

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 15 WORKFORCE INVESTMENT ACT (WIA) GRIEVANCE PROCEDURES

11.2.15.1 ISSUING AGENCY: New Mexico Department of Labor.
[11.2.15.1 NMAC – N, 7/14/2000]

11.2.15.2 SCOPE: The New Mexico State Administrative Entity (SAE), New Mexico Workforce Development Areas/ Local Workforce Development Boards (NMWDAs/LWDBs) and other WIA subrecipients
[11.2.15.2 NMAC – N, 7/14/2000]

11.2.15.3 STATUTORY AUTHORITY: U.S. Department of Labor Employment and Training Administration, Workforce Investment Act (WIA) of 1998, its Regulations at 20 CFR Part 652, and 29 CFR Part 37, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the WIA of 1998; Final Rule; Training and Employment Information Notices (TEINs), Training and Employment Guidance Letters (TEGLs), and any amendments thereto and, New Mexico House Bill 740. Chapter 260, Laws of 1999, Forty-fourth Legislature.
[11.2.15.3 NMAC – N, 7/14/2000]

11.2.15.4 DURATION: Permanent.
[11.2.15.4 NMAC – N, 7/14/2000]

11.2.15.5 EFFECTIVE DATE: July 14, 2000, unless a later date is cited at the end of a section.
[11.2.15.5 NMAC – N, 7/14/2000]

11.2.15.6 OBJECTIVE: This policy establishes procedures for processing two subject areas: EO Complaints and Non EO/Non-Criminal Complaints, as mandated by the WIA and its Regulations. These procedures shall be implemented by the SAE, NMWDAs/LWDBs and their WIA subrecipients, WIA partner agencies/entities, any receiver of WIA funds, and other interested parties.
[11.2.15.6 NMAC – N, 7/14/2000]

11.2.15.7 DEFINITIONS: The following definitions will apply:

A. Complaint/Grievance. An allegation that something imposes an illegal obligation or burden or denies some equitable or legal right, or causes injustice. An expressed dissatisfaction about the program or activity from an applicant, participant, recipient, other interested person, when the dissatisfaction arises either from program operations or working conditions, relations which discriminate in terms of race, color, sex/gender; national origin, citizenship, age, disability, religion, political affiliation or belief, reprisal or retaliation for filing a grievance, testifying or agreeing to testify in any investigation or proceeding related to WIA, or denying benefits to any individual to which that individual is entitled.

B. EO Complaints. Complaints alleging discrimination based on race, color, sex/gender, national origin, citizenship, age, disability, religion, or political affiliation or belief, reprisal or retaliation for filing a grievance or complaint, testifying or agreeing to testify in any investigation or proceeding related to WIA, or denying benefits to any individual to which that individual is entitled.

C. Discrimination. A denial or participation and/or rights to programs or activities financial assisted in whole or in part under WIA to persons on the basis of race, color, sex/gender, national origin, citizenship, age, disability, religion, political affiliation or belief in both participation and employment, reprisal or retaliation for filing grievance, testifying or agreeing to testify in any investigation or proceeding related to the WIA also regarding health, safety and displacement or denying benefits to any individual to which that individual is otherwise entitled, or participation in any WIA Title I-financially assisted program or activity.

- D. Recipient.** A Recipient includes but is not limited to:
- (1) The Governor;
 - (2) State-level agencies that administer or are financed in whole or in part with WIA Title I funds;
 - (3) State Employment Security Agencies;
 - (4) State and local Workforce Investment Boards;
 - (5) LWIA Grant recipients;
 - (6) One-Stop operators;
 - (7) Providers of services, aid, benefits, or training funded or authorized under WIA, including, eligible training providers;
 - (8) On-the-job training (OJT) employers;
 - (9) Job Corps contractors and center operators, excluding the operators of federally operated Job Corps centers;
 - (10) Job Corps national training contractors;
 - (11) Outreach and admissions agencies, including Job Corps contractors that perform these functions;
 - (12) Placement agencies, including Job Corps contractors that perform these functions; and,
 - (13) One-Stop partners to the extent that they participate in the One-Stop delivery system.
- E. Retaliation.** Forms of retaliation include but are not limited to denial of right to oppose discrimination or participate in grievance or complaint procedure, harassment, intimidation denial of employment benefits, denial of training and/or employment opportunities, discharge, discipline, demotion, reassignment, unjustified evaluations and reports, acceleration of disciplinary actions. All persons are protected by law against retaliation because he/she has filed a grievance or complaint, testified, assisted, or participated in any manner in an investigation, review, proceeding, or hearing under this policy.
[11.2.15.7 NMAC – N, 7/14/2000]

11.2.15.8 ACTION:

- A. Discrimination EO Grievance/Complaint Procedures.**
- (1) Complaints alleging discrimination must be filed within 180 days from the date of the alleged discrimination.
 - (2) A complaint alleging discrimination must contain: complainant’s name and address; identity of the entity or individual alleged to be responsible for discrimination; description of alleged violation, (including date of event and sufficient details to allow the recipient or Civil Rights Center [CRC] to determine jurisdiction and whether the allegations, if true, violate EO provisions of WIA) and, complainant’s signature or signature of complainant’s authorized representative.
 - (3) All EO complaints may be filed, at the option of the complainant, with the recipient or the federal Civil Rights Center, at the addresses listed below. The complaint must be filed, with either the recipient or the Civil Rights Center, within 180 days of the event or conditions giving rise to complaint;
 - (4) The addresses are as follows: The New Mexico Department of Labor, EO Officer, P.O. Box 1928, Albuquerque, New Mexico 87103, (505) 841-8323 or The Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210.
 - (5) If the complainant chooses to file the complaint with the recipient, the recipient will:
 - (a) Provide initial, written notice to complainant which contains an acknowledgement that the recipient has received the complaint;
 - (b) Provide written notice that the complainant has the right to be represented in the complaint process;
 - (c) The recipient will also provide a written statement that contains a list of the issues raised in the complaint, and for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reason for each rejection; and,
 - (d) A period of fact-finding or investigation of the circumstances underlying the complaint.
 - (6) A written Notice of Final Action will be provided to the complainant within 90 days of the date on which the complaint was filed, that contains, 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 issues and notice that the complainant has a right to file a complaint with the Center for Civil Rights within 30 days of the date on which the Notice of Final Action is issued if dissatisfied with the recipient’s final action on the complaint.
 - (7) The complainant may attempt to resolve his/her complaint through Alternative Dispute Resolutions (ADR).

(8) A party to any agreement reached under ADR may file a complaint with the Director of the Civil Rights Center in the event the agreement is breached.

(9) In the event the agreement reached through ADR is breached, the following rules will apply:

(a) The non-breaching party may file a complaint with the Director of Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach;

(b) The Director will evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complainant may file a complaint with the Civil Rights Center based upon the original allegations, and the Director will waive the time deadline for filing such a complaint.

(10) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director at: The Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210.

(11) Forms. A complainant may file a complaint by completing and submitting a Civil Rights Center's Complaint Information and Privacy Act Consent Form, which may be obtained either from the recipient's EO Officer, or from Civil Rights Center at the address listed in subsection A4 above.

B. Non-EO/Non-Criminal Complaint/Grievance Procedure.

(1) Applicability of Procedures. These procedures are applicable to complaints by recipients of services under the WIA, or by members of the public who have been aggrieved by any application of the provisions of the WIA and appeals submitted by a unit or combination of units of general local government per WIA Section 116(a)(2)(B) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area under WIA. The following procedure is applicable:

(a) All complaints will be processed in accordance with this procedure, except for complaints of violation of Equal Employment Opportunity laws that shall be processed in accordance with the grievance provisions applicable to such claims.

(b) Basic Procedure and Timelines. All complaints are to be reported to the SAE, the administrative entity for the local area of direct recipient of funds within 10 days of the event or condition giving rise to the complaint. The SAE may refer the complaint to the local area for resolution within five calendar days of receipt of the complaint. The direct recipient of funds shall notify the SAE and the administrative agency for the local area within five calendar days of receipt of the complaint.

(c) The parties shall have five calendar days from the date of receipt of the complaint to attempt an informal resolution. Any party, including the local area, SAE or direct recipient, may initiate discussion to informally resolve the complaint.

(d) The parties shall have five calendar days following expiration of the deadline for informal resolution of the complaint to request a hearing from the SAE or local area.

(e) The SAE or local area shall conduct an administrative adjudicator hearing within 20 calendar days after receipt of the request for hearing.

(2) Content of Complaint/Grievance.

(a) Verbal complaints. If a complainant makes an allegation in person or through a telephone conversation and refuses to put such complaint in writing, the person to whom the allegation is made must put the components of the complaint in writing. The complaint will be referred to the SAE, the local area or the recipient.

(b) Written complaints. A complaint may be filed in any form, although the complainant is encouraged to complete the New Mexico Department of Labor Equal Opportunity Office, Complaint Information Form. All complaints must contain the "complaint components" described below in (3). If this information is not included in the submitted complaint, the NMDOL representative is to make every effort to obtain the omitted information by interviewing the complainant.

(c) Components of a Complaint. The allegations(s) should be described in sufficient detail to allow the recipient of the complaint to determine whether the complaint falls under the recipient's jurisdiction, was filed in a timely manner, has apparent merit or whether the complaint should be processed in accordance with the grievance provisions applicable to claims under the Equal Employment Opportunity laws. Every effort should be made to have the complainant provide the following information:

(i) Name, address, and telephone number or other means of contacting the complainant;

(ii) The name and specific location of the entity delivering the Workforce Improvement Act Program and/or services;

(iii) The nature of the incident(s) or action(s) that gave rise to the complaint described in as much detail as possible;

(iv) The names, titles and business addresses of persons, who may have knowledge of the facts of the complaint; and,

(v) The date(s) on which the acts complained of occurred, or if continuing, when such acts began and describe the continuing nature.

(3) Confidentiality. The name of the complainant may be kept confidential if requested by the complainant. When no request for confidentiality has been made, disclosure shall be under the conditions which do not promote release of any potentially confidential information

(4) Notification of Non Jurisdiction. The SAE, local board or recipient of the complaint that the complaint alleges a violation of the nondiscrimination or equal opportunity provisions of the WIA program and that the complaint may not be processed under this procedure shall notify the complainant within 5 calendar days of a determination. The complainant shall be informed of the procedures available for asserting claims for violation of the nondiscrimination or equal opportunity provisions of the WIA. A claim for violation of the nondiscrimination or equal opportunity provisions which has been initially rejected under this procedure will not be deemed untimely if filed under the nondiscrimination or equal opportunity provisions within 10 calendar days after the receipt of the notice informing the complainant that the complaint has been rejected.

(5) Hearing Procedure. The hearing shall be conducted by the SAE or local area or a designated hearing examiner. The direct recipient of the funds may attend the hearing and the parties shall enter into a pre-hearing order within five calendar days after the filing of the request for hearing, designating witnesses, exhibits, a description of the issues as specified by each party, and deadlines for any discovery.

(a) With the approval of the hearing examiner, the parties may request an extension of the 20-day time limit for conducting the hearing.

(b) The hearing shall be conducted informally to determine the rights and duties of the parties and the formal rules of evidence and civil procedure will not apply. The parties may stipulate to the application of the formal rules of evidence or civil procedure.

(c) After receipt of the pre-hearing order, the hearing examiner will issue a notice of hearing containing a description of the issues to be heard.

(d) The parties have the right to be represented by counsel.

(e) The parties may call and examine witnesses, cross examine witnesses, introduce exhibits and offer rebuttal exhibits and testimony. The hearing may be continued upon agreement of the parties and the hearing examiner.

(f) The parties may make opening and closing statements, and submit memoranda as permitted by the hearing officer.

(g) The hearing examiner will issue a decision, including findings of fact and conclusions of law within 20 days of the conclusion of the hearing.

(h) The parties shall have 10 days from the date of issuance of the decision to file an appeal to the Secretary of Labor, United States Department of Labor.

(i) The Secretary of Labor will issue a decision within 60 days of receipt of the appeal.

(j) The SAE and recipient shall make available services in languages other than English and/or through use of alternate forms of communication if required by the complaining party.

C. Corrective Action/Remedies

(1) If the hearing examiner finds a violation of the WIA, the hearing examiner may order any of the following including suspension or termination of payments from funds provided under WIA, prohibition of placement of a WIA participant with an employer that has violated any requirement under this Title, where applicable, reinstatement of an employee, payment of lost wages and benefits, and re-establishment of other relevant terms, conditions and privileges of employment, and, other equitable relief deemed appropriate by the hearing examiner to remedy the violation of the WIA.

(2) Nothing in this procedure shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under any other Federal, State, or local law for a violation of WIA.

D. Denial or Termination of Eligibility as a Training Provider. Entities, training providers, including providers of Individual Training Accounts (ITAs), training or customized training who have been denied eligibility by the State Board or a Local Board may appeal such denial by using the grievance process described above. Decisions rendered under the State process are final and may not be appealed to the Secretary of the U.S. Department of Labor.

E. Criminal Fraud and Abuse. Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Investigations (via the Hotline telephone number: 1-800-347-3756) or by completing an OIG

Incident Report and transmitting it to: Office of inspector General, Office of Investigations (OIG), 200 Constitution Avenue NW, Room S5514, Washington, DC 20210 or to the corresponding: Regional Inspector General for Investigations, U.S. Department of Labor, 525 Griffin Street, Dallas, TX 75202 with a copy simultaneously provided to the Employment and Training Administration: Administrator, Employment and Training Administration, United States Department of Labor, Griffin Street, Dallas, Texas 75202.
[11.2.15.8 NMAC – N, 7/14/2000]

11.2.15.9 RESCISSIONS: None.
[11.2.15.9 NMAC – N, 7/14/2000]

11.2.15.10 CONTACT ENTITY: Inquiries regarding this policy should be directed to the New Mexico Department of Labor at (505) 827-6827.
[11.2.15.10 NMAC – N, 7/14/2000]

11.2.15.11 DISTRIBUTION: NMWDA and LWDB Chairpersons, SAE/NMWDA/LWDB Legal Counsel, NMWDA/LWDA Administrative Entities, SAE/NMWDA/LWDB EO Office, SAE Subrecipients, NMWDA/LWDA Subrecipients USDOL Federal Representative and New Mexico State Records Center and Archives.
[11.2.15.11 NMAC – N, 7/14/2000]

ATTACHMENTS: None.