



**WASHINGTON STATE**

# **NONDISCRIMINATION PLAN**

## **2018**

**Jay Inslee, Governor  
State of Washington**

**Suzan G. LeVine, Commissioner  
Employment Security Department**

**Cami Feek, Deputy Commissioner, Governor's Designee  
Employment Security Department**

**Teresa Eckstein, State-Level Equal Opportunity Officer  
Employment Security Department**

**Workforce Innovation and Opportunity Act Title I  
Financial Assistance Recipients**

**Submitted December 19, 2018**

**Civil Rights Center  
U.S. Department of Labor**

In accordance with  
Section 188 of the Workforce Innovation and Opportunity Act of 2014  
and its regulations at  
29 CFR Part 38

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# INTRODUCTION

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## WorkSource Washington

The Governor of Washington State has designated Cami Feek, Deputy Commissioner, Employment Security Department (ESD), as the Governor's designee for Workforce Innovation and Opportunity Act (WIOA) nondiscrimination. Ms. Feek appointed Teresa Eckstein as the State-Level Equal Opportunity Officer (EO) to administer the implementation of nondiscrimination and equal opportunity provisions of WIOA.

By submitting a Nondiscrimination Plan, the Governor agrees to follow its provisions fully. Failure to do so may result in a finding of noncompliance by the U.S. Department of Labor's (USDOL) Civil Rights Center (CRC). See 29 CFR 38.51(a).

The Governor, ESD and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38 by the recipient, unless the Governor has:

- Established and implemented a Nondiscrimination Plan, under CFR 38.54, designed to give a reasonable guarantee of the recipient's compliance with such provisions;
- Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;
- Acted with due diligence to monitor the recipient's compliance with these provisions; and
- Taken prompt and appropriate corrective action to effect compliance.

If the Director of the Civil Rights Center determines that the Governor has demonstrated substantial compliance with the requirements, they may recommend to the USDOL Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient. The Civil Rights Center may monitor Washington State's as well as recipients' compliance with the requirements.



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### **Background: WorkSource Washington**

WorkSource Washington is Washington State's One-Stop delivery system. It provides a comprehensive and integrated interface that allows both employers and job seekers easier access to workforce services and information through WorkSource Centers, and affiliate and connection sites.

In 1999, Governor Gary Locke issued Executive Order No. 99-02 in compliance with WIA requirements. Section 1 of the Executive Order directs that, "*The Workforce Training and Education Coordinating Board (Workforce Board) shall act as the Workforce Investment Board for purposes of the federal WIA of 1998*". (Attachment Intro 1)

In accordance with RCW 28C.18.020, the Workforce Training and Education Coordinating Board consists of nine voting members. Each is appointed by the Governor, with the Washington State Senate's consent, and consists of three representatives from each of the following sectors: business, labor, and state government. The Superintendent of Public Instruction, the Executive Director of the State Board for Community and Technical Colleges, and the Commissioner of the Employment Security Department represent state government. There are also two nonvoting participants: the Board Chair, selected by the Governor with consent of the senate, who represents the Governor, and one other individual appointed by the chair to represent racial and ethnic minorities, women, and people with disabilities. The Board and the 12 Local Workforce Development Board (LWDB) work in partnership to develop the state-unified plan, designed to meet WIOA implementation requirements.

WorkSource Washington consists of 12 geographic local workforce development areas (LWDAs): Olympic, Pacific Mountain, Northwest, Snohomish County, Seattle-King County, Tacoma-Pierce County, Southwest, North Central, South Central, Eastern Washington, Benton-Franklin, and Spokane. A local workforce investment board heads each LWDA. For purposes of this document, the local workforce investment boards will be referred to as the Local Workforce Development Boards (LWDBs). Attachment 1B-15 provides a list of the LWDBs, their addresses, and the names of the directors.

### **Workforce Innovation and Opportunity Act**

The Workforce Innovation and Opportunity Act (WIOA) of 2014 supersedes the Workforce Investment Act (WIA) of 1998 and took effect on July 1, 2015. WIOA was designed to strengthen and improve our nation's public workforce system and assist Americans, including youth and those with significant barriers to employment, in obtaining high-quality jobs and careers and help employers hire and retain skilled workers.



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The regulations at 29 CFR Part 38, implementing the nondiscrimination and equal opportunity provisions of Section 188 of WIOA, were effective January 2, 2017.

Following is a summary of the changes in the regulation:

- Updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles.
- Ensures protection from discrimination based on pregnancy.
- Safeguards meaningful access to the workforce system for persons with limited English proficiency (LEP).
- Ensures access to the workforce system for people with disabilities by bringing the regulations in line with updated disability civil rights law.
- Ensures that recipients and beneficiaries are aware of the full scope of their responsibilities and rights.
- Outlines protections for transgender and gender non-conforming people.
- Improves the effectiveness of the Department's enforcement program to support compliance.

Washington State submitted to USDOL CRC an addendum to the Methods of Administration on March 7, 2017 describing Washington State's Plan for implementing the equal opportunity and nondiscrimination provisions of WIOA. As instructed by the CRC, the addendum specifically addressed Washington State's designation of a State-Level EO Officer; plan to implement annual monitoring; plan to ask participants if they have LEP and their preferred language; and plan for updating EO posters. (Attachment Intro 2)

### **WIOA Section 188/29 CFR Part 38 Pertinent Definitions**

The following definitions in pertinent part are found at 29 CFR 38.4 and apply to this Nondiscrimination Plan:

**Recipient** means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, one-stop partners, as defined in section 121(b) of WIOA, are treated as "recipients", and are subject to the nondiscrimination and equal opportunity requirements of 29 CFR Part 38, to the extent that they participate in the one-stop



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delivery system. "Recipient" includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
- (2) State Workforce Agencies;
- (3) State and Local Workforce Development Boards;
- (4) LWDA grant recipients;
- (5) One-stop operators;
- (6) Service providers, including eligible training providers;
- (7) On-the-Job Training (OJT) employers;
- (8) Job Corps contractors and center operators;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions;
- (12) Other National Program recipients.

**Service provider** means:

- (1) Any operator of, or provider of aid, benefits, services, or training to:
  - (a) Any program or activity that receives WIOA Title I financial assistance from or through any State or LWDA grant recipient; or
  - (b) Any participant through that participant's Individual Training Account (ITA); or
- (2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

**State Programs** means programs financially assisted in whole or in part under Title I of WIOA in which either:

- (1) The Governor and/or State receives and disburses the grant to or through LWDA grant recipients; or
- (2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.
- (3) "State Programs" also includes State Workforce Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.





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### **WIOA Title I-financially assisted program or activity** means:

- (1) A program or activity, operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA, that provides either:
  - (i) Any aid, benefit, service, or training to individuals; or
  - (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;
- (2) Aid, benefit, service, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIOA Title I; or
- (3) Aid, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance. See the definition of “aid, benefit, service, or training” in this section.

### **Financial assistance under Title I of WIOA** means any of the following, when authorized or extended under WIOA Title I:

- (1) Any grant, subgrant, loan, or advance of federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;
- (2) Provision of the services of Federal personnel, or of other personnel at Federal expense;
- (3) A grant or donation of Federal real or personal property or any interest in or use of such property, including:
  - (i) Transfers or leases of property for less than fair market value or for reduced consideration;
  - (ii) Proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and
  - (iii) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:
    - (A) Without consideration;
    - (B) At a nominal consideration; or
    - (C) At a consideration that is reduced or waived either for the



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purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

- (4) Waiver of charges that would normally be made for the furnishing of Government services; and
- (5) Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.



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# Documentation

## Attachments for Introduction

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Intro 1 - [Executive Order 99-02 Workforce Development](#)

Intro 2 - [Washington State MOA Addendum March 2017](#)



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# ELEMENT ONE

## DESIGNATION OF STATE- AND LOCAL-LEVEL EQUAL OPPORTUNITY (EO) OFFICERS 29 CFR 38.54(c)(1)(ii)

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.28 through 38.33. Any individual appointed as an EO Officer should have the skill, ability, knowledge and authority to properly oversee and direct the EO program to which that individual has been assigned.*

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The nondiscrimination and equal opportunity provisions contained in 29 CFR 38.28 require that all recipients, except small recipients and service providers, designate EO Officers. These provisions describe who can serve as EO Officers and what their responsibilities are.

### **EO Officer Designation at State Level**

Teresa Eckstein, is the designated State-Level Equal Opportunity Officer. Attached is ESD's organizational chart to show the location of the State-Level EO Officer. Ms. Eckstein has oversight responsibility for coordinating, implementing, maintaining and monitoring the nondiscrimination and equal opportunity requirements under the U.S. Department of Labor (USDOL) regulations 29 CFR Part 38 and Title VI of the Civil Rights Act of 1964, as amended. (Attachments 1A-1 and 1A-2)

Ms. Eckstein reports to Cami Feek, Deputy Commissioner, who is the Governor's designee for EO. On matters related to EO and nondiscrimination, Ms. Eckstein has direct access to the ESD Commissioner, Suzan G. Levine, and the Governor. (Attachments 1A-3 and 1A-4)

Ms. Eckstein's position description does not include duties and responsibilities that would constitute or appear to constitute a conflict of interest. If instances arise where the appearance of a conflict is presented, the Deputy Commissioner will assign the duties to other staff or contract the work out to an independent investigator. Examples of potential conflicts of interest include investigating discrimination complaints by Ms. Eckstein's staff or discrimination complaints about personnel selections in which the State-Level EO Officer or the Deputy Commissioner was involved in the selection process.



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Ms. Eckstein's duties include the following:

- Coordinating and ensuring Washington State compliance with Section 188 of WIOA, 29 CFR Part 38 and Title VI of the Civil Rights of 1964, as amended.
- Serving as the state's liaison with the USDOL Civil Rights Center.
- Providing technical guidance to LWDB EO Officers statewide to ensure compliance with the USDOL and other federal and state laws, regulations, policies, procedures and directives.
- Monitoring and investigating recipients' activities to ensure compliance with WIOA Nondiscrimination and EO requirements.

Ms. Eckstein has 20 years of experience in Equal Opportunity, Civil Rights and Human Resources work, including administering external and internal programs in state government agencies. Ms. Eckstein's experience and extensive training have provided her with a strong background in the areas needed to successfully carry out her assigned duties as the State-Level EO Officer. She has a Bachelor of Arts degree from The Evergreen State College in Cultural Studies and Social Science, and earned her Senior Professional in Human Resources (SPHR) certification.

The Civil Rights Center (CRC) will be promptly notified if the designation of the State-Level EO Officer changes.

Staff resources in support of Ms. Eckstein are:

- ESD Equal Opportunity Officer: Megan Eason serves as the ESD agency-level Equal Opportunity Officer required by the Workforce Innovation and Opportunity Act (WIOA). She helps to ensure equal access for citizens and clients statewide in workforce development and ESD programs, including WIOA, Unemployment Insurance (UI) and other state workforce development services. (Attachment 1A-5)
- Equal Opportunity Consultants: We are recruiting to fill a new Equal Opportunity Consultant position. They will work alongside Kelly Moore, EO Consultant, to provide nondiscrimination and equal opportunity (EO) consultation and services for Employment Security Department (ESD) and the State Workforce System, including nondiscrimination compliance monitoring, equal employment opportunity (EEO) consultation and technical assistance, and discrimination complaints processing and investigations. (Attachments 1A-6 and 1A-7)
- Employment Connections (EC) Division: The EC Division administers WIOA Title IB programs. Amy Lagerquist is the program complaint lead for WIOA and Wagner-Peyser complaints elevated to the state level. Ms. Lagerquist forwards



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discrimination complaints to the State-Level EO Officer and collaborates, when needed, on the investigation.

- Unemployment Insurance Customer Support (UICS) Division: The UICS Division administers the unemployment benefits as well as the tax assessment and collections programs.
  - Data Specialist: Greg Jasperson is a data manager in the Employment System Policy Division who manages data for the UI Benefits Program. Mr. Jasperson provides EO data reports on UI claimants and assists in conducting data analysis for State-Level EO Officer UI Benefits Program compliance monitoring reviews.
  - Claims Center Operations: Jennifer Tecca is the Spokane Claims Center Intake Manager. Ms. Tecca assists the State-Level EO Officer in gathering and providing information for customer service and/or discrimination complaints in the UI Benefits Program.
- Communications Office: Alicia Cárdenas-Short is a Communications Consultant who conducts outreach and coordinates language services department-wide. She uses her expert skills as a certified Spanish language interpreter and translator to translate and/or arrange translation and interpretation agency-wide on a consistent basis. Ms. Cárdenas-Short assists the State-Level EO Officer by addressing language service delivery, collecting and analyzing data and reports on UI Benefits Program LEP customers and coordinating with the State-Level EO Officer.

This structure adheres to USDOL requirements by appointing the State-Level EO Officer, reporting to the Deputy Commissioner as the Governor's designee. The State-Level EO Officer is accountable for equal opportunity and nondiscrimination in the Washington WorkSource system and in all agency programs and employment practices.

### **EO Officer Designation at the Local Level**

In compliance with the nondiscrimination requirements for the Nondiscrimination Plan, each LWDB has a designated local EO Officer. Washington State addresses designation of LWDB EO Officers, potential conflicts of interest and accountability on a case-by-case basis. Conflicts of interest continue to be reviewed through the monitoring process by the State-Level EO Officer. To date, there have been no conflicts of interest.

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LWDB EO Officers are responsible for, but are not limited to:

- Conducting EO and nondiscrimination monitoring reviews and investigating the activities of service providers and other recipients in their area to ensure compliance with the nondiscrimination and EO obligations under WIOA and 29 CFR Part 38.
- Reviewing written policies to ensure they are nondiscriminatory.
- Developing and publishing procedures for processing discrimination complaints and ensuring adherence to the procedures.
- Coordinating local-level WIOA EO responsibilities to include ensuring service providers' compliance with the nondiscrimination and EO provisions of WIOA.

Outlined in the table below are the names of the LWDB EO Officers for each Local Workforce Development Area (LWDA) and the percentage of time committed to EO matters. Attached are their job descriptions. (Attachments 1B-1 – 1B-12)

LWDA	Local Workforce Development Board	EO Officer	% of Time Committed to EO Matters
1	Olympic Consortium	Sarah Oliver	10%
2	Pacific Mountain	Craig Clark	10%
3	Northwest Workforce Council	Malinda Bjaaland	12%
4	Workforce Snohomish	Cameron Cassidy	15%
5	Seattle-King County	Emily Livesay	25%
6	Workforce Central	Deborah Howell	10%
7	Workforce Southwest Washington	Amy Gimlin	10%
8	North Central	Dave Petersen	31%
9	South Central Workforce Council	Amy Garcia-Hernandez	10%
10	Eastern Washington Partnership	Dayna Brown	10%
11	Benton-Franklin	Cynthia Garcia	20%
12	Spokane Workforce Council	Dawn Karber	15%

Forty-nine (49) WorkSource Centers and affiliate sites are located within the 12 local workforce development areas. All offices refer EO-related matters to their LWDB-designated EO Officer or the State-Level EO Officer, as appropriate. The LWDB EO Officers may refer issues to ESD, One-Stop partner EO Officers or other entities depending on jurisdiction. This ensures nondiscrimination and accessibility in services provided to WorkSource customers. Each LWDB develops a policy to administer this requirement. A list of the WorkSource Centers and affiliate sites is attached. (Attachment 1B-13)



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Attachment 1B-14 includes the October 2000 letters sent to the 12 LWDBs and to the former ESD WIA Manager, regarding identification of individuals designated as local EO Officers. The same information is collected today when new LWDB EO Officers are appointed. Staff of the Workforce Monitoring office notify the State-Level EO Officer if they become aware of an EO issue during one of their reviews. Attachment 1B-15 identifies the LWDB EO Officers, along with their position titles and contact information.

### **EO Notices and Training**

The WIOA “Equal Opportunity is the Law” posters have been distributed to LWDBs for posting in their offices and their recipient offices. The posters, which are placed in prominent locations for public viewing, provide all applicants, registrants, eligible applicants and registrants, participants, employees, and applicants for employment, as well as interested members of the public, with the identity and contact information of the LWDB EO Officer and State-Level EO Officer. See attachments 1C-1 and 1C-2 for a copy of the Equal Opportunity Notice poster in English and Spanish.

Teresa Eckstein became the State-Level EO Officer in 2015 and regularly attends National Association of State Workforce Agencies (NASWA) Equal Opportunity Committee meetings. Ms. Eckstein chairs the Communications subcommittee of the NASWA EO Committee. Ms. Eckstein presented on gender identity and restrooms at the NASWA EO Committee meeting in July 2018, and gave a presentation at the NASWA National Workforce Summit in September 2018, regarding updates to the EO and Nondiscrimination Provisions of WIOA.

In December 2017, Ms. Eckstein and two of her staff attended the State-Level EO Officer Conference provided by the USDOL CRC, and gained a deeper understanding of the new regulations and the CRC’s expectations for implementation.

The State-Level EO Officer is proactive in identifying and meeting the training needs of the LWDB EO Officers. The State-Level EO Officer uses the USDOL Methods of Administration (MOA) training developed for USDOL CRC by TATC Consulting. This training is provided regionally two to four times per year, and is required for new EO Officers. Other EO Officers and staff who assist with EO duties, are invited to attend as well. The State-Level EO Officer provided four sessions in 2016, three sessions in 2017, and two sessions in 2018. New EO Officers are also provided hands-on monitoring training in their local area. (Attachment 1C-3).

In February 2017, the State-Level EO office provided the first annual two-day training conference for the LWDB EO Officers. In November 2018, Ms. Eckstein provided a one-day training conference for the LWDB EO Officers as a pre-conference in conjunction with the state’s Washington Workforce Association’s annual conference. This one day pre-conference will also be provided annually going forward. The State-Level EO Officer



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provides regular EO Officer conference calls to share information and discuss current issues. Sample agendas are attached. (Attachments 1C-4 – 1C-7)

A two-hour Equal Opportunity and nondiscrimination training has been presented consistently to all staff and their supervisors who assist customers. The training addresses the nondiscrimination requirements of Section 188 of the WIOA and 29 CFR Part 38, and focuses on ensuring nondiscrimination while serving customers and providing them equal opportunities to succeed. The training was recently revised and expanded, in coordination with LWDB EO Officers, to be more interactive, including table top exercises. The new three hour training will be offered beginning January 2019. The training is presented a minimum of every two years for all recipient staff. LWDBs are responsible for providing the training for recipients in their workforce development areas. (Attachment 1C-8).

Most ESD programs and services are provided through WorkSource Centers. ESD staff providing State Programs as defined by 29 CFR 38.4 such as employment service, Trade Act, and Migrant and Seasonal Farmworker receive EO and nondiscrimination training at WorkSource centers and Affiliates. Unemployment insurance benefit program staff receive training tailored for call center staff, and other ESD staff receive EO and nondiscrimination training appropriate for their work.



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## Documentation

### Attachments for Element One

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- 1A-1 [ESD Organizational Chart](#)
- 1A-2 [Position Description Form - Teresa Eckstein](#)
- 1A-3 [Governor's Designee WIOA Nondiscrimination Letter - Cami Feek](#)
- 1A-4 [Governor's Designee and State-Level EO Officer Reappointment Letter](#)
- 1A-5 [Position Description Form - Megan Eason](#)
- 1A-6 [Position Description Form - Vacant](#)
- 1A-7 [Position Description Form - Kelly Moore](#)
- 1B-1 [Olympic EO Officer Job Description](#)
- 1B-2 [Pacific Mountain EO Officer Job Description](#)
- 1B-3 [Northwest EO Officer Job Description](#)
- 1B-4 [Snohomish EO Officer Job Description](#)
- 1B-5 [Sea-King EO Officer Job Description](#)
- 1B-6 [Workforce Central EO Officer Job Description](#)
- 1B-7 [Southwest EO Officer Job Description](#)
- 1B-8 [North Central Executive Director Job Description](#)
- 1B-9 [South Central EO Officer Job Description](#)
- 1B-10 [Eastern EO Officer Job Description](#)
- 1B-11 [Benton-Franklin EO Officer Job Description](#)
- 1B-12 [Spokane EO Officer Job Description](#)
- 1B-13 [List of WorkSource Centers and Affiliate Sites](#)
- 1B-14 [Letters to LWDBs October 26, 2000](#)
- 1B-15 [List of LWDB EO Officers with Directors](#)
- 1C-1 [Equal Opportunity Poster – English](#)
- 1C-2 [Equal Opportunity Poster – Spanish](#)
- 1C-3 [MOA Training for EO Officers](#)
- 1C-4 [EO Officer In-person Training Meeting Agenda Feb 21-22, 2018](#)
- 1C-5 [EO Officer WWA In-person Meeting Agenda Nov 5, 2018](#)
- 1C-6 [EO Officer Conference Call May 1, 2017](#)
- 1C-7 [EO Officer Conference Call August 22, 2018](#)
- 1C-8 [EO Training 2018](#)



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## ELEMENT TWO

### NOTICE AND COMMUNICATION (29 CFR 38.54(c)(1)(iii))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.34 through 38.39. States should ensure the establishment of a notice and communication system that makes all registrants, applicants, eligible applicants/registrants, applicants for employment, employees and interested members of the public aware of both the recipient's obligation to operate its programs and activities in a nondiscriminatory manner, and the extent of the rights of members of these groups to file complaints of discrimination.*

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#### **Notice and Communication**

Within WorkSource Washington, the Employment Security Department (ESD) and other recipients, as well as customers, unions, the public and professional organizations, are provided notice of the nondiscrimination and equal opportunity requirements of the Workforce Innovation and Opportunity Act (WIOA). WIOA Policy Number 5402 - Equal Opportunity and Nondiscrimination is distributed to recipients when the three-hour EO and nondiscrimination training for staff is conducted. All ESD employees have been provided with a copy of ESD's Equal Opportunity/Affirmative Action Policy Number 0021 and are required to review the policy annually. (Attachments 1C-8, 2A1 and 2A-2)

Both the WIOA and ESD EO and Nondiscrimination policies incorporate the following laws and regulations:

- Title VI and Title VII of the Civil Rights Act of 1964, as amended;
- Section 504 of the Rehabilitation Act of 1973, as amended;
- Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination Act of 1975, as amended;
- The Age Discrimination in Employment Act of 1967, as amended;
- Title IX of the Education Amendments of 1972, as amended;



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- Section 188 of the Workforce Innovation and Opportunity Act (WIOA) of 2014; and
- Title 29, Code of Federal Regulations, Part 38.

The WIOA “Equal Opportunity is the Law” posters (in English and Spanish) with the wording specified in 29 CFR 38.35 are distributed statewide on 11-inch by 17-inch posters within the WorkSource Washington system. (Attachments 1C-1 and 1C-2)

The notice and communication requirements are covered during EO Officer training, and discussed during the three-hour EO and nondiscrimination training course for recipients and their staff. Training delivery is monitored for compliance during EO and nondiscrimination monitoring reviews.

Efforts are made to ensure that communications with individuals with disabilities are just as effective as communications with others. LWDB EO Officers and WorkSource Center Administrators are informed during each monitoring review that they may develop an audio recorded EO Notice for individuals who are blind or low vision. They may also read the notice to the person. Spokane Workforce Council has made the EO notice available in Braille throughout its service area.

EO Notice posters are prominently displayed in all WorkSource Centers, WorkSource Affiliate sites and other recipients in the One-Stop system in Washington State. During EO monitoring reviews, reviewers check to see that EO posters are displayed in reasonable numbers and places. Posters are available upon request and can be ordered through the State-Level EO Officer. In addition to English and Spanish, the posters are also available in Russian, Ukrainian and Vietnamese. (Attachment 2A-3 – 2A-5)

The EO Notice has been made available to all registrants, applicants, eligible applicants/registrants, participants, subrecipients, and interested members of the public. Applicants for employment, employees, and unions can view the notice on the EO page on ESD’s internet site. Policies and forms to file a discrimination complaint are also available in English and Spanish on ESD’s EO web page at: <http://www.esd.wa.gov/newsandinformation/formsandpubs/equal-opportunity-nondiscrimination-information.php>. (Attachment 2A-6)

In addition, WIOA recipients require registered participants to sign a statement and/or provide acknowledgement that they understand their rights and have received an EO Notice handout, this is done electronically when the participants register through the Efforts to Outcomes (ETO) system. A copy of this notice is placed in participants’ files. (Attachment 2A-7)



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ESD and other recipients operating State Programs have included the following tagline on their official web sites, job announcements, brochures and advertisements that describe programs, or the requirements for participation, financially assisted under Title I of WIOA:

“WorkSource (or name of recipient) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.”

In an email dated July 21, 2017, addressed to the 12 EO Officers and LWDB Executive Directors, all grantees were instructed to include the correct EO tagline. Requirements for tagline usage are also spelled out in WIOA and ESD EO and nondiscrimination policies, and are covered in the EO Officer training and three-hour EO and nondiscrimination training. During each monitoring review, recipients are checked for compliance. (Attachment 2A-8)

Tagline language, the Equal Opportunity Notice in English and Spanish, and the discrimination complaint procedures are accessible from the “Equal Opportunity” link at the bottom of each page of the ESD internet site at [www.esd.wa.gov](http://www.esd.wa.gov). (Attachment 2A-9)

Attached are sample materials that include the EO tagline language. As additional materials are produced to market programs and services, the EO tagline language will continue to be used. (Attachments 2A-10 – 2A-12)

The Employment System Administration and Policy unit has placed an expanded EO tagline in UI publications. The expanded tagline is as follows:

“The Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711.”

ESD’s Office of Communications, which prepares many of the unemployment insurance flyers and brochures, complies with agency Policy #0033 – Graphic Standards, which requires the use of the EO tagline on all publications. This policy also describes the requirements for non-English publications. The policy is being updated to include the new WIOA tagline. (Attachment 2A-13)

The UI Handbook for Unemployed Workers includes information on filing a discrimination complaint. The handbook is translated into Spanish, and is in the process of being updated. The revised version will include WIOA updates. The handbook includes a statement instructing individuals with limited English proficiency (LEP) on



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how to get help in understanding the claims kit and is translated into seven languages. (Attachments 2A-14 and 2A-15)

ESD developed the following videos in English, Spanish and open caption: How to Apply for UI Benefits; Apply for Unemployment Benefits; How to File Your Weekly Claim; and, How to Complete Your UI Job Search Log. Since 2011, the UI Division has added videos online such as: Training Benefits; How to Prepare and Present Your Case; and Plan and Pay Your Taxes. In August 2012, ESD added more to its repertoire of online resources such as the "Other Languages" page, which includes pictorial and voice language assistance in 15 different languages. Here, LEP customers obtain assistance in navigating the claims process in their own language.

### **Information Dissemination and Training**

Registrants, applicants, eligible applicants/registrants and participants are advised of their rights to file a discrimination complaint during orientations and/or registration for WIOA services, and are provided with the notice of rights to file a discrimination complaint (Equal Opportunity is the Law Notice). LWDBs monitor to ensure participants have a copy of a signed EO notice in their participant file.

ESD has updated its new employee orientation and it is now available online. All ESD employees are provided with copies of relevant EO policies and procedures: Harassment Prevention; Reasonable Accommodation and Nondiscrimination on the Basis of Disability; Discrimination Complaint Processing Procedures; and Equal Opportunity and Affirmative Action. Agency staff are required to review and sign that they have read these policies, which are listed among those mandated for annual review. Staff continue to receive training and technical assistance relative to these policies and procedures. (Attachments 2B-1 – 2B-4)

EO and Nondiscrimination Training is presented regularly (see Element 1 Training). The State-Level EO Officer provides informational updates, as well as notices of EO training sponsored by other sources, such as EEOC Summits. The State-Level EO Officer also provides ongoing technical assistance to LWDB EO Officers.



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## Documentation

### Attachments for Element Two

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- 2A-1 [Policy 5402 - Equal Opportunity and Nondiscrimination](#)
- 2A-2 [Policy and Procedure 0021 - EO Affirmative Action](#)
- 2A-3 [Equal Opportunity Poster - Russian](#)
- 2A-4 [Equal Opportunity Poster - Ukrainian](#)
- 2A-5 [Equal Opportunity Poster - Vietnamese](#)
- 2A-6 [EO and Nondiscrimination ESD Web Page](#)
- 2A-7 [EO Notice in ETO](#)
- 2A-8 [EO Tagline Notice to LWDB EO Officer](#)
- 2A-9 [ESD Main Web Page](#)
- 2A-10 [WorkSource Welcome Menu of Services](#)
- 2A-11 [New to WorkSource Flyer](#)
- 2A-12 [WorkSource Veteran Brochure - Finding a Job](#)
- 2A-13 [0033 Policy - Graphic Standards](#)
- 2A-14 [ESD Handbook for Unemployed Workers – English](#)
- 2A-15 [ESD Handbook for Unemployed Workers – Spanish](#)
- 2B-1 [Policy and Procedure 0014 - Harassment Prevention](#)
- 2B-2 [Policy and Procedure 0013-1 - RA and Nondiscrimination](#)
- 2B-3 [Policy and Procedure 0013 - Discrimination Complaint Processing](#)
- 2B-4 [Policy and Procedure 0021 - EO Affirmative Action](#)



# ELEMENT THREE

## ASSURANCES

(29 CFR 38.54(c)(1)(i) and (c)(2)(i), (ii) and (iii))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.25 through 38.27 regarding the review of assurances, job training plans, contracts, and policies and procedures. Additionally, Washington State addresses the procedures it and its recipients are following and will continue to follow in assessing the ability of grant applicants, if funded, or training providers, if declared eligible, to comply with WIOA Section 188 and 29 CFR Part 38.*

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### **Background**

The State of Washington does not knowingly do business with any entity that discriminates. It is the Employment Security Department's (ESD) policy to include a nondiscrimination and equal opportunity (EO) statement in all training plans, contracts and agreements. In addition, policies issued at the state and local levels reinforce ESD's commitment to ensure nondiscrimination throughout the One-Stop system.

ESD requires all grant applicants to include the EO assurance language verbatim, or its citation, in their grants, contracts and cooperative agreements. The assurance language commits the recipient to "comply fully with the nondiscrimination and equal opportunity provisions" of Section 188 of the Workforce Innovation and Opportunity (WIOA); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and 29 CFR Part 38 and other regulations implementing these laws. The assurance acknowledges the government's right to seek judicial enforcement if these laws are not followed. The specific language for this assurance is found at 29 CFR 38.25 (a)(1). If a citation is used instead, it should read, "The nondiscrimination assurances at 29 CFR Part 38.25(a)(1) apply to this [contract/agreement/etc]."

### **Assurances**

Within the Finance and Administrative Services Division of ESD, the Contracts Office routinely reviews all contracts and agreements prior to finalization and execution to ensure EO assurances are included. The agency requires all applications for federal financial assistance under WIOA to include EO assurances, thereby committing recipients to full compliance with the nondiscrimination provisions of WIOA.



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The agency's State-Level EO Officer works with the Contracts Office and the Employment System Administration and Policy staff to develop language that incorporates nondiscrimination clauses, EO assurances and sanctions in contracts, grant agreements, interagency agreements, personal service contracts, and requests for proposal processes where state and federal funds are expended to provide services. Attached is WIOA Terms and Conditions language that is a template for ESD staff and WIOA recipients to use when developing contracts. (Attachment 3A-1)

ESD issued guidance to LWDBs regarding EO assurances. Each recipient is expected to ensure their training plans, contracts and agreements are consistent with the EO and nondiscrimination provisions of WIOA. (Attachment 3A-2)

Compliance with assurance language requirements is monitored for during annual EO and nondiscrimination monitoring.



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# Documentation

## Attachments for Element Three

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3A-1 [Contract Assurance Language](#)

3A-2 [Updated Assurance Language Notice to LWDB EO Officers](#)



# ELEMENT FOUR

## AFFIRMATIVE OUTREACH (29 CFR 38.54(c)(1)(v))

*Washington State addresses how it and its recipients are complying with and will continue to comply with the requirements of 29 CFR 38.40 relating to the provision of affirmative outreach and equal access to programs and activities.*

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### **Background**

Through a \$9 million grant from the United States Department of Labor (USDOL), Washington State began developing its One-Stop system prior to the Workforce Investment Act (WIA) being signed. Core elements of the system were customer focus, integration of services, universal access and a strong accountability for outcomes. The One-Stop system was designed by a multitude of partners at both the state and local level with oversight by the Executive Policy Council (EPC). The EPC also required One-Stop partners to take into account the needs of the target populations including, at a minimum, dislocated workers, veterans, migrant and seasonal farmworkers, disadvantaged adults and youth, job seekers with disabilities, older workers, and welfare recipients seeking employment. (Attachment 4A-1, pages 1, 6 and 9)

The planning and decision-making process in the development of One-Stop Centers laid much of the groundwork for WorkSource Washington. During the implementation of WIA, planning directions were sent to the chief local elected officials. Planning directions included a required assessment of current and future employment opportunities and skills needs, current and future workforces, current workforce development systems, goals, objectives and strategies. Universal services for WIA Title I-B funded employment and training services to youth, adults and dislocated workers were also a requirement. (Attachment 4A-2, pages 1, 2 and 4)

In implementing WIOA, Washington State is working to improve coordination between and among agencies through integrated service delivery, so that workers and job seekers have more seamless access to a system of high-quality career services, education, and training through the one-stop service delivery system and partners. It is also improving access to education and workforce services for individuals with significant barriers to employment—some veterans, individuals with disabilities, out-of-school and at-risk youth, and other populations—to help ensure that everyone has an opportunity to get a good job. Performance measurement also will take into account differences in the populations served to remove any disincentives to serving those who need the most help. (Attachment 4A-3)



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WorkSource Washington's electronic One-Stop system was developed to reach out universally to all individuals interested in employment and training services. It is a customer service network designed to assist a broad range of job seekers and employers. The web site address is <https://worksourcewa.com>, and includes a link to our EO and nondiscrimination notice. We have continued our efforts to ensure inclusion of the EO tagline language in all official web sites, job announcements, brochures and advertisements. See Element 2 for sample publications. On the worksourcewa.com website, jobseekers are able to post their resumes for employers to review; request referrals to listed job openings; obtain information from classified ads, government jobs, company web sites, and US jobs; and obtain information on apprenticeship programs, training benefits and labor market information. The site can be accessed any time and offers opportunities for targeted populations to benefit from WIOA services. (Attachment 4A-4 and 4A-5)

From worksourcewa.com, individuals can also access local services by clicking on the 'WorkSource locator' link. This allows users to find their Local Workforce Development Boards (LWDB) and WorkSource Centers, affiliate sites and other recipients within their area. Outreach efforts that encourage participation by all segments of the eligible population are evident throughout this site. We have made great strides in ensuring all web sites are accessible and contain links to disability information for both job seekers and employers. Many are available in languages other than English and in alternate formats, where applicable. These sites provide notices of employment and training opportunities, job fairs and workshops, and links to recipient services that help publicize services available to everyone. See web site examples in attachments 4A-6 and 4A-7.

LWDBs are aware of their obligation to provide appropriate language assistance to individuals with limited English proficiency in order to ensure meaningful access to programs and services, in accordance with U.S. Department of Labor (USDOL) requirements and guidance.

Washington Relay Service is utilized in local offices and in unemployment insurance (UI) claim centers to help ensure communications for all.

LWDB recipients are co-located at WorkSource Centers and affiliate sites across the state. This enables access by WorkSource customers without having to go to another site to obtain services. Customers are able to access services through self-service, staff-assisted service, workshops and training classes, and through one-on-one staff-directed services. Levels of services are based on the needs of the customer. The State-Level EO Officer has communicated LWDB obligations to provide affirmative outreach and to include different genders, various racial, ethnic and age groups, and individuals with disabilities. LWDBs incorporate this information into their WIOA operations and strategic plans. (Attachments 4A-8 – 4A-11)



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Toby Olson, Executive Secretary of the Governor's Committee on Disability Issues and Employment (GCDE), continues to work with ESD and other recipients to ensure equal access for persons with disabilities and to provide training for staff. GCDE operates an information clearinghouse for persons with disabilities and employers, identifies needs and develops programs and resources to provide effective employment and training services for people with disabilities, and builds capacity within the WorkSource system to serve job seekers with disabilities. (Attachment 4A-12 and 4A-13)

At WorkSource Centers, customers are provided UI information and assistance using self-service direct telephone lines and the internet. UI WorkSource liaison staff receive formal classroom training to assist walk-in customers needing basic UI assistance. Many of these claimants are limited in English proficiency or are individuals with disabilities who require assistance with our agency forms and publications. UI WorkSource liaisons show claimants how to access and use agency online resources and telephone self-service technology. They also provide training and assistance to UI claimants in developing training plans and job searches.

The UI Program provides primary service delivery into UI call centers and the internet for initial claims, weekly claims and adjudication of issues. Claimants call a toll-free number and, after selecting their language and identifying the reason for the call, are connected through an automated call distribution system to an agent, or online through [www.esd.wa.gov](http://www.esd.wa.gov).

All agents in the UI claim centers participate in an intensive intake training program. The program includes a component on customer service with a focus on how to better serve persons who need language assistance. If needed, staff at each site use third party telephone interpretation services, or Washington Relay Service 711. Calls are routed across the state regardless of the caller's location so that customer wait times are reduced. Special emphasis has been placed on publishing forms and scripts in plain language.

### **Ensuring Accessibility**

WorkSource Washington is committed to making all services, facilities and information accessible and usable by individuals with limited English proficiency (LEP). An LEP customer is an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. Efforts are also made to provide equal access to different genders, racial and ethnic groups, and individuals with disabilities.

Bilingual positions have been established throughout the Employment Security Department (ESD) wherever needed to ensure effective communication with LEP



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customers. ESD's Human Resource Division approves the establishment of these positions based on skills and abilities and other identified criteria. ESD currently has more than 50 bilingual staff in the UI claim centers to provide language assistance in several languages including Chinese, Korean, Russian, Spanish, Vietnamese and other languages.

Targeted outreach efforts have been underway to promote WorkSource, WorkFirst (Welfare to Work), UI benefits and veterans services programs. Individuals with disabilities are one of the targeted groups. All UI online videos have 'open caption' for individuals with hearing impairments.

ESD established a Limited English Proficiency (LEP) Committee to address several key requirements in the LEP guidance issued by the United States Department of Labor Civil Rights Center. The State-Level EO Officer serves as chair. Individuals on the committee are charged with updating the agency-wide LEP plan and policy that provides guidance on:

- Conducting the required assessment of LEP demographics and language needs using the 'four factor analysis' provided by USDOL.
- Developing guidance and timetables for local planning.
- Identifying documents in each program that require written translation and the priority for completing the translation.

ESD's Policy and Procedure #0022 – Providing Language Services to Limited English Proficiency Customers, provides requirements and guidance for providing language services for ESD programs and services. LWDBs may use ESD's plan and policy as a model to develop their own. However, ESD and other recipients have continually provided meaningful access to LEP customers. The State-Level EO Officer has monitored for access to language services through EO and nondiscrimination compliance reviews. (Attachment 4B-1 and 4B-2)

Census statistics continue to indicate that Spanish is the primary language used among the LEP population in Washington State. Should this change, the LEP Committee will assess and identify the need to provide the additional assistance required in the new primary language.

In 2002, the UI Division developed and implemented an LEP Policy titled "UI Program Policy on Providing Services to Customers with Limited English Proficiency (LEP)", which was distributed in UI Circular 15-02. (Attachment 4B-3)

UI claimants are provided language assistance by bilingual staff or are connected with a telephone interpreter. To meet the demand of our customers, the agency continues to recruit additional bilingual staff. ESD regularly reviews interpreter service call data to



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identify customer language needs. Claimants can receive free interpretation of any UI documents. Claim instructions and forms are provided in several languages including Chinese, Korean, Russian, Spanish, and Vietnamese.

UI claims can be filed online at [www.esd.wa.gov](http://www.esd.wa.gov). We currently have online information in 15 languages with calling instructions to get basic information and questions answered about UI claims.

The current Handbook for Unemployed Workers includes additional information on filing a discrimination complaint. The handbook is translated into Spanish. It includes a statement in seven languages other than English, instructing LEP individuals on how to get help in understanding the kit. (Attachment 2A-14 and 2A-15)

ESD developed the following videos in English, Spanish and Open Caption: Applying for Unemployment Benefits; Submitting your Weekly Claim; and How to Complete Your Job Search Log. Since 2011, the UI Division has added videos online such as Training Benefits; How to Prepare and Present your Case; and Plan and Pay your Taxes. In August 2012, ESD added more to its repertoire of online resources such as the “Other Languages” page, which includes pictorial and voice language assistance in 16 languages. Here, LEP customers are able to obtain assistance in navigating the claims process in their own language.

The Office of Administrative Hearings (OAH), a separate state agency funded partially by ESD, provides appeal information. OAH’s booklet, “How to Prepare and Present your Case,” is available in 5 languages: English, Russian, Somali, Spanish, and Vietnamese. (Attachment 4B-4)

OAH provides interpreters free of charge in any language to those appealing a decision and requesting assistance. ESD also provides online information on filing an appeal in English and Spanish, which is available in WorkSource Centers. Also available is information on how to contact outside advocacy organizations should a customer want assistance preparing for and participating in the appeal hearing. (Attachment 4B-5)

### **Outreach and Recruitment**

Efforts to provide services to a substantial segment of the population are based on census data, labor market analysis, service need assessments, and information from community and social service organizations, educational institutions, employers, and labor and community service advocates. LWDBs are made up of representatives of public and private agencies, educators, employers, and community-based organizations that provide services to the disadvantaged, underserved, underemployed and targeted groups within their communities. They share a mutual interest in improving employment opportunities to meet the needs of employers and in improving the economic conditions



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in their communities. Through the development of local strategic plans, cooperative efforts are now in place for all recipients in the workforce development system. Improvements in communications were made with the business sector and economic development organizations. Better collaborations from these new relationships have created an environment for a stronger, more responsive, and more proactive workforce development system.

Ongoing activities continue to provide universal access. Samples of demographic information can be found in the attached local area strategic plans for Pac Mountain, Snohomish and Benton Franklin Local Workforce Development Areas. The plans include samples of data such as: current and future workforce; school dropout rates; percent of population by gender, race, and Hispanic origin; state and county population by age; public/private school enrollment by race/ethnic origin; persons with disability status; people of all ages in poverty; and other data used by the LWDBs to help determine program priorities and provide equal access for all. (Attachment 4A-9 – 4A-11)

LWDBs continue to ensure their recipients provide equal access and are conducting affirmative outreach. Two examples of outreach and enrollments from two recipients in the South Central LWDA that focus on providing services to youth are attached. Their outreach plans include public service announcements on community television and radio stations, as well as advertisements in Spanish and bilingual media. In addition, outreach and promotional efforts include a campaign to recruit individuals with disabilities. The Spokane LWDB remodeled and reorganized their One-Stop Center using Human Centered Design to make the center more accessible, maximize the customer experience, and make the staff more effective in their work. (Attachments 4C-1 4C-3)

ESD created a multi-language flyer for its UI Benefits Program. This flyer has instructions on how to contact the UI claims center for information and how to apply for benefits. In addition to the toll free number, it also provides numbers for assistance in the customer's preferred language. The UI Benefits information is translated into 15 languages informing customers that language services are available free of charge. (Attachment 4C-4)

A copy of the multi-language flyer was distributed to WorkSource centers across the state and is available online. A customer will not only have the option to see the translated text but can hear a recording of that text in any of the 15 languages.

### **Governor's Executive Orders for Veterans and Individuals with Disabilities**

In 2013, Governor Jay Inslee issued Executive Order 13-01 – Veterans Transition Support, to improve hiring of veterans by state agencies. Each agency is required to





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establish a veteran employment plan to increase the representation of veterans and provide a volunteer for the state-wide Veterans Employee Resource Group (VERG). ESD established a veteran employment plan in 2013, updates the plan annually, and has a staff as a member serve on the state resource group. The department is participating in enterprise strategies to increase its number of veterans as employees, including forming an agency VERG in 2017. ESD's VERG works to ensure an organizational culture that welcomes veterans, supports their transition from military service, and encourages their career growth.

Also in 2013, the Governor issued Executive Order 13-02 – Improving Employment Opportunities and Outcomes for People with Disabilities in State Government. Each agency is required to establish a Disability Employment Plan and to provide a staff to serve on the Disability Employment Taskforce. Agencies were required to adopt a goal of having at least five percent of employees as individuals with a disability by July 30, 2017. Currently, ESD's Affirmative Action Utilization Report shows 4.4% of employees have identified as persons with disabilities. ESD implemented a Disability Employment Plan and has a staff member serving on the taskforce. ESD created an agency Disability Employee Resource Group in 2017 that works to ensure an inclusive work environment where people with disabilities can flourish, their talents and abilities are valued and recognized, and they feel safe and welcomed to contribute in making a difference for our customers. Each Wednesday, ESD spotlights Power of a Job success stories on the ESD blog. Attached is an example of a story highlighting an employee with a disability and a story highlighting the agency's YesVets program. (Attachments 4D-1 - 4D-4)

### **Governor's Directive for LGBTQ Inclusion and Safe Places Initiative**

In 2016, the Governor issued Directive 16-11 – LGBTQ Inclusion and Safe Places Initiative, directing the Office of Financial Management to develop a statewide LGBTQ employee resource group, to identify and share best practices, and to develop a Safe Place program in which local businesses and organizations can signal the public that they serve as locations for members of the LGBTQ community to find safe and secure spaces to request and wait for police assistance. ESD has a staff member serving as a member of the resource group. ESD created an agency LGBTQ+ Employee Resource Group in 2018 that works to foster an inclusive culture at ESD that values and respects LGBTQ+ employees and customers. The agency ERG is working on a pilot with Pac Mountain LWDB and a local law enforcement department to create a Safe Space program in one of our local areas. The goal of the Safe Space is to let LGTBQ+ individuals know they are welcome by placing a sticker on the door that signals their business will provide a safe location for a person to wait while local police are contacted, or if someone feels that they are at risk of violence. Training for staff on the Safe Place Program will also be provided. The ERG is addressing other ways to create



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a safe and inclusive environment for LGBTQ+ employees and customers. (Attachment 4E-1)

### **Monitoring**

LWDBs continue to monitor their customer composition by comparing the local labor market information with data from the WorkSource enterprise case management database, Efforts to Outcomes (ETO). These reports show the makeup of their participants, including members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. They work with their recipients and other community organizations to share information, sponsor job fairs, and provide outreach to target various populations.

Through onsite compliance reviews, the State-Level EO Officer continually monitors and evaluates efforts by ESD and LWDBs to broaden representation of persons in programs, services and employment. (See Element 7)



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# Documentation

## Attachments for Element Four

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- 4A-1 [WA One-Stop System Decisions](#)
- 4A-2 [Local WDC Formation and Certification](#)
- 4A-3 [WIOA Fact Sheet](#)
- 4A-4 [WorkSourcewa.com Home Page](#)
- 4A-5 [WorkSourcewa.com Training Page](#)
- 4A-6 [WorkSource Okanogan Class Calendar](#)
- 4A-7 [WorkSource Skagit Class Calendar](#)
- 4A-8 [One-Stop Evaluation and Certification](#)
- 4A-9 [Benton-Franklin LWDB Strategic Plan](#)
- 4A-10 [Pacific Mountain LWDB Strategic Plan](#)
- 4A-11 [Snohomish LWDB Strategic Plan](#)
- 4A-12 [RCW 50.12.250 Information Clearinghouse](#)
- 4A-13 [GCDE Overview](#)
- 4B-1 [Policy 0022 - LEP](#)
- 4B-2 [ESD LEP Plan 2013](#)
- 4B-3 [UI Circular 15-02 - UI Program Policy on Providing Services to Customers with LEP](#)
- 4B-4 [OAH's Booklet "How to Prepare and Present Your Case" - Spanish](#)
- 4B-5 [Unemployment Law Project Information](#)
- 4C-1 [YVOIC Outreach and Enrollment](#)
- 4C-2 [NCAC Outreach and Enrollment](#)
- 4C-3 [Spokane LWDB Spokane Human-Centered Design Web Page](#)
- 4C-4 [Multi-Language Poster 2012](#)
- 4D-1 [Executive Order 13-01 Veterans Transition Support](#)
- 4D-2 [Executive Order 13-02 People with Disabilities in State Employment](#)
- 4D-3 [Power of a Job Story - Disability](#)
- 4D-4 [Power of a Job Story - Veteran](#)
- 4E-1 [Governor's Directive 16-11 - LGBTQ Inclusion and Safe Places Initiative](#)



## ELEMENT FIVE

### COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended, and 29 CFR Part 38 (29 CFR 38.54 (c)(2)(v))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of the disability-related requirements of WIOA Section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 38.12 through 38.17; Subparts B and C of 29 CFR Part 32; the Americans with Disabilities Act of 1990, as amended; and RCW 49.60.*

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#### **Background**

Washington State is committed to making all services, facilities and information accessible and usable by individuals with disabilities. (Attachments 5A-1 – 5A-4) This applies to all programs, services and activities provided by or made available within the WorkSource Washington system to customers, potential customers, job applicants, employees, volunteers, recipients, and licensees.

Washington State ensures nondiscrimination on the basis of disability by:

- Providing opportunities for participation or benefits equal to that afforded to others;
- Providing financial aid, benefits, services or training equal to that provided to others;
- Ensuring that qualified individuals with disabilities are offered the option of participating in the same programs or activities offered to non-disabled individuals;
- Denying assistance, either directly or through contractual licensing or other arrangements, to any agency, organization or person that discriminates on the basis of disability;
- Ensuring that licensing and/or certification programs operate in a matter which does not discriminate against qualified individuals with disabilities;
- Ensuring that eligibility criteria do not screen out individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity,



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unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered; and

- Eliminating barriers to employment and providing accommodations in the workplace.

During monitoring reviews, the State-Level Equal Opportunity (EO) Officer evaluates employment practices to ensure there are no barriers to employment. (See Element 7)

### **Reasonable Accommodation for a Disability**

Washington State is committed to providing reasonable accommodations to qualified individuals with disabilities in all aspects of its programs, services, activities and employment, unless providing the accommodation would cause undue hardship. Reasonable accommodations are 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. See the definitions sections of this element for a comprehensive definition/explanation of reasonable accommodations. Accommodations may include, but are not limited to, qualified sign language interpreters, auxiliary aids, and alternate formats. Reasonable modifications in policies, practices, or procedures are made, when necessary, to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

### **Program Accessibility**

Steps taken by the Employment Security Department (ESD) and WorkSource Washington to ensure services, programs, and activities are readily accessible by individuals with physical, mental, or sensory impairments include the following:

- Policy and Procedure Number 0013-1 - Reasonable Accommodation, and Nondiscrimination on the Basis of Disability for employees, and Policy 5402 Equal Opportunity and Nondiscrimination for customers and employees, indicate ESD's firm commitment to providing timely, reasonable accommodations to the known physical, mental or sensory limitations of an otherwise-qualified employee or customer with a disability. The accommodations may include adjustments and modifications that allow a person with a disability to perform the essential functions of the job, enjoy the benefits and privileges of employment, or participate in department programs, services and activities. Qualified sign language interpreters, readers, and other auxiliary aids are provided upon request. (Attachments 2B-2 and 2A-1)
- WorkSource Washington operates each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals



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with disabilities. All programs, services and activities are offered to individuals with disabilities in the most integrated setting appropriate to them. To achieve program accessibility, WorkSource Washington considers the redesigning of equipment and the provision of appropriate auxiliary aids and services, including assistive technology and sign language interpreters.

- The Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity and Nondiscrimination Policy Number 5402 states that recipients funded under WIOA, whether in whole or in part, are responsible for ensuring equal opportunity and nondiscrimination in programs and activities. Each program or activity, when viewed in its entirety, must be operated in a manner that makes it readily accessible to qualified individuals with a disability. (Attachment 2A-1)

The U.S. Department of Labor (USDOL) Office of Disability Employment Policy's Section 188 Disability Checklist has been distributed to all Local Workforce Development Boards (LWDBs).

Washington State continues to assist registrants, applicants, eligible applicants/registrants and participants with disabilities by providing the following:

- Comprehensive accessibility assessments — Assessments have been completed for all WorkSource Centers and affiliates.
- Individual disability access improvement plans — Plans have been developed by each center based on the results of their assessment. Model policies and procedures for serving customers with disabilities have been developed and disseminated.
- Staff training — Training on issues related to serving people with disabilities has been incorporated into all of the major WorkSource conferences and training events held in the state. Two WorkSource Centers have instituted a practice of holding a one-hour training session for staff each month on a different disability issue or program.
- Technical assistance — ESD, the Governor's Committee on Disability Issues and Employment (GCDE) and the Department of Social Health Services' Division of Vocational Rehabilitation have established a Technical Assistance Clearinghouse. The Clearinghouse serves as a single point of contact on issues related to serving people with disabilities and provides access to information, linkage to useful resources and assistance with creative problem solving.

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The Washington State Office of the Chief Information Officer has adopted new standards for technology accessibility. Recipients need to adhere to the following standards: (Attachment 5B-1):

- All covered technology must be accessible to and usable by individuals with disabilities, either directly or by supporting the use of assistive technology. Standard 188.10 - Minimum Accessibility Standard outlines the minimum levels for compliance. This includes all covered technology acquired, procured, developed or substantially modified or substantially enhanced after the effective date of the policy, including software available at no cost.
- Where a covered technology is not able to be brought into compliance, the system or content owner is responsible to provide individuals with disabilities equivalent access.
- For each instance of non-compliance of a new covered technology, a waiver must be requested and approved.

### **Architectural Accessibility**

State entities and ESD WIOA Title I recipients are required to follow specific requirements of the Americans with Disabilities Act (ADA), as amended. LWDBs have been informed of their obligation to abide by USDOL EO and nondiscrimination provisions and other federal agency requirements of the ADA. ESD communicates these requirements through the Workforce Training and Education Board State Strategic Plan, the self-assessment process for certification of WorkSource Centers and affiliate sites, and the assurance language in WIOA grant agreements. WorkSource Centers that are not state-owned/leased must abide by local building codes and standards for accessibility as well. (Attachment 5C-1)

Steps taken by ESD and WorkSource Washington to ensure all programs and activities are architecturally accessible to individuals with disabilities include:

- ESD Policy and Procedure Number 0013-1 - Reasonable Accommodation and Nondiscrimination on the Basis of Disability provides:

“ . . . The Department shall provide its services and operate its programs and/or activities so that, when viewed in their entirety, they are accessible to qualified persons with a disability.”



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“A program must be accessible to clients, or a comparable program must be made available at an alternate site that is accessible.” (Attachment 2B-2)

- The ESD Facilities Unit inspects ESD’s facilities at lease renewal to ensure compliance with requirements of the Americans with Disabilities Act of 1990, as amended. The State of Washington developed a checklist with the help of GCDE, members of the disabled community and customer agencies. This checklist meets the requirements for barrier-free access in Washington State and is more stringent than federal standards. It is used for the evaluation and selection of new and existing facilities. The evaluation focuses on: site access; signage at primary building entrances of inaccessible facilities; interior door and corridor widths; public restroom requirements; and other architectural specifications of the ADA Accessible Guidelines. The purpose is to ensure compliance with Washington Administrative Code (WAC) 51-50-005 and the Washington State Building Code. Copies of the facility evaluations are maintained in the Facilities Unit. In an effort to ensure compliance, the Facilities Unit has also instituted a new program addressing signage in all facilities. The checklist and sample evaluations are included in attachments. (Attachments 5C-2 – 5C-4)
- The LWDBs provide criteria that must be followed for WorkSource Center certification. Each LWDB provided this information in the way that worked best for their area. An example is Workforce Central’s Certification process. (Attachment 5C-5)
- Each LWDB EO Officer is provided with ADA measuring devices – a pressure gauge and an ADA tape measure. The instruments assist LWDB EO Officers in conducting EO and nondiscrimination monitoring reviews and WorkSource Center Administrators in keeping their centers accessible for individuals with disabilities.

### **Communication**

ESD and LWDBs take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. Auxiliary aids and services are provided, when appropriate and necessary, to afford individuals with disabilities opportunities to participate in and enjoy the benefits of WIOA Title I financially assisted programs and activities. The Washington Relay Service is used to communicate with individuals who are hard of hearing or deaf, or have speech impairments. Where site telephone numbers are provided, the relay service number must also be provided.

LWDBs are aware of their obligation to ensure that communications with members of the public, customers, and applicants with disabilities are as effective as





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communications with others. WIOA Equal Opportunity and Nondiscrimination Policy Number 5402 states that recipients must ensure programs are provided in the most integrated setting appropriate for the needs of individuals with disabilities, and that communications with individuals with disabilities are as effective as communications with others. (Attachment 5B-2)

ESD is committed to ensuring that its programs, services and activities, when viewed in their entirety, are readily accessible by individuals with physical, mental, or sensory disabilities. When requested, qualified sign language interpreters, readers, and other auxiliary aids will be provided. Documents and publications will also be made available in alternate formats.

### **Records**

ESD and the LWDBs ensure the confidentiality of information related to an individual's medical condition that may reveal the presence of a disability as noted at 29 CFR 32.15(d) and the Americans with Disabilities Act, as amended. Medical condition information is kept in a single, secured location separate and apart from other files. Electronic systems also support separate recordkeeping for medical condition information. Pre-employment/employment medical inquiries are conducted in accordance with the WIOA, ADA and the regulations of Section 504 of the Rehabilitation Act of 1973, as amended. Specific guidance is referenced in recipients' policies. EO monitoring ensures adherence to these provisions. (See Elements 2, 6 and 7)

ESD's Policy and Procedure Number 0013-1 – Reasonable Accommodation and Nondiscrimination on the Basis of Disability states in the employee section that upon completing the reasonable accommodation process, all supporting information needs to be forwarded to the Human Resource Division. "It will be filed in a secure location, separate from an employee's personnel file. Information about an individual's disability is limited to designated personnel and only provided on a need-to-know basis." (Attachment 2B-2)



## Element Five Definitions

**Auxiliary aids or services** includes: (1) Qualified interpreters on-site or through video remote interpreting (VRI) services, notetakers, real-time computer-aided transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, including real-time captioning, voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices, videotext displays, accessible electronic and information technology, or other effective means of making aurally delivered materials available to individuals with hearing impairments; (2) Qualified readers, taped texts, audio recordings, materials and displays in Braille, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; (3) Acquisition or modification of equipment or devices; and (4) Other similar services, devices, and actions.

**Disability** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

**Employment practices** means a recipient's practices related to employment, including but not limited to: (1) Recruitment or recruitment advertising; (2) Selection, placement, layoff or termination of employees; (3) Upgrading, promotion, demotion or transfer of employees; (4) Training, including employment-related training; (5) Participation in upward mobility programs; (6) Deciding rates of pay or other forms of compensation; (7) Use of facilities; or (8) Deciding other terms, conditions, benefits and/or privileges of employment. Employment-related training means training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment.

**Facility** means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase "real or personal property" in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.



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**Fundamental alteration** means: (1) A change in the essential nature of a program or activity as defined in this part, 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. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include: (i) The nature and net cost of the modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification; (ii) The overall financial resources of the facility or facilities involved in the provision of the modification, including: (A) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and (B) The effect the modification would have on the expenses and resources of the facility or facilities; (iii) The overall financial resources of the recipient, including: (A) The overall size of the recipient; (B) The number of persons aided, benefited, served, trained, or employed by the recipient; and (C) The number, type and location of the recipient's facilities; (iv) The type of operation or operations of the recipient, including: (A) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and (B) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and (v) The impact of the modification upon the operation of the facility or facilities, including: (A) The impact on the ability of other participants to receive aid, benefit, service, or training, or of other employees to perform their duties; and (B) The impact on the facility's ability to carry out its mission.

**Qualified individual with a disability** means: (1) With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position; (2) With respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

**Qualified interpreter** means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals who are limited English proficient. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary, either in-person, through a telephone, a video remote interpreting (VRI) service, or via internet, video, or other technological methods.

**Reasonable accommodation:** (1) The term "reasonable accommodation" means: (i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or (ii) Modifications or adjustments that enable a qualified individual with a disability to



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perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to: (A) The environment where work is performed or aid, benefits, services, or training are given; or (B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or (iii) 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. (2) Reasonable accommodation includes, but is not limited to: (i) Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and (ii) Restructuring of a job or a service, or of the way in which aid, benefits, services, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities. (3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (4) A recipient is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong (paragraph (q)(1)(i) of this section) or the “record of” a disability prong (paragraph (q)(1)(ii) of this section), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong (paragraph (q)(1)(iii) of this section).

**Undue hardship** means, with regard to reasonable accommodation of individuals with disabilities, significant difficulty or expense incurred by a recipient, when considered in light of the following factors. Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include: (A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation; (B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, 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 would have on the expenses and resources of the facility or facilities; (C) The overall financial resources of the recipient, including: (1) The overall size of the recipient, (2) The number of persons aided, benefited, served, trained, or employed by the recipient, and (3) The number, type and location of the recipient's facilities; (D) The type of operation or operations of the recipient, including: (1) The geographic separateness and administrative or fiscal relationship of the facility or facilities in



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question to the recipient, and (2) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and (E) The impact of the accommodation 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.



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## Documentation

### Attachments for Element Five

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- 5A-1 [RCW 49.60 Discrimination – Human Rights Commission](#)
- 5A-2 [RCW 50.12.210 Employment Services for Handicapped](#)
- 5A-3 [Title 162 WAC - Human Rights Commission \(Applicable Chapters\)](#)
- 5A-4 [Disability Access Information - Department of Enterprise Services Website](#)
- 5B-1 [188 OCIO](#)
- 5C-1 [TAP Overview](#)
- 5C-2 [WAC 51-50-005 International Building Code Requirements for Barrier Free Accessibility](#)
- 5C-3 [Barrier-Free Access - Checklist for State Leased Facilities'](#)
- 5C-4 [ADA Checklist](#)
- 5C-5 [Workforce Central One-Stop Certification Process](#)



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# ELEMENT SIX

## DATA AND INFORMATION COLLECTION AND MAINTENANCE (29 CFR 38.54(c)(1)(iv) and (vi))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.41 through 38.45 and 29 CFR 38.53 related to data and information collection and maintenance.*

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### **Background**

Washington State has established policies and procedures on data collection that applies job seekers, employers and agency employees for all Workforce Innovation and Opportunity Act (WIOA) Title I state programs. The Employment Security Department (ESD) also maintains and annually updates a Data Information/Technology Security plan through the Washington State Technology Solutions (WaTech). This plan ensures that data collected is secure and provides contingency plans for unexpected failures. ESD currently maintains two data systems that capture, store and report information considered confidential. These systems fall under the guidelines and requirements for our policy and procedures, as well as the Technology Security Plan.

### **Data Collection**

All agency systems have been modified to meet the requirements for capturing and reporting equal opportunity (EO) data elements. The unemployment insurance (UI) benefits program EO data reports are produced from the new Unemployment Tax & Benefits (UTAB) system, which was launched January 2017. WIOA and Labor Exchange EO reports are available from the Efforts to Outcomes (ETO) system. The State is in the process of replacing this system. The State-Level EO Officer met with a statewide team to share the data requirements for the new system and is involved in the development of the new system, to ensure compliance.

ESD data, including employee information, is captured in the following systems:

UTAB	Unemployment Tax and Benefits, for tracking UI benefits and claimant activities.
HRMS	Human Resources Management System, for capturing and maintaining data on agency employees.



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ETO            Efforts to Outcomes, a management information system for tracking WIOA Title I and Trade Adjustment Assistance/North American Free Trade Agreement participants, a case management tool for the One-Stop system for Washington State. This is a job matching, case management and information-tracking system that supports the collection of data used for reporting purposes.

Washington State's One-Stop system is compliant with 29 CFR 38.41 through 38.45. We collect EO demographic information when a person registers in the online system. This holds true for applicants for employment also. For customers seeking to enroll in a program, if we have not already captured the information, we will ask at the point at which the job seeker or customer is "registered".

Policies, procedures and security plans are in place to safeguard collected information pertaining to specific job seekers, program participants, enrollees, benefit claimants, employers and recipient staff. These policies, procedures and plans are reviewed and modified, if necessary, on an annual basis. Data is accessible only to program managers, program monitors, case managers, and a limited number of other "authorized" personnel needing access to these systems to provide direct services. (Attachments 6A-1 and 6A-2)

The UTAB system is used to process UI claims. It stores EO demographic information as required by the U.S. Department of Labor (USDOL) Civil Rights Center (CRC). The information is collected voluntarily when applying online or using the touchtone pad of a telephone. Each claimant is asked to voluntarily provide his or her:

- Race/ethnicity
- Sex
- Age
- Disability status
- LEP status and preferred language

This information is confidential and is used for the purposes of recordkeeping and reporting, and determining program compliance with nondiscrimination requirements. Claimant information is automatically transferred to our job registration system unless the claimant requests to be excluded.

Access to this information is limited to those persons with a legitimate business need to access the systems. Access and use of information maintained by ESD is covered in the following policies and procedures:





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- ESD Policy and Procedure Number 0006, Public Record requests (Attachment 6A-3);
- ESD Policy and Procedure Number 0029, Online or Bulk Data/Information Sharing Policy, covering the confidentiality of information obtained by ESD (Attachment 6A-4);
- ESD Policy and Procedure Number 2010, Automated Systems Security (Attachment 6A-5); and
- ESD Policy and Procedure Number 1016, Employee Conduct, page 7 states that the penalty for failure to comply with these privacy protection requirements will be grounds for nothing less than disciplinary action, up to and including dismissal, and/or legal actions against the individual. (Attachment 6A-2)

### **Data Storage and Reports**

ESD managers and Local Workforce Development Boards have access portals to ETO to analyze compliance with the nondiscrimination provisions of Section 188 of the WIOA and 29 CFR Part 38. ETO produces several reports, including EO reports.

ETO allows EO data to be downloaded and forwarded to CRC upon request to allow CRC to conduct its own statistical/quantifiable data analyses. The State-Level and LWDB EO Officers use the WIOA and Labor Exchange EO data reports to analyze customer participation by race/ethnicity, sex, age and disability status. Certain data is reported to the USDOL quarterly according to the individual program's reporting requirements.

The UI Policy Unit and the State-Level EO Officer receive automated statewide EO reports by race/ethnicity, gender, age, and disability to analyze pass/fail rates in various steps of the benefits process. When significant differences in participation exist, as measured by the 80% Rule and the Two-Standard Deviation Test for Statistical Significance, the disparities are discussed among the UI Benefits Program management and the State-Level EO Officer. The differences are investigated and justified or mitigated. (Attachment 6B-1)

### **Self-Service and Monitoring**

Clients who sign-in to use the resource room computers, self-service features of the WorkSource System, must provide basic information to create a profile on worksourcewa.com. An initial registration is automatically created in ETO if a client record does not already exist. This data allows tracking of resource room self-service and is necessary to meet customer-tracking requirements. When personally identifiable



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information is collected, such as address or Social Security Number, EO demographic information is also collected on a voluntary basis.

LWDB EO Officers observe self-service activity, meet with and interview staff members regarding their observations and identify corrective action, if necessary. The State-Level EO Officer, in conjunction with the LWDB EO Officers, will also monitor self-service. (See Element 7)

### **Logs**

Each LWDB EO Officer and the State-Level EO Officer maintains a log of discrimination complaints filed on the basis(es) of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for customers, citizenship and/or participation in a WIOA Title I-financially assisted program or activity. See attachment 6C-1 for a sample copy of a log. Also see Element 8.

### **Records**

Records containing medical condition information that may reveal the presence of a disability are stored, secured and kept separate and apart from other information. If an entity is found to be out of compliance, corrective actions are administered. See Elements 3 and 5. 2B-2 for the Reasonable Accommodation Policy; and Record's Policies 6A-3 through 6A-5.

Records are maintained for at least three years, in compliance with state and federal regulatory requirements. All customer and recipient staff discrimination complaints are maintained for three years after the cases are closed. ESD employee and job applicant discrimination complaints are maintained for six years after closure in accordance with the State Government General Records Retention Schedule. (Attachment 6D-1)

### **Enforcement Actions**

The Director of CRC will be informed of all administrative enforcement actions or lawsuits that allege discrimination on one or more of the bases outlined above and prohibited by Section 188 of WIOA.



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## Documentation

### Attachments for Element Six

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- 6A-1 [UI Circular 08-00 UI Claimant Data Sharing Notice](#)
- 6A-2 [Policy and Procedure 1016 – Employee Conduct](#)
- 6A-3 [Policy and Procedure 0006 - Public Record Requests](#)
- 6A-4 [Policy and Procedure 0029 - Online or Bulk Data-Information Sharing](#)
- 6A-5 [Policy and Procedure 2010 - Automated Systems Security](#)
- 6B-1 [Sample UI EEO Data Report 2018](#)
- 6C-1 [Sample LWDB Discrimination Complaint Log](#)
- 6D-1 [SOS Retention Schedule - Discrimination](#)



## ELEMENT SEVEN

### MONITOR RECIPIENTS FOR COMPLIANCE (29 CFR 38.54 (c)(1)(viii))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.51(b). The State is required to establish procedures to annually monitor all aspects of the recipient's compliance with WIOA Section 188 and 29 CFR Part 38.*

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The State-Level Equal Opportunity (EO) Officer conducts in-depth EO and nondiscrimination compliance monitoring reviews of each LWDB to assess their compliance with the EO and nondiscrimination provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and 29 CFR Part 38 and provides training and technical assistance to LWDB EO Officers regarding their monitoring responsibilities and activities.

State-Level EO Officer and LWDB EO and nondiscrimination monitoring follows procedures listed in the Employment Security Department and Local Workforce Development Board Equal Opportunity and Nondiscrimination Monitoring Guide. (Attachment 7A-1)

A necessary component of conducting EO and nondiscrimination monitoring is conducting data analysis. Data analysis consists of:

- Comparing the percentage of eligible applicants or applicants in an EO demographic group to the percentage of the civilian labor force in your county or counties. This determines if we are reaching our eligible population.
- Using the 80% Rule and the Two-Standard Deviation Test for Statistical Significance to determine if there are significant differences in participation among EO groups. Here we compare success rates of customers from, for example, eligible applicants to applicants, applicants to participants, participants to positive exits or participants to entered training and completed training.
- When significant differences are found, investigating the reasons for the disparity to determine if it is caused by a neutral policy or practice. When the policy or practice is found to be a justifiable business necessity, we document what was found. If there is no justifiable business necessity found, we attempt to mitigate the effects.



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### State-Level EO Officer Monitoring

The State-Level EO Officer conducts EO and nondiscrimination reviews of LWDBs and the State Board. The ESD EO Officer works with the State-Level EO Officer and conducts reviews of the UI Benefits Program, and Employment Service programs. (Attachment 7B-1)

### **WIOA PROGRAMS**

The State-Level EO Officer annual compliance monitoring reviews consist of desk reviews and on-site reviews of each LWDB.

Once each year, the State-Level EO Officer conducts a comprehensive review of one LWDB. This is a review of the LWDB and every LWDB recipient in the local area. The LWDB is selected based on the results of prior reviews or due to the complexity of providing service in the workforce development area. These reviews assist the State-Level EO Officer in determining if all LWDB recipients are adequately reviewed and assist the LWDB in determining how to review its recipients.

Reviews of WIOA programs normally consist of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan;
- A review of data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance;
- Participant file reviews and medical/disability records file review;
- A review of job orders;
- Interviews with staff and customers using a questionnaire;
- A review of LWDB EO monitoring reports; and
- A walkthrough using a checklist.

Questionnaires and checklists are found in the ESD and LWDB EO and Nondiscrimination Monitoring Guide. (See Attachment 7A-1)

Following the LWDB monitoring review, the State-Level EO Officer conducts an exit meeting with the LWDB EO Officer and Executive Director to discuss the findings. Follow-up monitoring may be scheduled if deficiencies are found or corrective action is needed. The State-Level EO Officer is responsible for developing a report of each visit. The LWDB Executive Director and LWDB EO Officer receive a copy of the report. (Attachment 7A-1 and 7B-1)



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### UI BENEFITS PROGRAM

ESD's EO Officer conducts annual UI Benefit Program EO and nondiscrimination monitoring reviews. Reviews consist of, but are not limited to, monitoring:

- Data analysis and investigation of monetary determinations, non-monetary determinations, separation and non-separation issues, lower level and higher level appeals;
- Services to LEP customers and customers with disabilities;
- An onsite interview with claims center administrators and staff;
- Management and staff EO and nondiscrimination training;
- Benefits accuracy; and
- EO taglines and posters.

Reviews of the UI Benefits Program normally consist of, but are not limited to:

- An interview with claim center managers using a questionnaire covering the elements of the Nondiscrimination Plan;
- Data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance;
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements; and
- A walkthrough of claim centers using a checklist.

### EMPLOYMENT SERVICE

ESD's EO Officer monitors employment service programs annually including:

- UI Reemployment
- Veteran
- WorkFirst
- Migrant and Seasonal Farmworker

The Labor Exchange Equal Opportunity Report found in the Efforts to Outcomes (ETO) system is analyzed to determine if significant differences exist. If any are found, the ESD EO Officer collaborates with the appropriate program office to have them investigate and justify the findings or attempt to mitigate the effects.

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### TRADE ADJUSTMENT ASSISTANCE

ESD's EO Officer will monitor the Trade Adjustment Assistance Program annually while monitoring the LWDBs as this program is administered through WorkSource Centers and Affiliates.

Reviews of the Trade Adjustment Assistance program normally consists of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan;
- Data analysis using the 80% Rule and Two-Standard Deviation Test for Statistical Significance;
- Participant file reviews and medical/disability records file review; and
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements.

### STATE BOARD

The State-Level EO Officer annually monitors the State Workforce Board for adherence to the EO and nondiscrimination requirements of Section 188 of the WIOA and 29 CFR Part 38.

Reviews of the State Workforce Board will consist of, but are not limited to:

- An interview with a manager or supervisor using a questionnaire covering the elements of the Nondiscrimination Plan; and
- Interviews with staff using a questionnaire to determine staff knowledge of EO and nondiscrimination requirements.

### LWDB EO Officer Monitoring

LWDB EO Officers develop procedures and monitoring tools for monitoring their recipients' compliance with Section 188 of the WIOA, 29 CFR Part 38 and applicable WIOA state policies. Monitoring tools for LWDBs are available in the ESD and LWDB EO Monitoring Guide. They include a questionnaire covering the elements of the Nondiscrimination Plan, a participant file review and disability/medical file review worksheet, staff and customer questionnaires, and a facility walkthrough checklist.

Each LWDB EO Officer monitors the activities of recipients in the local workforce development area to ensure equal opportunity and nondiscrimination. Policies and



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procedures regarding monitoring and oversight requirements for compliance reviews have been disseminated to the local level. Those monitoring and oversight requirements together with EO monitoring instruments are the methods and processes used to conduct and organize the review.

LWDBs must use a monitoring instrument that covers the elements of the Nondiscrimination Plan and the procedures outlined in the EO and nondiscrimination monitoring guide. See attachment 7C-1 through 7C-12 for LWDB monitoring plans.

### **Eligible Training Provider Monitoring**

The USDOL Civil Rights Center defines training providers on the Eligible Training Provider list as recipients and has informed State-Level EO Officers at National Association of State Workforce Agencies Equal Opportunity Committee meetings and training conferences that training providers are to be monitored also. Training providers include private schools, community colleges and four-year colleges.

The State Board's WIOA Policy #5611 requires that Eligible Training Providers maintain performance levels, provide records to the Board annually, and allow reviews and audits. (Attachment 7D-1)

The State-Level EO Officer is responsible for monitoring Eligible Training Providers. The State-Level EO Officer is beginning this monitoring program with conducting data analysis for private schools and training providers. The State-Level EO Officer will follow up with training providers when the results of the review indicate a potential issue, or if there is a discrimination complaint involving the provider. This follow up may involve a discussion, request for additional information, and/or a full review.

Even when records provide small numbers for analysis, the State-Level EO Officer 1) must compare the percentages of the demographic groups in each step of the training delivery process against each other and 2) compare the percentages of the civilian labor force against the percentages of eligible applicants or applicants, to determine if the percentages or numbers are sensible. For example, if there is a small but diverse group of eligible applicants or applicants but only members of one group go on to be participants and positive exiters, this will be examined to determine whether there is a justifiable reason for the occurrence. This holds true for analyzing other programs as well.





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### Monitoring Elements

State-Level and LWDB EO Officers conduct the following monitoring and oversight activities covering the nine elements of the Nondiscrimination Plan:

- **EO Officer Designation** (29 CFR 38.28 through 38.33)  
Ensure EO Officers have been appointed, training is ongoing, assigned EO duties do not constitute a conflict of interest, EO duties are being carried out, and the name of the EO Officer is identified.
- **Notice and Communication** (29 CFR 38.34 through 38.39)  
Ensure "Equal Opportunity is the Law" posters have been distributed and posted in prominent locations for public viewing and that recruitment brochures and other materials include the EO tagline and relay service number for individuals with disabilities. Additionally, any written materials (policies, notices, checklists, brochures, etc.) are reviewed to ensure the EO and nondiscrimination requirements have been met.
- **Assurances (29 CFR 38.25 through 38.27)**  
Review training plans, contracts, agreements, and policies and procedures to ensure EO and nondiscrimination compliance.
- **Affirmative Outreach** (29 CFR 38.40)  
In their recruitment efforts, recipients ensure that materials, brochures, and public service announcements are aimed at broadening the pool of those considered for employment or participation in programs and activities. This includes members of both sexes, various racial/ethnic groups, various age groups, individuals with disabilities and individuals with limited English proficiency.
- **Compliance with Section 504 of the Rehabilitation Act of 1973, as amended** (29 CFR 38.12 through 38.17)  
Ensure compliance with the disability-related requirements of WIOA Section 188 and Section 504 of the Rehabilitation Act.
- **Data and Information Collection and Maintenance** (29 CFR 38.41 through 38.45)  
Ensure collection and maintenance of records or data necessary to determine compliance, e.g., EO and nondiscrimination recordkeeping procedures, policy issuances, reports, complaint logs, etc.
- **Development of a Monitoring System** (29 CFR 38.51 and 38.53)



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Ensure monitoring tools and program policies are developed to ensure their programs and activities are operating in a nondiscriminatory way and their recipients receive on-site monitoring reviews. Ensure data analysis and follow-up is conducted.

- **Complaint Processing Procedures** (29 CFR 38.69 through 38.85)  
Ensure discrimination complaint procedures are adhered to and that complaint logs are maintained.
- **Corrective Actions and Sanctions** (29 CFR 38.54(c)(2)(vii))  
Ensure LWDBs impose corrective actions with time limits, and considers sanctions if voluntary efforts at compliance fail.

### Sanctions

If deficiencies are identified, State-Level or LWDB EO Officers provide on-site technical assistance. When the deficiencies are included in the compliance review report, the recipient or state program must comply by the due date. If compliance is not attained through voluntary means, a corrective action plan or conciliation agreement may be necessary. After attempts to obtain voluntary compliance fail, the matter is raised to the Commissioner. See Element 9.



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## Documentation

### Attachments for Element Seven

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- 7A-1 [EO Monitoring Guide](#)
- 7B-1 [State-Level 2019-2020 EO Monitoring Review Plan](#)
- 7C-1 [Benton-Franklin EO Monitoring Plan](#)
- 7C-2 [Eastern EO Monitoring Plan](#)
- 7C-3 [North Central EO Monitoring Plan](#)
- 7C-4 [Northwest EO Monitoring Plan](#)
- 7C-5 [Olympic EO Monitoring Plan](#)
- 7C-6 [Pacific Mountain EO Monitoring Plan](#)
- 7C-7 [Sea-King EO Monitoring Plan](#)
- 7C-8 [Snohomish EO Monitoring Plan](#)
- 7C-9 [South Central EO Monitoring Plan](#)
- 7C-10 [Southwest EO Monitoring Plan](#)
- 7C-11 [Spokane EO Monitoring Plan](#)
- 7C-12 [Workforce Central EO Monitoring Plan](#)
- 7D-1 [ETP 5611 Part D](#)



# ELEMENT EIGHT

## COMPLAINT PROCESSING PROCEDURES (29 CFR 38.54(c)(1)(vii))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.72 and 38.73 regarding complaint processing procedures.*

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### **Background**

The State of Washington is committed to providing equal opportunity (EO) and ensuring nondiscrimination in employment and services. The Revised Code of Washington (RCW) 49.60 – the Washington Law Against Discrimination (WLAD), prohibits discrimination on the basis of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. (Attachment 5A-1)

In addition, the following Executive Orders and Directives were issued to further ensure nondiscrimination in employment and services:

- Executive Order 17-01 – Reaffirming Washington’s Commitment to Tolerance, Diversity, and Inclusiveness (Attachment 8A-1)
- Executive Order 16-04 – Reaffirming the Interagency Committee of State Employed Women (Attachment 8A-2)
- Executive Order 12-02 — Workforce Diversity and Inclusion (Attachment 8A-3)
- Executive Order 96-04 — Implementing the Americans with Disabilities Act (Attachment 8A-4)
- Executive Order 89-01 — Sexual Harassment (Attachment 8A-5)
- Executive Order 13-01 — Veterans Transition Support (Attachment 4D-1)
- Executive Order 13-02 — Improving Employment Opportunities and Outcomes for People with Disabilities in State Employment (Attachment 4D-2)
- Governor's Directive 16-11 — LGBTQ Inclusion and Safe Places Initiative (Attachment 4E-1)



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The Employment Security Department (ESD) and LWDBs maintain compliance with Section 188 of the Workforce Innovative and Opportunity Act (WIOA) and its regulations regarding the processing of discrimination complaints.

Every recipient under WorkSource Washington adheres to WIOA Policy Number 1012 – Customer Concern and Complaint Resolution and the WorkSource Complaint Handbook, which includes a discrimination complaint form. The complaint form is available in both English and Spanish. Local Workforce Development Boards (LWDB) may develop their own discrimination complaint policies and procedures, but they must not conflict with WIOA Policy 1012 and the WorkSource Complaint Handbook. (Attachment 8A-6 and 8A-7)

ESD maintains a separate discrimination complaint policy and procedure for its employees, ESD Policy and Procedure Number 0013 - Discrimination Complaint Processing. (Attachment 2B-3)

### **Process**

It is the policy of ESD and LWDBs to advise WorkSource customers and employees of their right to file a discrimination complaint. Any person who believes they have been discriminated against 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 for any beneficiary of, applicant to, or participant in programs financially assisted under Title I of WIOA, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity, has the right to file a discrimination complaint. Discrimination complaints must be filed within 180 days of the alleged discrimination or retaliation. Customers may file with their local LWDB Equal Opportunity (EO) Officer, the State-Level EO Officer, or the Director of the Civil Rights Center, U.S. Department of Labor. If the complainant is less than 18 years old, the complainant's parent or legal guardian must sign the written discrimination complaint.

The discrimination complaint process provides for prompt and equitable resolution of complaints and includes the following elements:

- A written and signed discrimination complaint;
- A Notice of Receipt that includes:
  - Acknowledgement of receipt of the discrimination complaint.
  - Notice that the complainant has the right to be represented in the discrimination complaint process.



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- Notice of rights contained in 29 CFR Part 38.35.
- Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that the notice at 29 CFR Part 38.35 will be translated into the appropriate non-English language as required in 29 CFR Part 38.34, 29 CFR Part 38.36, and 29 CFR Part 38.9.
- A list of each issue raised in the discrimination complaint and, for each issue, a statement that the issue is accepted for investigation or is not accepted. The reason(s) must be provided for rejection.
- An invitation to participate in alternative dispute resolution (ADR).
- A period of fact-finding or ADR if accepted; and
- A written Notice of Final Action (NOFA) provided to the complainant within 90 calendar days of the date the discrimination complaint was filed. The NOFA will contain:
  - 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 a right to file a complaint with CRC within 30 calendar days of the date on which the NOFA is received if the complainant is dissatisfied with the recipient's final action on the complaint.

Upon receipt of a discrimination complaint, EO Officers are required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

- 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 persons(s) who furnished information relative to, or assisting in a complaint investigation.

If the State-Level or LWDB EO Officer determines that they do not have jurisdiction over a discrimination complaint, the EO Officer is required to:

- Inform the complainant of this decision in writing;
- Inform the complainant of the entity that has jurisdiction;



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- Promptly refer the complaint to that entity, explaining the circumstances; and
- Advise the complainant of their right to file a complaint with the Director of the CRC.

A discrimination complaint log is maintained by each LWDB EO Officer and at the state level for logging, tracking and reporting discrimination complaints. This log must contain:

- The name and address of the complainant;
- The basis of the discrimination complaint;
- A description of complaint;
- The date the complaint was filed;
- The disposition and date; and
- Any other pertinent information.

Information that could lead to the identification of a particular individual who filed a complaint must be kept confidential.

Recipients are monitored to ensure they comply with the discrimination complaint process. (Attachments 8B-1)

### **Responsibilities**

The State-Level EO Officer has overall responsibility for developing and implementing departmental discrimination complaint procedures, ensuring agency recipients develop their procedures, and ensuring staff (including recipient staff) are provided the training required by 29 CFR Part 38. The State-Level EO Officer provides oversight, monitoring and technical assistance for the processing of all discrimination complaints, including provision of Alternative Dispute Resolution (ADR) services required under 29 CFR Part 38.

LWDB EO Officers are responsible for:

- Publicizing and implementing their own or adopting the state WIOA discrimination complaint process in their local area, in accordance with 29 CFR Part 38;
- Assisting local WorkSource customers in filing a discrimination complaint;
- Logging, tracking, reporting and processing discrimination complaints filed against a local recipient, including training providers, in their workforce development area;



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- Conducting intake to determine if the complaint is covered by 29 CFR Part 38, resolving jurisdictional issues and, if appropriate, routing the discrimination complaint to the appropriate entity that has jurisdiction for processing; and
- Providing EO and nondiscrimination training within their LWDB.

The LWDB EO Officer confers with the State-Level EO Officer promptly upon receipt of a discrimination complaint, prior to determining jurisdiction over the matter.

ESD's Employment Service Complaint Officer is located in the Employment Connections Division. The ESD Complaint Officer forwards discrimination complaints they receive to the State-Level EO Officer.

The State Monitor Advocate oversees Migrant and Seasonal Farmworker (MSFW) services at WorkSource Centers and/or affiliate sites that have a significant number of MSFW populations in their area. The State Monitor Advocate forwards discrimination complaints they receive to the State-Level EO Officer.

### **Communication**

Information about the discrimination complaint process is available to department and recipient staff, as well as customers. We display posters informing and instructing individuals on discrimination complaint procedures throughout the WorkSource system at LWDB and recipient sites. During the initial applicant intake interview, an explanation of the full range of services available and the discrimination complaint process is provided to applicants. Applicants also receive a handout or brochure that explains services provided and the discrimination complaint process. This handout has been translated into Spanish and is accessible to clients needing other formats or additional assistance upon request. All ESD staff members have access to a copy of their discrimination complaint procedure on ESD's intranet site for employees. ESD employees are required to review the discrimination complaint policy and procedure annually.

UI claimants are responsible for understanding the contents of the Handbook for Unemployed Workers, which includes information on how to file a discrimination complaint. A copy of the handbook is attached. (Attachment 2A-14

The ESD web page, [www.esd.wa.gov](http://www.esd.wa.gov), contains an "Equal opportunity" link in the banner at the bottom of each page that links to the EO and nondiscrimination web page where the EO Notice of Rights, EO tagline, WIOA and ESD discrimination complaint policies, procedures and forms are located. (See Elements 2 and 7)





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## Documentation

### Attachments for Element Eight

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- 8A-1 [Executive Order 17-01 – Reaffirming Washington’s Commitment to Tolerance, Diversity, and Inclusiveness](#)
- 8A-2 [Executive Order 16-04 – Reaffirming the Interagency Committee of State Employed Women](#)
- 8A-3 [Executive Order 12-02 - Workforce Diversity and Inclusion](#)
- 8A-4 [Executive Order 96-04 - Implementing the Americans with Disabilities Act](#)
- 8A-5 [Executive Order 89-01 - Sexual Harassment](#)
- 8A-6 [WIOA Policy 1012 - Customer Concern and Complaint Resolution](#)
- 8A-7 [WIOA Policy 1012 - Complaint Handbook](#)
- 8B-1 [State-Level Sample Discrimination Complaint Log](#)



## ELEMENT NINE

### CORRECTIVE ACTIONS/SANCTIONS (29 CFR 38.54(c)(2)(vii))

*Washington State addresses how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 38.54(c)(2)(vii).*

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#### **Background**

The Employment Security Department (ESD) will seek corrective action from a Workforce Innovative Opportunity Act (WIOA) recipient or state program (as defined at 29 CFR 38.4) when a violation is identified in the following circumstances:

- The State-Level Equal Opportunity (EO) Officer's EO and nondiscrimination monitoring review using desk audits, on-site reviews or observations identify 1) a technical deficiency, 2) a failure to follow through on written assurances, or 3) a barrier to equal access to, or disparate impact in, programs or services.
- The assessment of the circumstances surrounding a discrimination complaint and/or investigation, or other fact-finding tools reveals barriers to equal opportunity or equal access to WIOA, Employment Service, UI benefits or other state programs as defined at 29 CFR 38.4.
- A recipient refuses to implement voluntary corrective actions, submit requested data or documentation, or provide access to premises or records during a compliance review.

ESD has notified its recipients of their responsibility to adhere to the nondiscrimination requirements of 29 CFR Part 38 through issuance of WIOA Title I Policy 5402 – Equal Opportunity and Nondiscrimination and the Nondiscrimination Plan. Local Workforce Development Boards (LWDB) are required to establish policy and procedures for obtaining prompt corrective action or, as needed, applying sanctions when a recipient is not in compliance with the EO and nondiscrimination provisions of Section 188 of WIOA, Title VI of the Civil Rights Act of 1964, as amended, or related laws. (Attachment 2A-1)



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### Voluntary Compliance

**Level One** - If the need for corrective action is identified by the State-Level EO Officer, the recipient is notified in writing of the violation(s) with recommendations for voluntary corrective action. The recipient is given a due date to comply. When feasible, corrective action should be completed within 30 days from the date of initial notification of the violation. The State-Level EO Officer provides technical assistance and consultation on the specific action(s) to correct the violation(s).

**Level Two** - If Level One fails, the recipient and the State-Level EO Officer enter into a conciliation agreement drafted by the State-Level EO Officer based on 29 CFR Part 38, specifying the commitment the entity will undertake to correct the violation(s), behavior and/or practice and to ensure it will not recur. The conciliation agreement must:

- Be in writing;
- Address the legal and contractual obligations of the recipient;
- Address each cited violation;
- Specify the corrective action or remedial action to be taken within a stated period of time to come into compliance;
- Provide for periodic reporting on the status of the corrective and remedial action;
- State that violation(s) will not recur; and
- Provide for enforcement for a breach of agreement.

The State-Level EO Officer or designee conducts follow-up visits or monitoring if required.

### Final Determination

**Level Three** – After all efforts for voluntary compliance have been exhausted, the State-Level EO Officer notifies the ESD Commissioner in writing, specifying the following:

- Efforts made to achieve voluntary compliance, along with the areas of disagreement (if known);
- The apparent violation(s) and pertinent EO and nondiscrimination provision(s) of 29 CFR Part 38; and
- The corrective action the recipient must take to address the violation(s).

The ESD Commissioner may secure voluntary compliance with the recipient through a written assurance and/or conciliation agreement. However, if voluntary compliance cannot be obtained, the Commissioner may issue a final determination that contains the following information:



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- A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- A statement of the areas of disagreement;
- A list of any modifications to the findings of fact or conclusions that were set forth in the initial notice of findings by the State-Level EO Officer;
- A statement of the recipient's liability and, if appropriate, the extent of that liability;
- A description of the corrective or remedial actions that the recipient must take to come into compliance;
- A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, the recipient first will be given the opportunity for a hearing. The Commissioner then considers the following sanctions:
  - Termination of future funding;
  - Disallowance of selected costs;
  - Restriction from bidding on competitive or discretionary funds; or
  - Reduction in funding.

LWDBs model these procedures for ensuring compliance with their recipients.



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# Documentation

## Attachments for Element Nine

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No Attachments