

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 27 WIA EQUAL OPPORTUNITY REQUIREMENTS AND DISCRIMINATION
COMPLAINT RESOLUTION PROCEDURES

11.2.27.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).
[11.2.27.1 NMAC - N, 12/31/2005]

11.2.27.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients.
[11.2.27.2 NMAC - N, 12/31/2005]

11.2.27.3 STATUTORY AUTHORITY: Workforce Development Act Chapter 50, Article 14, NMSA 1978
[11.2.27.3 NMAC - N, 12/31/2005]

11.2.27.4 DURATION: Permanent.
[11.2.27.4 NMAC - N, 12/31/2005]

11.2.27.5 EFFECTIVE DATE: December 31, 2005, unless a later date is cited at the end of a section.
[11.2.27.5 NMAC - N, 12/31/2005]

11.2.27.6 OBJECTIVE:
A. This rule sets forth requirements for compliance with the equal opportunity and nondiscrimination requirements by recipients of WIA Title I federal financial assistance.
B. This rule also sets forth the complaint resolution procedures for discrimination complaints.
[11.2.27.6 NMAC - N, 12/31/2005]

11.2.27.7 DEFINITIONS: [RESERVED]

11.2.27.8 ACTION: References include the following: Public Law 105-220, Workforce Investment Act (WIA), 29 CFR, Part 37, 20 CFR Section 667.275, 20 CFR Section 667.600(g)(1)(2) and training and Employment information notice (TEIN) No. 16-99.

A. Recipients of WIA title I federal financial assistance have nine (9) basic requirements which are summarized as follows:

- (1) designate an equal employment opportunity officer;
- (2) communicate equal employment opportunity policy and train staff to carry it out;
- (3) review all contracts, plans, and agreements for equal opportunity;
- (4) make efforts to provide equitable services among substantial segments of the eligible population;
- (5) ensure program and site access to individuals with disabilities;
- (6) collect and maintain data to examine discrimination;
- (7) monitor recipients for compliance;
- (8) receive and process discrimination complaints; and
- (9) obtain corrective action or apply sanctions for violating nondiscrimination requirements.

B. All WIA recipients shall perform an annual self-appraisal to ensure and document compliance with the above listed requirements. This will include completion by each LWDB and/or its service providers of the five (5) accessibility checklists, set forth in USDOL training and information notice no. 16-99, available on the web at: www.wia.state.nm.us; or www.doleta.gov/directives.

C. Discrimination complaints.

(1) **Who may file:**

(a) Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or its implementing regulations may file a written complaint, either by him/herself or through an authorized representative.

(b) WIA prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, discrimination on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

(2) **Time and place for filing:**

(a) Discrimination complaints must be filed within 180 days of the alleged discrimination.

However, a complainant may petition the director of the civil rights center for an extension of the filing time.

(b) Discrimination complaints may be filed with a state or local administrative entity, service provider, one-stop operator or with the director of the civil rights center (CRC), U.S. department of labor, 200 Constitution Ave. NW, room N-4123, Washington D.C. 20210.

(3) **Time limit for completing complaint processing procedures:** The discrimination complaint processing procedures must be completed and a written notice of final action issued within 90 calendar days from the date the complaint was filed.

(4) **Procedure to be followed:**

(a) **Step 1: Initial review of written complaints.** Written complaints will be taken by the state or local administrative entity, service provider, or one-stop operator from the complainant or the complainant's designated representative. A written complaint must include: 1) the complainant's name and address; 2) the identity of the individual or entity that the complainant alleges is responsible for the discrimination; 3) a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and 4) the complainant's signature or the signature of the complainant's authorized representative.

(i) **Record keeping.** All complaints must be logged. The log must include: 1) the name and address of the complainant, 2) the basis for the complaint, 3) a description of the complaint, 4) the disposition and date of disposition of the complaint, and any other pertinent information. Information that could lead to the identification of the person filing the complaint must be kept confidential.

(ii) **Jurisdiction of the discrimination complaint must be determined.** In order to have jurisdiction to process the discrimination complaint: 1) the respondent against whom the complaint was filed must be a WIA recipient, 2) the complaint must allege a basis for discrimination that is prohibited by WIA, and 3) the complaint must be filed within 180 calendar days of the alleged discrimination.

(iii) **Notice of lack of jurisdiction.** If a determination is made that there is no jurisdiction to process the complaint, a notice of lack of jurisdiction must be sent to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the civil rights center within 30 calendar days from receipt of the notice of lack of jurisdiction.

(iv) **Joint jurisdiction.** Where the complaint alleges discrimination by a WIA recipient, or service provider on a basis that is prohibited by *both* WIA and by a civil rights law independently enforced by that WIA recipient or service provider, the complaint must be referred to that WIA recipient or service provider for processing under their procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA recipient or service provider and they are also prohibited from discriminating on the basis of national origin, then the complaint will be referred to them for processing according to their own procedures. Notice must be sent to the complainant about the referral.

(v) **Sole jurisdiction.** 1) Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced by that WIA recipient or service provider (e.g., political affiliation or belief, citizenship or participation in WIA Title I), the complaint must be processed by that WIA recipient or service provider under these procedures. 2) When it is determined that WIA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the equal opportunity (EO) officer of the New Mexico office of workforce training and development.

(b) **Step 2: Formal resolution.** The EO officer must send written notice to the complainant stating that the complaint has been received. The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The

notice must also give the complainant the right to choose between an alternative dispute resolution (ADR) process or a hearing.

(i) **ADR process.** 1) If the party filing the complaint requests to use the ADR process for resolving the complaint, the EO officer will request a mediator and monitor the processing of the complaint. The mediator will schedule mediation by written notice, mailed to all interested parties at least 7 calendar days prior to the first mediation session. The notice will include the date, time, and place of the mediation. The mediation process must be concluded within 45 calendar days from the date the complaint was filed. 2) The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement must give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within 30 calendar days of the date the non-breaching party learns of the breach. 3) If the parties do not reach an agreement, the EO officer will forward the complaint to an impartial hearing officer for a hearing.

(ii) **Hearing process.** 1) If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the EO officer will forward the complaint to the impartial hearing officer and monitor the processing of the complaint. The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 60 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. The hearing officer's recommended resolution must be completed and sent to the state administrative entity within 75 calendar days from the date the discrimination complaint was filed. 2) The state administrative entity will review the recommendation of the hearing officer and will issue a notice of final action within 90 calendar days from the date the discrimination complaint was filed.

(c) **Step 3: Notice of final action.** The notice of final action must contain: 1) the WIA recipient's decision on each issue and the reasons for the decision, 2) a description of the way the parties resolved the issue, and 3) notice that the complainant has the right to file an appeal with CRC within 30 calendar days from the date the notice of final action is issued if dissatisfied with the WIA recipient's final action on the complaint.

[11.2.27.8 NMAC - N, 12/31/2005]

11.2.27.9 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.27.9 NMAC - N, 12/31/2005]

11.2.27.10 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all WIA SAE subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.

[11.2.27.10 NMAC - N, 12/31/2005]

HISTORY OF 11.2.27 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed June 23, 2000 - Repealed 12/31/2005.