by any individual or organization including, but not limited to:

- program participants,
- subrecipients,
- contractors,
- staff of the recipient or subrecipient,
- applicants for participation of financial assistance,
- labor unions, and
- community-based organizations.

C. GENERAL INFORMATION

Definitions:

Grievance or complaint: a written expression by a party alleging a violation of WIOA, regulations promulgated under WIOA, recipient grants, sub agreements, or other specific agreements under WIOA.

Complainant: any participant or other personally interested or personally affected party alleging a noncriminal violation of the requirements of WIOA.

Respondent: party against whom the complaint of an alleged violation is made.

Notification of the grievance/complaint procedure shall be made to all persons interested in such procedures regardless of affiliation and to all program participants. Notification shall be made upon intake or orientation to the program.

Persons filing a complaint concerning a partner of the local AJCC will first submit that complaint to that AJCC partner utilizing the procedures of that agency.

Participants will first utilize procedures, if available to them, at the employer/training agency level. If the employer does not have a grievance/complaint procedure, the procedures under 683.600 will be used.

The person filing a complaint shall be free from restraint, coercion, reprisal, or discrimination. The complainant may file an appeal or request a separate review by the Employment Development Department (EDD) if they experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.

The grievance/complaint shall not be considered as reflecting unfavorably on either the aggrieved or management, but is to be considered an aggrieved party's expressed right. It is the goal of these procedures to resolve complaints at the local level. However, this does not preclude the right of the aggrieved to refer his/her complaint to the Governor of the State of California after exhausting the administrative remedies established herein. If an alleged violation of the Act or regulations is also an alleged violation of another law, an individual or organization may file a complaint or grievance under such other law or agreement with respect to the non-WIOA cause of action. Individuals alleging a labor standards violation may submit the grievance to a binding arbitration procedure if a collective bargaining agreement covering the parties to the grievance so provides.

Persons wishing to file a complaint have the right to present their grievances to a grievance officer at ETR according to the grievance/complaint procedures described herein. The location at which to file this grievance is 1600 E. Belle Terrace, Bakersfield, California, 93307.

D. COMPLAINT PROCEDURE - Section 683.600

1. Notice to participant upon enrollment of the appropriate complaint procedures.
2. Notice to participant at the time the complaint is initiated, of the procedures under which the complaint is being processed (i.e. this policy).
3. Written notification of the settlement of the complaint and the reasons therefore, which shall be issued within 60 calendar days of the filing of a complaint, unless the grievance procedure or the collective bargaining agreement specifically provides other limits.
4. Upon request by the complainant, a review of an employer's decision by the WIOA grant recipient (ETR) and the Governor.
5. The complaint shall contain the following:
 - a. The full name, telephone number, and mailing address of the complainant;
 - b. The full name, telephone number and address of the party against whom the formal allegation is made (i.e. the respondent);
 - c. A clear and concise statement of the facts, including pertinent dates, describing the alleged violation;
 - d. Where known, the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;
 - e. Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIOA law, regulation or contract; and
 - f. The remedy sought by the complainant.

The absence of any of the requested information shall not be a basis for dismissing the complaint. A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. The one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are re-filed with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The LWDA shall send a copy of the grievance or complaint to the respondent.

6. A copy of the final decision of the recipient or subrecipient issued pursuant to Section 683.600.
7. Where any local law or other personnel rules require procedures, in addition to those above, for any adverse action including termination for employment, similarly employed WIOA participants shall be notified of their rights to use the same procedures.

E. PROCEDURES FOR THE RESOLUTION OF COMPLAINTS FILED UNDER 683.600

The filing of a complaint involves a process to be used for the resolution of grievances filed under Section 683.600. Upon filing a complaint, and at each stage thereafter, each complainant will be notified in writing of the next step in the procedure.

The resolution of any complaint alleging a violation of WIOA, regulations, grant, or other agreements under WIOA by any participants, subrecipients or any aggrieved party include the following:

1. Filing of Complaint

- a. Complaints accepted by ETR from the complainant shall be in writing. It will be necessary to complete a complaint form and have the complainant sign and date it. Persons contacting the Grievance Officer regarding filing a complaint will be furnished with a copy of this Grievance/Complaint Policy as well as the complaint form. Complainants will be asked to review the Policy prior to filling out the form. If the complainant will only submit an oral complaint, the Grievance Officer shall reduce it to writing. The Grievance Officer will review the Policy with the client to ensure they are familiar with the process. After the Grievance Officer completes writing the oral complaint, they will note the time and date received, and shall have the complainant review it for accuracy and completeness, sign and date it.
- b. The Grievance Officer will be available by appointment to assist in the preparation and completion of a complaint.
- c. Parties may be permitted to file by mail or by delivery in person to ETR at 1600 E. Belle Terrace, Bakersfield, California 93307.
- d. The complaint must be filed within one year of the alleged occurrence, unless the complaint involves fraud, criminal activity, or discrimination.
- e. The first day of the grievance procedure commences on the date the signed/dated complaint is received by ETR.

- f. Under WIOA section 188(a) complaints of discrimination from participants and other interested parties must be handled in accordance with WIOA section 188(b), and the Department of Labor (DOL) nondiscrimination regulations implementing that section. Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA Section 188 are addressed in Section F below.
- g. Nothing in this subpart precludes a complainant from pursuing a remedy authorized under another Federal, State or local law.

2. Informal Resolution

The LWDA shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either party in the grievance or complaint procedure to exert good faith efforts shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process. Where a complaint alleges a violation of WIOA Title I, grant or any agreements under WIOA, the LWDA must assure that every grievance or complaint not resolved informally or not withdrawn is given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

- a. Within 10 calendar days of receipt of a complaint, the ETR Grievance Officer will meet with the complainant and discuss the issue. When the complaint concerns discrimination, this task will be assigned to the Equal Opportunity Officer.
- b. The Grievance Officer will review the case and ascertain facts prior to this meeting, so that an appropriate resolution can take place at the time of this meeting, whenever possible.
- c. Failure of the complainant to attend this conference will not preclude his/her right to request a hearing on the subject.
- d. If a mutually satisfactory resolution results and ETR concurs, the Grievance Officer will write a brief report for the file and parties involved stating the issues and resolution. The matter will then be considered closed.

3. Request for Hearing

- a. If resolution does not result, the complainant will be notified in writing within 5 calendar days of the opportunity to request a hearing. This notice will state the procedure for requesting a hearing and shall describe the steps in the hearing procedure.

- b. A hearing will then be scheduled and held within a specified time period of 30 calendar days, following the receipt of the complaint.
- c. Prior to the hearing, the complainant may amend his/her complaint to correct technical deficiencies, but not to add issues. This amendment must accompany the request for hearing.

4. Notice of Hearing

- a. Written notice shall be sent to the complainant and respondent not less than 10 calendar days prior to the hearing. If feasible, the notice will be in the language of the complainant's greatest fluency. It shall clearly state:
 - i) The date of the notice, the name of complainant and the name of the party against whom the complaint is being filed;
 - ii) The date, time, and place of the hearing before an impartial hearing officer;
 - iii) The purpose of the hearing and a statement of the alleged violations and pertinent sections of the Act or Regulations involved. 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; and
 - iv) The name, address and telephone number of the contact person issuing the notice.
- b. Optional information may be included as follows:
 - i) The necessity for attending the hearing and disadvantage of not attending. Failure to attend without prior notice to ETR will waive the right to another hearing regarding the complaint;
 - ii) The opportunity to withdraw the request for hearing, in writing, before the hearing;
 - iii) The opportunity to request rescheduling of the hearing, for good cause; and
 - iv) Procedural rights, such as the right to present testimony, to bring witnesses and present records, to present oral argument, to be represented by an attorney or other representative of choice, opportunity to question any witness or parties.

Prior to the hearing, in addition to a copy of the hearing notice letter, ETR will supply the impartial Hearing Officer with a copy of the complaint and any

amendments, pertinent regulations or documents and other information as appropriate.

5. Conducting the Hearing

- a. The hearing shall be conducted informally. Unnecessary technicalities will be avoided.
- b. The Hearing Officer must be impartial, and will have complete independence to obtain facts and make decisions. He/she will be in a position to render impartial decisions and thus will not be subordinate to the ETR staff involved in administering the program.
- c. Full regard shall be given to the requirements of due process to insure a fair and impartial hearing.
- d. The Hearing Officer designated by ETR to function in a quasi-judicial capacity will begin the hearing by summarizing the record and the issue and will explain the manner in which the hearing will be conducted, making sure that everyone involved understands the proceedings. Such explanations will be adapted to the needs of the specific situation. The hearing will be tape recorded and the Hearing Officer will take testimony under oath or affirmation to give some assurance of truthfulness to the hearing.
- e. The burden of proof will be reasonable and flexible, depending on the circumstances of the case involved. The Hearing Officer determines the order of proof. Generally, the party making the complaint has the obligation of establishing his/her case and will be examined first.
- f. The complainant will have the right to be represented, if he/she so desires. Otherwise he/she is limited to his/her own abilities and those of the Hearing Officer in obtaining testimony in the case.
- g. All parties shall be entitled to hear the whole testimony and evidence produced against them, to know the claims or charges made against them, and to confront and be confronted by all parties and witnesses on the other side.
- h. All parties shall have the right to offer evidence and witnesses in their behalf and to rebut or explain testimony or evidence against them. This shall include the right to cross-examine other parties and witnesses and to offer argument or explanation in support of their positions or contentions.

- i. It is important that the Hearing Officer obtain the fullest information for the record. If the parties involved, or their representatives, do not know how to ask the right or pertinent questions in pursuing their right to due process, it shall be necessary for the Hearing Officer to have all the materials and relevant facts presented.
- j. The practice in informal hearings is generally not to apply strict rules of evidence in obtaining facts. However, the quantity of evidence required to support a decision on an issue shall be sufficiently credible that a court, upon reviewing the decision, would conclude that the decision is supported by substantial evidence.

6. Decision

The decision shall be written by the Hearing Officer. The decision shall be submitted to the director of ETR for approval and/or adoption. ETR shall inform the participant and the other involved parties of the adopted decision by first class mail within 60 calendar days of the filing of the complaint. The complainant has the right to request a review by the State if a local decision is not issued within 60 days of filing their complaint. The decision shall include the following information:

- a. Names of the parties involved;
- b. A statement of the alleged violation and related issues;
- c. A statement of facts based on the entire record as disclosed at the hearing;
- d. The Hearing Officer's opinion and reasons for the decision;
- e. A statement of corrective action or remedies for violations, if any, to be taken; and
- f. Notice of the right of either party to request a review of the decision by the State Review Panel within 10 calendar days of the receipt of the decision.

7. Record of Hearing

- a. A record will be made of the hearing conducted during the ETR review process and be retained by ETR.
- b. The purpose of the record is to serve as substantiation of the process followed by ETR on the resolution of the issue and the results. This information will then be available for subsequent review in the event the matter is raised with the State of California or the Department of Labor or in the courts.

- c. Such records must be retained for a three year period after the grant has been officially closed out.

8. Appeal Process

If the complainant does not receive a decision from ETR within 60 calendar days of filing their grievance, received reprisals for filing a complaint, or received an adverse decision, the complainant may file an appeal with the State. Appeals must be filed or postmarked within 10 days from the date on which the complainant received an adverse decision from the Local Area. Requests for EDD review must be filed or postmarked within 15 days from either of the following:

- The date on which a complainant should have received a decision regarding a locally filed complaint, which is defined as five days from the date the decision was due.
- The date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

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

STATE LEVEL GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES

If an evidentiary hearing was held at the local level, the Compliance Review Office shall request the record of the hearing from the Local Area and the State Review Panel shall review the record without scheduling an additional hearing. The Local Area 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 the Local Area to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If the Local Area 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 Local Area (in cases of local level appeals and requests for EDD review) 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 manner 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 the 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 Local Area programs will be remanded to the Local Area. Reviews that reveal a trial issue, such as the hearing officer being an interested party, will be remanded to the Local Area 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 the Local Area and/or state will be remanded to the Local Area 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.

F. COMPLAINTS REGARDING DISCRIMINATION

References:

- Civil Rights Act of 1964 (Public Law 88-352) Titles VI and VII
- Education Amendments of 1972 (Public Law 92-318) Title IX
- Rehabilitation Act of 1973 (Rehab Act) (Public Law 93-112) Title V, Section 504
- Age Discrimination Act of 1975 (Public Law 94-135)
- Americans with Disability Act of 1990 (ADA) (Public Law 101-336)
- Workforce Innovation and Opportunity Act of 2014 (WIOA) (Public Law 113-128) Sections 121(b), 183(c), and 188
- Title 20 Code of Federal Regulations (CFR) Section 658.400
- Title 28 CFR Part 35, Subpart A
- Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691
- Title 41 CFR Part 101-19, Subpart 101-19.6

- Title 45 CFR Part 90, Subpart D, Section 90.43(c)(3)
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP)
- Fair Employment and Housing Act, Government Code, Section 12900 - 12996
- Dymally-Alatorre Bilingual Services Act (DABSA), Government Code Section 7290-7299.8
- EDD Directive WSD17-03 August 11, 2017 Limited English Proficiency
- EDD Directive WSD17-01 August 1, 2017 Nondiscrimination and EO Procedures

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA states that programs and activities funded under or otherwise financially assisted in whole or in part under the Act are considered to be programs and activities receiving Federal financial aid. This section concerns the following:

1. Prohibition of discrimination on the grounds of race; color; religion; sex (including pregnancy, childbirth and related medical conditions, sex stereotyping, transgender status, and gender identity); national origin (including LEP); age; disability; political affiliation or belief;
2. For beneficiaries only, prohibition of discrimination based on citizenship status or participation in a WIOA Title I-financially assisted program or activity.

G. ETR DISCRIMINATION COMPLAINT PROCEDURE

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 WIOA may file a written complaint first with the Grievance Officer of ETR, who will make a recommendation whether the complaint is covered under nondiscrimination laws. In that case, the complaint will be referred to ETR's Equal Opportunity Officer, or a representative on his or her behalf.

Complaints alleging discrimination must be filed within 180 days from the date of the alleged violation. The complaint may be filed with ETR's Equal Opportunity Officer (or the person designated for this purpose), or may be filed directly with the:

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

An extension of the filing deadline may be requested from the CRC (see WSD17-01 at www.edd.ca.gov for details).

1. To file a discrimination complaint with ETR:
 - a. Complaints will be made in writing to the ETR EO Officer, 1600 E. Belle Terrace Bakersfield, CA 93307. The EO Officer will be available by appointment to assist in the preparation and completion of a complaint;
 - b. It must be signed by the complainant or his or her representative;
 - c. It must contain the complainant's name, address, telephone number, and/or other means of contacting him or her;
 - d. It must identify the respondent; and
 - e. It must describe the complainant's allegation in sufficient detail to determine whether (1) CRC or ETR has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has merit; i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA.
2. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.
3. The complainant must be offered alternative dispute resolution (ADR) immediately upon receipt of the complaint. The choice whether to use ADR rests with the complainant; the preferred form of ADR is mediation. The ADR process is described in WSD17-01.
4. The EO Officer shall issue a written acknowledgement to the complainant of receipt by ETR of a complaint alleging discrimination by a WIOA Title I recipient.
5. The EEO Office requires one copy of the complaint. Please mail it to the following address:

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001

- a. If the complainant elects not to participate in the ADR process, the EO Officer shall investigate the circumstances underlying the complaint.
- b. At any point in the investigation of the complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

- c. ETR shall be allowed 90 days to issue a Notice of Final Action. If, during the 90-day period, ETR issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with CRC within 30 days after the date on which the complainant receives the Notice.
 - d. If the 90 days expire and the complainant does not receive a Notice of Final Action from ETR, or ETR fails to issue a Notice of Final Action, the complainant or his or her representative may, within 30 days of the expiration of the 90-day period, file a complaint with CRC (within 120 days of the date on which the complaint was filed with ETR).
 - e. The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 38.77, or if other good cause is shown.
 - f. ETR shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with CRC within 30 days of receipt of the Notice.
 - g. During the resolution process, the EO Officer 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 to the allegations;
 - 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 evidence on the record.
6. Actions may be taken by the CRC as follows:
- a. The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 38.78. When CRC accepts a complaint for investigation, it shall:
 - Notify ETR and the complainant of the acceptance of the complaint for investigation; and
 - Advise ETR and complainant on the issues over which CRC has accepted jurisdiction.
 - b. Under the AJCC delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal

granting agency other than DOL, but participates as a partner in a AJCC delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the federal granting agency, CRC and the granting agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The granting agency's regulations will govern the processing of the complaint.
- If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIOA, but not by any civil rights laws enforced by the federal granting agency, CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 38. The CRC will advise the complainant and ETR of the referral.

H. CORRECTIVE ACTIONS/SANCTIONS

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 38.62 or 38.64, 38.66 and 38.67, or 38.87 respectively, must include the steps and the specific time period it will take ETR to achieve voluntary compliance. (See Section 38.90(b) for corrective action steps.)

Monetary corrective action may **not** be paid from federal funds.

For findings of noncompliance, the following sections of Title 29 CFR Part 38 may be referred to for detailed information:

- Final Determinations, Section 38.96-38.97
- Breaches of Conciliation Agreements, Section 38.98-38.100
- Subpart E-Federal Procedures for Effecting Compliance, Sections 38.110-38.115

I. INTIMIDATION AND RETALIATION PROHIBITED

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following; a violation of the WIOA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIOA or Title 29 CFR Part 38. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

The complainant may file an appeal or request a separate review by EDD if they experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.

J. RECORD RETENTION

All discrimination complaint records for the LWDA and service providers will be kept for a period of a minimum of three years.

KERN, INYO, AND MONO WORKFORCE DEVELOPMENT AREA COMPLAINT FORM

A. **ALL COMPLAINANTS FILL OUT THIS SECTION:**

1. Name of Complainant: _____
2. Address: Home: _____
 Work: _____
3. Social Security Number: _____
4. Birth Date: _____
5. Telephone Number: Work: _____
 Home or Message: _____
 Best time to call: _____
6. Complaint is against: _____
7. How were you wronged or in what way were you discriminated against?

8. Date of alleged violation: _____
9. Are there any witnesses that you feel could provide evidence?

NAME	ADDRESS	TELEPHONE NUMBER
------	---------	------------------

- | | | |
|----|-------|-------|
| a. | _____ | _____ |
| b. | _____ | _____ |
| c. | _____ | _____ |

10. Are these persons aware that you are naming them as witnesses?

YES ____ NO ____

11. If **Discrimination** claim, what type of discrimination?

- | | |
|---|---|
| <input type="checkbox"/> Age - provide date of birth: | <input type="checkbox"/> Citizenship |
| <input type="checkbox"/> Color | <input type="checkbox"/> Disability |
| <input type="checkbox"/> National Origin (Including limited English proficiency) | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Harassment |
| <input type="checkbox"/> Gender -Specify <input type="checkbox"/> F <input type="checkbox"/> M | <input type="checkbox"/> Sex (including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status) |
| <input type="checkbox"/> Race - indicate race: | <input type="checkbox"/> Status as a program participant under WIOA |
| <input type="checkbox"/> Political Affiliation or Belief | <input type="checkbox"/> Other (Specify): |

12. If **Discrimination** claim - Alternate Dispute Resolution (ADR) - Also Known as Mediation

Notice-You **must** indicate if you wish to mediate your case. ETR 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.
- Mediation 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.

13. If **Discrimination** claim - 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 our 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.

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: _____

B. FILL OUT THIS SECTION IF COMPLAINANT IS AN EMPLOYEE OR TRAINEE:

1. (a) Date enrolled in the program: _____

(b) WIOA Title under which you were enrolled: _____

2. Job Title and Duties/Training Activities at time of alleged violation:

3. Name of immediate supervisor: _____

4. Names of management and other supervisory staff:

a. _____

b. _____

c. _____

5. Who made the decision as to the action? _____

6. Why do you think the action was taken? _____

7. What reasons were given you at the time of the action?

8. Where else have you filed a complaint? _____

9. Was action also taken against any others? YES ____ NO ____

NAME	ADDRESS	TELEPHONE NUMBER
------	---------	------------------

a. _____

b. _____

c. _____

10. Were you evaluated on the job or in the training activity?

YES ____ NO ____ If yes, by whom? _____

C. FILL OUT THIS SECTION IF THE COMPLAINANT IS AN APPLICANT:

1. For what position did you apply? _____ WIOA Title _____

2. Why do you think you were not hired or selected? _____

3. Who told you that you were not going to be hired or selected?

4. What reasons were given you for your being rejected?

5. Did you receive written documents regarding not being hired?

YES ____ NO ____

6. List your work history:

EMPLOYER	ADDRESS	JOB TITLE	DATES

D. ALL COMPLAINANTS FILL OUT THIS SECTION:

1. Since the alleged violation, what have you done to resolve the matter?

2. What specifically would you like this office to do for you?

3. Do you have any questions or comments? _____

I HAVE READ THE PRECEDING AND I AGREE TO THE FACTS AS STATED THEREIN.
FURTHER, I GIVE MY PERMISSION TO THE GRIEVANCE OFFICER TO INVESTIGATE
THE COMPLAINT AND TO HAVE ACCESS TO MY PERSONNEL FILES KEPT BY THE
RESPONDENT.

Complainant

(Date)

(Grievance Officer)

(Date)