



Nondiscrimination and EEO Policy Directive

Department: Office of Economic & Workforce Development

Effective Date: July 1, 2018

Directive # WDD 18-22

Supersedes: 22-12

PURPOSE

This directive provides guidance and establishes procedures regarding nondiscrimination and equal opportunity procedures. This policy applies to all OEWD Service Providers.

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), as amended
- *Americans with Disabilities Act of 1990* (ADA) (Public Law 113-128)
- *Workforce Innovation and Opportunity Act* (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 WSD 17-01 Nondiscrimination and Equal Opportunity Procedures (August 1, 2017)

POLICY:

It shall be the policy of the Workforce Investment Board of San Francisco (WISF) to foster and ensure equal opportunity and nondiscrimination in the operation of OEWD funded programs consistent with the guidelines of WIOA Public Law 113-128 programs and activities.

A. General Principles

1. Programs shall be open to all qualified individuals. No one shall be excluded from participation, denied benefits, subjected to discrimination, subjected to retaliation, or denied gainful employment because of race, color or national origin, age, handicap, sex, religion, political affiliation or belief, or citizenship. In addition, sexual harassment is against the law. Acts of sexual harassment are grounds for a discrimination complaint based on sex under Title VII of the Civil Rights Act of 1964.
2. OEWD clients, applicants, participants, and provider staff shall be free to file complaints and participate in hearings, alternative dispute resolution, investigations, or compliance reviews

without the threat of intimidation, coercion, or discrimination. There shall be no retaliation or reprisal against an individual who has opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA or an individual who has otherwise exercised any rights and privileges under the WIOA nondiscrimination and equal opportunity provisions.

3. Programs shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the United States Attorney General to work in the United States.
4. Efforts shall be made to develop programs that contribute to lifelong learning, occupational development, upward mobility, development of new careers, and overcome sex stereotyping in occupations traditional to the other sex.
5. Fair employment practices shall be maintained in recruiting, hiring, transferring, promoting, training, and compensating all staff. These same principles shall apply to layoffs and terminations.

B. Other

1. Administrative Entity Office and Service Provider administrative offices and program sites shall be designed to accommodate the needs of qualified individuals with disabilities as appropriate:
 - a) Offices providing intake, assessment, and referral shall be accessible.
 - b) OEWD clients, applicants, participants, and staff may request medically necessary accommodations by simply putting their request in writing and submitting it to the appropriate administrative office.
 - c) Programs and activities shall be conducted in the most integrated setting appropriate for qualified individuals with disability.
 - d) Programs and activities, when viewed in their entirety, shall be accessible.
2. Efforts should be made to use minority and female owned enterprises when procuring goods and services for the Workforce Investment System, as appropriate.
3. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having Limited English Proficiency (LEP) receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the Recipients. Program documents, will be published in languages other than English to convey program information to limited English speaking participants, applicants, and participants and members of the public interested in job training information and programs, as appropriate.
4. Initial and continuing notice of nondiscriminatory practices and the right to file a complaint will be:
 - a) Posted in prominent locations;
 - b) Disseminated in internal memoranda and other written or electronic communications;
 - c) Included in handbooks, manuals, brochures, broadcasts, and other communications;

- d) Included in each participant's file. The participant must sign a copy of acknowledgement of receipt. Where the participant's file is maintained electronically, a record of such notice shall be documented in the participant's file;
 - e) The notice shall be provided in appropriate formats to individuals with visual impairments. A record of such notice shall be documented in the participant's file; and
 - f) Given to:
 - Applicants/registrants;
 - Eligible applicants/registrants;
 - Participants;
 - Applicants for employment;
 - Employees;
 - Unions or professional organizations holding collective bargaining or professional agreements with the WIB; and
 - Recipients of WIOA Title I funds.
5. Generally distributed publications, broadcasts, and other communications, which that promote WIOA programs or activities, shall include the following taglines: "This WIOA Title I-financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities." This applies similarly to those Recipients required by law or regulation to publish or broadcast program information to public media. Where appropriate, information and services should be additionally provided in languages other than English.
6. Where materials indicate that the WIB may be reached by telephone, the California Relay Service (CRS) telephone number 1-800-735-2929 or 711 will be also used.

C. Universal Access

1. As required in Title 29 CFR Section 38.40, Recipients must ensure universal access to WIOA Title I-financially assisted programs and activities by:
 - a) Implementing an outreach and recruitment plan to solicit participation of all potentially WIOA Title I-eligible applicants in the entire locale;
 - b) Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;
 - c) Considering a pool of individuals for participation that includes members of both sexes, various race/ethnicity/age groups, and individuals with disabilities;
 - d) Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and
 - e) Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

D. Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended and Title 29 CFR Part 38:

1. The Recipients must ensure the accessibility to their training programs and activities for all individuals, and must administer their training programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by recipients that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments. The recipients must provide means for individuals with disabilities to receive information about availability of facilities accessible to them. Additionally, recipients must provide auxiliary aids and services and reasonable accommodation to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs). OEWD clients, applicants, participants, and staff may request medically necessary accommodations by submitting a written request to the appropriate administrative office.
2. The Recipients must also provide:
 - a) Designated parking for people with disabilities that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
 - b) Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
 - c) The international symbol for accessibility at each primary entrance of an accessible facility;
 - d) Building entrance doors that can be opened with one hand;
 - e) Accessible information/public counter areas;
 - f) Facility elevators are accessible from the entrance meeting the above criteria;
 - g) Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
 - h) At least one accessible public telephone;
 - i) Accessible meeting rooms with Braille symbols at an accessible height;
 - j) Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
 - k) Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.
3. With regard to aid, benefits, services, training, and employment, a recipient must:
 - a) Provide reasonable accommodation to qualified individuals with disabilities, who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
 - b) Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIOA Title I financially assisted service, program, or activity. In those circumstances where a

recipient believes that the proposed accommodation would cause undue hardship or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." A written statement of the recipient's reasons for reaching that conclusion must accompany the decision. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the modification.

4. If a requested accommodation would result in undue hardship, or a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such burden or such alteration but would nevertheless ensure that individuals with disabilities receive the aid, benefits, services, training or employment provided by the recipient.

Title 29 CFR Section 38.4(rrr)(1) defines "undue" hardship" with regard to reasonable accommodation of individuals with disabilities as significant difficulty or expense incurred by a recipient, when considered in light of certain factors to be considered. These factors include, but are not limited to, the nature and net cost of the accommodations needed, overall financial resources of recipient, type of operation(s) of recipient, the number of persons aided, benefited, served, trained, or employed, the impact on the ability of other participants to receive aids, benefits, services, or training, or of other employees to perform their duties and the impact on the facility's ability to carry out its business.

The term "fundamental alteration" means (1) a change in the essential nature of a program or activity as defined in Title 29 CFR Part 38, including but not limited to an aid, service, benefit, or training or (2) a cost that a recipient can demonstrate would result in an undue burden. The definition of "fundamental alteration" incorporates the concept of "undue financial and administrative burdens" in Title 29 CFR Part 38.

5. In addition, recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, participants, and members of the public who are individuals with disabilities are as effective as communications with others.

E. Review Assurances in Job Training Plans, Contracts, and Policies and Procedures

1. A system must be implemented to ensure that all contracts, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions" of WIOA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.
2. Title 29 CFR Section 38.25 requires that each application for federal financial assistance under Title I of WIOA must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the

Governor, recipient, or DOL prior to and as a condition of receiving federal financial assistance under Title I of WIOA (including both new and continuing assistance).

F. Data and Information Collection and Maintenance

1. In compliance with Section 188 of WIOA and 29 CFR Part 38, Recipients must:

- a) Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, registrant, eligible applicant/registant, participant, terminee, applicant for employment, and employee;
- b) Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (e.g., through password protection).
- c) Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance;
- d) Safeguard the confidentiality of the required information (confidential information should only be used for record keeping and reporting purposes; determining eligibility, where appropriate, for WIOA Title I-financially assisted program or activity; determining if the recipient is operating its WIOA program in a nondiscriminatory manner, or other use authorized by law);
- e) Maintain, and submit to CRC upon request, a log of complaints filed alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program and activity. The log must include: (1) name and address of the complainant; (2) grounds of the complaint; (3) description of the complaint; (4) date complaint was filed; (5) disposition and date of disposition of complaint; and (6) any other pertinent information;
- f) Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIOA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by CRC;
- g) Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- h) Adopt procedures for responding to complaints of discrimination

G. Compliance Monitoring

1. In accordance with Title 29 CFR Sections 38.5, the Employment Development Department (EDD) is responsible for the oversight and monitoring of all WIOA Title I- financially assisted

state programs. Consequently, the EDD EEO Office will conduct ANNUAL onsite monitoring reviews of Local Areas.

2. The onsite monitoring reviews will ensure that the Local Areas are in compliance with the nondiscrimination and equal opportunity provisions of the WIOA. The EDD EEO Office will determine whether each recipient is conducting its WIOA Title I – financially assisted program or activity in a nondiscriminatory way.

H. Complaint Processing Procedures

1. In compliance with nondiscrimination and equal opportunity provisions of the WIOA and Title 29 CFR Section 38, the EO Officer must:
 - a) Develop and publish procedures (including alternative dispute resolution) for resolving allegations within OEWD for noncompliance with applicable nondiscrimination and equal opportunity provisions;
 - b) Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (Although the WIB does not have the same contractual jurisdiction with vendors, as with service providers, the EO Officer shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the WIB should continue to utilize the services of the vendor.); and
 - c) Establish a system to record discrimination complaints.
2. Any client, applicant, participant, staff, employer/supervisor, Service Provider staff, prospective operation, union or professional organization holding collective bargaining or professional agreements with the WIB, or other interested party alleging violations of the discrimination and equal opportunity provisions of the WIOA Title I-financially assisted programs or activities, its implementing regulations; policies or procedures pertaining thereto, may file a complaint through the nondiscrimination and equal opportunity complaint procedures for WIOA programs.

DEFINITION OF TERMS

Beneficiary - One of the individuals intended by Congress to receive aid, benefits, services or training from a recipient.

Complaint - For this policy and procedure only, means an allegation of a violation of the WIOA nondiscrimination and equal opportunity provisions.

Local Level Equal Opportunity Officer - The WIB designates the City and County of San Francisco EEO Officer as the local-level Equal Opportunity (EO) Officer. The EO Officer ensures compliance with the nondiscrimination and equal opportunity provisions of WIOA and Title 29 CFR Section 38. The EO Officer's responsibilities include:

- Informing employees and participants of their rights and responsibilities.
- Hearing, answering, and advising individuals on complaints of discrimination.

- Explaining to grant recipient employees or participants how the equal opportunity complaint system works.
- Serving as liaison with the Civil Rights Center (CRC).

Recipient - means any entity to which financial assistance under WIOA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), such as the WISF, but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity.

Small Recipient - A small recipient is a recipient having fewer than 15 beneficiaries, and on any given day, fewer than 15 employees, in the grant year.

INQUIRIES

Inquiries regarding this guidance should be addressed to the OEWD Strategic Initiatives Director at 415-701-4848 or workforce.development@sfgov.org.

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.