



# Spokane Area WORKFORCE DEVELOPMENT COUNCIL

## (Complaint and Grievance/EEO)

Workforce Investment Act Policies and Procedures

**POLICY #:** 402

Date of Original Policy: June 18, 2008

Effective Date: June 18, 2008

Revised: N/A

Grantees, subrecipients, and contractors funded under the Workforce Investment Act (WIA), whether in whole or in part, must abide by the Workforce Investment Act of 1998, the WIA Regulations, all applicable Office of Management and Budget (OMB) Circulars, state requirements in laws and rules (Revised Code of Washington and Washington Administrative Code), Office of Financial Management (OFM) policies, and the Washington State WIA Policies.

### **BACKGROUND**

An applicant, participant, or registrant may file any of three types of complaints or grievances:

(1) discrimination complaints, (2) complaints against the program, and (3) complaints against an employer.

Discrimination complaints may be filed when a participant believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIA.

Complaints of a general nature may be filed when a participant, applicant, or registrant feels deprived of the benefits assured under the Act. These are complaints against the program and reflect potential violations of WIA and related regulations.

The third and final type of complaint is that filed against an employer. In these cases, the employer's grievance procedures must be followed unless the employer uses a grievance procedure required under a covered collective bargaining agreement. In the absence of a collective bargaining agreement or an employer grievance procedure, the state policy shall be followed.

There are provisions to appeal to the state and, under some circumstances, to the Department of Labor, if any party to the action is not satisfied with the results of the local hearings.

In addition, this policy sets forth requirements and processes to be followed in the event of the discovery of waste, fraud or abuse, labor standards violations, and audit resolution appeals.

### **POLICY**

A complaint cannot be processed as both a program complaint and as a discrimination complaint. It is important to establish the difference between the two types of complaints. A discrimination complaint includes, as a reason for mistreatment, one of the prohibited factors: race, color, national origin, sex, religion, age, disability, political affiliation or belief, or for beneficiaries, participation in WIA or citizenship. Discrimination complaints are covered under State WIA Policy 3450. All other types of complaints are covered under this policy.

## I. PROGRAM (NON-CRIMINAL) WIA RELATED COMPLAINTS

A. To be afforded treatment under these procedures, a complaint must either:

Allege a violation of the Workforce Investment Act, its regulations, or any grant or agreement under the Act, and be filed in writing within one year of the alleged occurrence. Included in this section are complaints arising from investigations or monitoring reports in addition to actions taken by or on behalf of the Workforce Development Council (WDC), the administrative entity, service providers and subgrantees, or any administrator, employee, or agent;

NOTE: Complaints may be filed by any individual or organization, and need not identify the specific provision of the law, regulations, policy, grant, or agreement regarded as violated. The allegation must, however, be complete and concise. It must contain sufficient information to allow the Workforce Development Council to determine whether it warrants treatment under WIA complaint procedures or would more appropriately be referred elsewhere.

### B. Jurisdiction

For subrecipients/ subgrantees operating complaint procedures, such lower-level procedures will apply only to those complaints arising from actions for which the subrecipient/subgrantee has responsibility. Under no condition will the operation of procedures by subrecipients/subgrantees fulfill the obligation of the WDC Administrative Entity to operate procedures itself. The operation of such lower level procedures will not limit a complainant's right to appeal through the WDC administrative entity or state subrecipient.

C. All complaint and hearing procedures will be written and readily available upon request.

## II. EMPLOYER GRIEVANCE PROCEDURES

Upon receipt of a complaint, alleged adverse action, or grievance, the WDC administrative entity Division will notify all interested parties at least 30 days prior to the hearing. The notice will include:

1. The time, date, and place of the hearing;
2. The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the hearing;
3. The hearing procedures and a statement of the issues; and
4. An explanation that the party or its legal counsel may examine the case file prior to the hearing.

Grievance procedures apply to issues related to the terms and conditions of participant employment. All participants whose employment is funded under the Act have access to them. If an employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of WIA complaints under this section.

## III. COMPLAINT PROCEDURES

A. In addition to requirements found at 29 CFR 37 Subpart D Compliance Procedures or 20 CFR Part 667 Subpart F Grievance Procedures, Complaints, and State Appeals Processes, the complaint and hearing procedures includes the following elements:

1. Complaint will be regarded as filed on the date it is received by the WDC administrative entity. (or for an audit appeal, not more than 30 days after a final determination is issued), and is received by the entity which has jurisdiction over the alleged occurrence. Each recipient shall maintain a log of all complaints filed. The log shall include the name and address of the complainant, reason for the complaint, the facts of the complaint, grounds for discrimination (if applicable), the date the complaint was filed, the disposition of the complaint, and any other pertinent information.
2. Complainants will be advised, in writing, of the status of the complaint at each step of the process:
3. Written response will be issued to complainants within 10 working days of receipt of any written complaint or attempt to file a complaint.

4. The correspondence will confirm the status of the complaint and advise of the next step in the process. If a complaint is not entitled to treatment under the complaint and hearing procedures, the complainant will be advised of the reasons. If a complaint is received by an entity that lacks jurisdiction over the alleged occurrence, the complaint will be returned to the complainant with instructions for proper filing.
5. If a complaint has been filed and implementation of procedures requires further action by the complainant, the complainant will be advised in writing: (i) of the actions to be taken; (ii) a specific and reasonable timeframe for such actions; and, (iii) that failure to take such action without good cause may be considered as intent to withdraw the complaint.
6. All resolutions, agreements, or actions affecting a change in the status of a complaint will be confirmed in writing.

B. Complainant Rights: Complaint and hearing procedures will inform complainants of their right to:

1. Request information and guidance on how to file a complaint or a request for review;
2. Waive or postpone a scheduled hearing in order to pursue informal resolution;
3. Request, with good cause, that a hearing be rescheduled; and,
4. Withdraw a complaint at any time.

#### C. Informal Resolution

Complaint and hearing procedures allow informal resolution at the level where the alleged violation occurred or at any higher level.

#### D. Hearing Notice

Written hearing notices will be sent to the complainant, respondent, and other parties considered appropriate by the entity operating the complaint and hearing procedure. Notices will be sent at least 15-calendar days prior to the scheduled hearing to permit adequate preparation of the case. The notice will include the date, time, and place of the hearing.

#### E. Hearing Procedures

Hearing procedures will incorporate the following minimum standards:

Hearings will be provided within 60 days of the receipt of a complaint, unless waived or postponed at the request of the complainant and confirmed in writing.

Impartial hearing officers will be provided to conduct hearings on complaints. Hearing officers will be individuals who have qualifications necessary to conduct proceedings which meet these requirements and to issue decisions which reflect WIA, its regulations, and other applicable laws. No individual will hear or decide on issues in cases in which he or she is an interested party.

Hearings will cover only those issues listed in the hearing notice.

Full and complete records will be kept of all hearing proceedings. All testimony will be recorded. Individuals involved in hearing proceedings have the right to be represented by counsel or other authorized agent(s).

The WDC administrative entity and other organizations providing or operating complaint and hearing procedures under these provisions are not liable for costs of legal council or representation incurred by the complainant.

All parties have the right to present witnesses and evidence.

Complainants have the right to question witnesses and other parties.

The burden of proof rests with complainants to demonstrate allegations are true and based on a preponderance of evidence.

A written decision will be issued to complainants within 60 days of the filing of a complaint, unless the right to a hearing has been waived. Written decisions will include:

- a. A statement of the violations alleged by the complaint;
- b. Findings of fact;

- c. Conclusions of law;
- d. A decision;
- e. Relief requirements and corrective actions; and
- f. Notice of the right to request state review and instructions on how to file the request.

#### IV. CRIMINAL COMPLAINTS AND REPORTS OF FRAUD, ABUSE, AND OTHER CRIMINAL ACTIVITIES

Such complaints are covered in 20 CFR 667.630 which requires immediate reporting of such information through the Incident Reporting System to DOL's Office of Investigations, Room S5514, 200 Constitution Avenue NW, Washington, DC 20210, or as otherwise directed in the section referenced above.

#### V. LABOR STANDARDS VIOLATIONS

Complaints alleging labor standards violations under Section 181 of the Workforce Investment Act of 1998 must exhaust local procedures as described in Section III or 60 days after filing must pass with no decision, before complaints can be submitted to the Secretary of the Department of Labor.

Labor standards are described in Subtitle E, Section 181, Requirements and Restrictions of the Act. Special handling of labor standards complaints is described in 667.272 of the implementing regulations.

#### VI. AUDIT RESOLUTION APPEALS

Pursuant to 20 CFR 667.500 as set out in the Federal Register, on non-federal audit resolution the Governor herewith prescribes standards for appeals procedures for audit resolution disputes.

A. The period of time shall be not more than 30 days after the issuance of the final determination in which an appeal may be filed for audit resolution.

B. Rules on procedure, on timely submission of evidence, on the timing of decisions and further appeal rights as set forth in Section III of this provision shall apply.

C. In the event of possible conflict in interpretation of hearing and review procedures, State Policy 3255 shall govern.

#### VII. COMPLAINT AND GRIEVANCE COORDINATOR

The Executive Director or designee will coordinate complaint and hearing procedures and grievance procedures described in this provision.

#### VIII. MAINTENANCE OF RECORDS AND REPORTING

In addition to State WIA Policy No. 3415, Records Retention and Public Access, all complaint and grievance procedures will incorporate recordkeeping procedures which meet the following standards:

- A. All records and correspondence related to complaints and grievances will be maintained in a manner which ensures security and confidentiality. Complaint files will be physically separate from any other records related to employment in or operation of programs. All records regarding discrimination complaints and actions taken shall be maintained for at least three years after the date of resolution.
- B. For each complaint or grievance filed, a separate file will be established and will include:
  - 1. The original complaint or grievance filed, except for discrimination complaints referred to DOL/CRC, in which case a copy will be retained;
  - 2. A chronological summary of all contacts made to investigate or resolve issues;

3. All investigative reports and reports of interviews;
  4. Copies of all correspondence and agreements with involved parties; and
  5. All documents collected and copies of documents reviewed in relation to the issues.
- C. All actions taken in relation to receipt, referral, and/or disposition of each complaint and grievance will be recorded in a complaints/grievance log.
- D. Such reports as may be requested will be submitted to the Employment Security Department.

#### IX. PETITION FOR REVIEW TO THE DEPARTMENT OF LABOR

Petitions for review of local decisions or the lack thereof regarding complaints alleging discrimination should be filed with the Department of Labor, Civil Rights Center. Such petitions must be filed within 30 days of receipt of the local decision and submitted to:

National Director  
U.S. Department of Labor  
Civil Rights Center  
Room N-4123 Frances Perkins Building  
200 Constitution Avenue NW  
Washington, D.C. 20210

#### X. PETITION FOR REVIEW TO THE STATE

Any individual or organization may petition the state to review a local decision or lack thereof, if the complaint was previously filed with the WDC, provided:

1. applicable local procedures have been exhausted, and
2. a decision was not received within sixty (60) days of filing; or
3. the decision received was unsatisfactory to the complainant or other interested party.

#### Filing of a Petition for Review

1. A petition for review will be regarded as filed on the date a written request is received by the Assistant Commissioner of the Employment and Training Division of the Employment Security Department.
  2. Requests must be received within fifteen (15) days from the date on which the complainant should have received a decision. If the petition is mailed, it will be deemed filed with the addressee on the postmark date if it is properly addressed and has sufficient postage.
  3. Petitions for review will be addressed to:  
Assistant Commissioner  
Employment Security Department  
Employment and Training Division  
P.O. Box 9046 Olympia, Washington 98507-9046  
Attention: WIA Complaints
  4. Copies of the petition for review will be sent by E&TD to all interested parties and will serve as notice that a request has been filed.
  5. Within five (5) days of receipt of the notice, WIA grant recipients, administrative entities, and state subrecipients will transmit all records pertaining to a particular complaint to the Employment and Training Division. Such records must include a complete transcript of the hearing.
- A. In the event the record is incomplete or otherwise provides insufficient information, the matter may be remanded to the responsible local authority for the taking of additional evidence and issuance of a new decision. Should the Assistant Commissioner be convinced that a fair hearing will not be provided by the local authority, the case may be assigned to an administrative law judge.

- B. The decision of the Assistant Commissioner is a final agency action and is subject to review under RCW 34.05.570.
- C. In the interest of fairness, the Assistant Commissioner reserves the option to delegate the review to the reviewing officer of the Employment Security Department. In that case, the decision of the delegated review authority is a final agency action and subject to review under RCW34.05.570.
- D. If a complainant requests a state review and a decision is not issued within thirty (30) days, the complainant may request a federal review. This review will determine whether reasonable cause exists to believe the Act or its regulations have been violated.
- E. Complainants shall be advised of this procedure at the time they request a state review.

#### XI. STATE LEVEL HEARING

Any aggrieved party with a timely complaint, alleged adverse action, or grievance against the state administrative office for WIA, shall be provided a written description of the Employment and Training Division complaint procedures. The procedures include notification of the right to file a complaint and instructions on how to file.

##### A. State Level Hearing Procedures

Upon receipt of a complaint, alleged adverse action, or grievance, the Employment and Training Division will notify the Office of Administrative Hearings to conduct a hearing. Notice of the hearing will be provided to all interested parties at least thirty (30) days prior to the hearing. The notice will include:

1. The time, date, and place of the hearing;
2. The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the hearing;
3. The hearing procedures and a statement of the issues; and
4. An explanation that the party or its legal counsel may examine the case file prior to the hearing.

##### B. State Level Decision by the Office of Administrative Hearings

A written decision will be issued to the interested parties within sixty (60) days of the filing of the request for a hearing.

##### C. Review of State Level Decision

When a request for review is made of a state level decision, the review will be conducted by the reviewing officer of the Employment Security Department.

1. A request for such review must be directed to the reviewing officer within twenty (20) days of the issuance of the decision by the Office of Administrative Hearings.
2. The review will be of the record prepared by the Office of Administrative Hearings and will result in a decision either affirming, modifying, or reversing the decision of the administrative law judge.
3. If the record is incomplete or otherwise provides insufficient information upon which to base a decision, the reviewing officer may remand the matter to the Office of Administrative Hearings for the taking of further evidence and issuance of a new decision.
4. The decision of the reviewing officer is a final state action subject to review under RCW 34.05.570.

#### XII. LAWSUITS OR ADMINISTRATIVE ENFORCEMENT ACTIONS

The Workforce Development Area or grant recipient shall notify the Assistant Commissioner of the Employment and Training Division of any lawsuits or administrative enforcement actions filed against it or any of its subrecipients. If appropriate, the Assistant Commissioner will notify DOL/CRC of any such actions.

**ATTACHMENT:**

Complaint and Grievance Procedure/EEO Form - ATTACHMENT A

(Requirement: Signed and maintained in each client file, and copy provided to client.)

**DEFINITIONS**

None.

**REFERENCES**

- Section 188 of the Workforce Investment Act;
- Part 667 Subpart B Administrative Rules, Costs and Limitations and Subpart F Grievance Procedures, Complaints, and the State Appeals Process of Department of Labor (DOL) regulations implementing the Workforce Investment Act (WIA) of 1998;
- Department of Labor regulations implementing Section 504 of the Rehabilitation Act (29 CFR Part 32);
- Department of Labor regulations implementing the Nondiscrimination and Equal Opportunities Requirements of the Workforce Investment Act of 1998 (29 CFR Part 37) issued November 12, 1999
- Title II of the Americans with Disabilities Act of 1990, as amended (28 CFR Part 35)

**DIRECT INQUIRES TO:**

(As referenced in SAWDC Staff Composition Policy #100)

Policy Manager

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