

Element 9
Corrective Actions
And Sanctions

ELEMENT 9: Corrective Actions and Sanctions

[29 CFR 37.54(d)(2)(vii)]

WDB follows DWD's issued policy guidance regarding corrective actions and sanctions for subcontractors, and any other recipients who fail to comply with the nondiscrimination and equal opportunity provision of WIA Title 1. Attachment 9-A. This issuance provides the standard for corrective and remedial actions to be applied to violations of WIA Section 188 and 29 CFR Part 37, the procedures for follow-up monitoring to ensure that commitments to take corrective and remedial action are fulfilled, reports required from the violating recipient regarding actions to correct the violation(s), and sanction procedures to be followed where voluntary compliance cannot be achieved. The Issuance is available on DWD's WorkSmart Website for recipients and members of the public to access.

Whenever a compliance review report, complaint, or any other information indicates a possible failure to comply with 29 CFR Part 37, or the state's MOA, WDB will conduct analysis and review to determine whether a true violation exists. Attachment 9-A. If the determination of non-compliance is made during an EO Monitoring Review, the WDB EO Officer will make every effort to provide onsite technical assistance to correct the violation, including posting EO notices or removing a comment from a participant's file. Corrective actions that cannot be fully addressed during an onsite review (e.g. development of a preliminary plan to address an accessibility issue such as wheelchair accessibility) will be part of the EO monitoring report. The recipient then has thirty (30) days from the date of receiving the report to respond to the findings and correct any violations identified. EO Staff will follow-up within thirty (30) days of the recipient's response to ensure that corrective action has occurred.

When EO violations are found during the course of a discrimination complaint investigation, those issues will become part of the findings of fact. Depending on the extent and severity of the violations, technical and programmatic corrective actions may be among the recommendations. They may also include "make-whole" provisions such as retroactive relief (e.g. back wages or benefits) and prospective relief (e.g. change of policy). A response must include assurances and/or a plan to attain compliance within thirty (30) days of the issuance of an investigative report. The WDB EO Officer will follow-up to monitor corrective action within thirty (30) days.

A lack of response to findings of noncompliance or a failure to implement corrective actions promised in a recipient's response will result in a Notice to Show Cause why enforcement proceedings or sanctions should not begin. The corrective action required and the ways to correct the noncompliance will be part of the Notice. The recipient will then have thirty (30) days to respond to the Notice.

A partial response or lack of response to the Show Cause Notice will be elevated to the State Level EO Officer for determination of appropriate sanctions. Sanctions may include, but are not limited to, reparation for discriminatory practices, establishment of policy issuance, removal of participants from sites refusing to implement corrective actions, and legal action.

Attachments for Element 9

Attachment 9-A - DWD Issuance 07-2010 Equal Opportunity (EO) Corrective Actions/Sanction Procedures

Attachment 9-A

**DWD Issuance 07-2010 Equal Opportunity (EO)
Corrective Actions/Sanction Procedures**



Missouri Division of Workforce Development

DWD Issuance 07-2014

Issued: December 30, 2014
Effective: December 30, 2014

**Subject: Nondiscrimination and Equal Opportunity (EO)
Corrective Actions/Sanction Policy and Guidelines**

1. Purpose: This Issuance is written to communicate the Division of Workforce Development's (DWD) standard for corrective and remedial actions to be applied when violations of the Workforce Investment Act's (WIA) nondiscrimination and equal opportunity provisions, Section 188 or 29 CFR Part 37, are found. These standards apply to any entity to which financial assistance under WIA Title I is extended, either directly through the Department or through another recipient.

2. Background: The nondiscrimination and equal opportunity provisions of the WIA prohibit discrimination against applicants, beneficiaries, and employees on the bases of race, color, national origin, age, disability, sex, religion, and political affiliation or belief; and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. The regulations that implement these provisions are published at 29 CFR Part 37 and require that each state formulate a standard for corrective and remedial actions to be applied to recipients of WIA, Title I funds when DWD is apprised of violations of WIA Section 188 or 29 CFR Part 37, or of any of the implementing plans or policies described herein.

The responsibilities of WIA Title I-financially assisted entities can be found at 29 CFR Part 37. In compliance with these regulations, Missouri has established and adheres to a Methods of Administration (MOA), available on the State's current EO website which further details the responsibilities of Missouri WIA recipients with respect to equal opportunity and nondiscrimination. Additionally, DWD Issuances 09-2012, 01-2014, 09-2010, 01-2008, 10-2010 and 08-2012 set forth more specific subrecipient requirements.

3. Substance: Whenever a compliance review report, complaint, or any other information indicates a possible failure to comply with 29 CFR Part 37, the State's MOA, or DWD Issuances relating to nondiscrimination or equal opportunity, DWD will conduct analysis and review to determine whether a true violation exists. If the determination of non-compliance is made during an EO monitoring review, the State EO Officer will make every effort to provide onsite technical assistance to correct the violation, including posting EO notices or removing a comment from a participant's file. Corrective actions

that cannot be fully addressed during an onsite review (e.g., development of a preliminary plan to address an accessibility issue such as wheelchair accessibility) will be part of the EO monitoring report. The recipient will then have thirty (30) days from the date of receiving the report to respond to the findings and correct any violations identified. EO Staff will follow-up within thirty (30) days of the recipient's response to ensure that corrective action has occurred. DWD may grant extensions for good cause.

When EO violations are found during the course of a discrimination complaint investigation, those issues will become part of the State EO Officer's findings of fact. Depending on the extent and severity of the violations, technical and programmatic corrective actions may be recommended. Corrective action may also include "make-whole" provisions such as retroactive relief (e.g., back wages or benefits) and prospective relief (e.g., change of policy). A response must include assurances and/or a plan to attain compliance within thirty (30) days of the issuance of an investigative report. State EO staff will follow-up and monitor the corrective action within thirty (30) days. DWD may grant extensions for good cause.

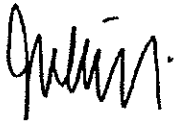
A lack of response to findings of noncompliance or a failure to implement corrective actions promised in a recipient's response will result in a Notice to Show Cause why enforcement proceedings or sanctions should not begin. The corrective action required and the ways to correct the noncompliance will be part of the Notice. The recipient will then have thirty (30) days to respond to the Notice.

A partial response or lack of response to the Notice to Show Cause will be elevated to the Governor of Missouri for determination of appropriate sanctions. Sanctions may include, but are not limited to, reparation for discriminatory practices, establishment of policy issuance, removal of participants from sites refusing to implement corrective actions, and legal action.

4. Action: This Issuance serves as notification of DWD's Corrective Action and Sanctions Policy with respect to the EO and nondiscrimination provisions of WIA. This Issuance should be distributed to all appropriate staff.
5. Contact: Please direct questions or comments regarding this Issuance to Danielle Smith, State WIA EO Officer, at (573) 751-2428 or Danielle.smith@ded.mo.gov, or to Julie Gibson, DWD Director, at (573) 751-3349.
6. Reference: The Workforce Investment Act of 1998; 29 CFR Part 37.
7. Rescissions: This Issuance supersedes and replaces DWD Issuance 07-2010, dated February 1, 2011.

8. Attachments: Missouri Division of Workforce Development Nondiscrimination and Equal Opportunity Non-Compliance, Corrective Action, and Sanction Policy and Guidelines

DWD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Missouri TTY Users can call (800) 735-2966 or dial 711.



Julie Gibson
Director



Missouri Division of Workforce Development

NONDISCRIMINATION AND EQUAL OPPORTUNITY (EO) NON-COMPLIANCE, CORRECTIVE ACTION, AND SANCTION POLICY AND GUIDELINES

Statement of Policy

It is the policy of the Division of Workforce Development (DWD) to provide guidance for the established Department of Labor and Civil Rights Center (CRC) procedures for effecting corrective actions and applying sanctions, if needed, to ensure that resolution of any non-compliance of the Nondiscrimination and EO Provisions of the Workforce Investment Act of 1998 (WIA) section 188 and implementing regulations 29 Code of Federal Regulations (CFR) part 37 can be enforced.

Scope of the Policy

This policy applies to any recipient (entity) to whom financial assistance is extended, either directly from DWD and the Division of Employment Security or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the program or activity.

In the instances in which the Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him/her (rather than disbursing the funds to another recipient), the Governor is also a recipient. "Recipient" includes, but is not limited to:

- A. State-level agencies that administer, or are financed in whole or in part with DWD funds;
- B. State Employment Security agencies;
- C. State and Local Workforce Investment Boards;
- D. Local Workforce Investment Area grant recipients;
- E. One-Stop operators;
- F. Service providers, including eligible training providers;
- G. On-the-Job Training employers;
- H. Job Corps contractors and center operators, excluding the operators of federally operated Job Corps centers;
- I. Job Corps national training contractors;
- J. Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- K. Placement agencies, including Job Corps contractors that perform these functions;
- L. Other national program recipients; and
- M. One-Stop partners, as defined in section 121(b) of the WIA, are treated as "recipients."

Statutory References

A. Civil Rights Center

1. Title VI of the Civil Rights Act of 1964, as amended.
2. Section 504 of the Rehabilitation Act of 1973, as amended.
3. Section 508 of the Rehabilitation Act of 1973, as amended.
4. Age Discrimination Act of 1975, as amended.
5. Title IX of the Education Amendments of 1972, as amended.
6. Section 167 of the Job Training Partnership Act, as amended.
7. Section 188 of the Workforce Investment Act of 1998.
8. Title II Subpart A of the Americans with Disabilities Act of 1990, as amended.
9. Title VII, Civil Rights Act of 1964, as amended. Section 2000e-16, Employment by Federal Government.
10. Equal Pay Act of 1963, as amended.

B. Executive Orders

1. Executive Order 13160-Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs.
2. Executive Order 13145-To Prohibit Discrimination in Federal Employment Based on Genetic Information.
3. Executive Order 13166-Improving Access to Services for Persons with Limited English Proficiency.
4. Executive Order 11478- Equal Employment Opportunity in the Federal Government.

C. Code of Federal Regulations

1. Title 28 CFR Part 35. Nondiscrimination on the Basis of Disability in the State and Local Government Services.
2. Title 29 CFR Part 31. Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.
3. Title 29 CFR Part 32. Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance.
4. Title 29 CFR Part 33. Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities conducted by the Department of Labor.
5. Title 29 CFR Part 34. Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Job Training Partnership Act of 1982.
6. Title 29 CFR Part 35. Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor; Final Rule.
7. Title 29 CFR Part 37. Implementation of the Nondiscrimination and Equal Opportunity provisions of the Workforce Investment Act of 1998.
8. Title 29 CFR Part 1614. Federal Sector Equal Employment Opportunity.

Definitions

- A. The United States Department of Labor's Civil Rights Center (CRC) - Enforcement Agency for nondiscrimination and equal rights provisions. The CRC, in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.
- B. Violation - A violation is a failure to comply with WIA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation. Taking corrective action requires identifying the violation that must be corrected:
 - 1. Technical violations. For example, a failure to include the required language in an assurance or failure to include the tag lines in a communication.
 - 2. Discrimination violations. Include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.
- A. Sanction - Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIA regulations.
- B. Make-Whole Relief - Make-whole relief is "making the person whole" or bringing the person to the condition they would be in if, the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied. NOTE - Monetary relief, such as back pay, may not be paid from federal funds.
- C. Prospective Relief - Curative and preventive steps *voluntarily* taken to ensure that a violation does not reoccur in the future.

General Overview of Corrective Actions/Sanctions

Any recipient who fails to comply with regulations and provisions as described in WIA section 188 and/or 29 CFR 37 is subject to corrective and remedial actions designed to completely correct each violation. This action is necessary when a violation of the nondiscrimination and equal opportunity provisions of WIA is identified because of a discrimination complaint, a monitoring review, or both a monitoring review and a discrimination complaint. Violations may range in seriousness from a technical violation to discrimination. Technical violations may include failure to include required language in assurances, failure to post Equal Opportunity (EO) notices, etc. Discrimination violations include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

Corrective Actions/Sanctions Guidelines

- A. The key requirements for corrective actions and sanctions include the following:
1. The DWD EO Unit establishes and enforces procedures for corrective actions and applying sanctions, if needed, to ensure that resolution of any non-compliance can be enforced (29 CFR 37.54 [C] [VII]).
 2. The DWD EO Unit documents that corrective actions and prospective relief plans are being implemented and maintained (29 CFR 37.95–37.98).
 3. The DWD EO Unit ensures the imposing of sanctions for violations that are not voluntarily corrected (29 CFR 37.110).
- B. Corrective Action Required - Corrective action is required from a recipient when there is probable cause to believe a violation of the nondiscrimination and equal opportunity requirements of WIA has occurred. The violation may be identified as a result of:
1. A monitoring review;
 2. A discrimination complaint; or
 3. Both a monitoring review and a discrimination complaint.

A violation is a failure to comply with WIA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation. Taking corrective action requires identifying the violation(s) that must be corrected:

1. A sample of a technical violation could be the failure to include the required language in an assurance or failure to include the tag lines in a communication.
 2. Samples of a discrimination violation include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.
- C. Appropriate Corrective Action - The action taken to correct a violation should be appropriate and reasonable given the violation that has occurred. If the technical violation involved failing to include tag lines in a communication, the appropriate corrective action will be to reissue the communication with the tag lines included.

To correct a discrimination violation, the appropriate corrective action may be to provide make-whole relief. Make-whole relief is “making the person whole” or bringing the person to the condition they would be in if the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied. The following are examples of make-whole relief:

1. Make-whole relief for back pay - The victim(s) is entitled to be made-whole for any loss of earnings suffered because of a discriminatory practice. The amount of money received should be equal to what they would have earned (plus compound interest) had the discrimination not occurred.

2. Make-whole relief for discrimination involving a failure to place an individual in a training program - The victim is entitled to an immediate and unconditional offer of placement into the training program that he or she would have been placed in had it not been for the discrimination.

D. Document That Corrective Actions and Prospective Relief Plans are Being Maintained - Where a technical violation has been (or can be) corrected immediately, a written agreement or assurance will be provided to document the corrective action taken and the prospective relief that is planned. The following should be included:

1. Corrective actions must be designed to completely correct each violation.
2. For each corrective action, a timeframe should be established that sets the minimum time necessary to completely correct the violation.
3. It is also required that DWD institute follow-up monitoring procedures to ensure that commitments to take corrective and remedial action are being fulfilled.

E. Prospective Relief is curative and preventive steps *voluntarily* taken to ensure that a violation does not re-occur in the future. An example of a corrective action plan for failing to include tag lines in a communication would be documentation that included:

1. An explanation that the communication was reissued with the tag lines added.
2. The timeframe for reissuing the communication if it has not yet been reissued.
3. An example of prospective relief planned to ensure that all future notices will also include the required language are as follows:
 - a) Changing the policy, practice, or procedure that allowed for the violation.
 - b) Developing a new policy communicating the change in policy.
 - c) Educating those responsible for implementing the revised procedures.

Impose Sanctions - When all attempts to provide assistance to effect voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established, DWD must have procedures in place to impose sanctions. Sanctions are the judicial enforcement actions taken, including suspending, terminating, or denying funding, when appropriate corrective actions are not taken to comply with WIA regulations. Sanction procedures include the following:

1. List the measures taken to achieve voluntary compliance up through the point when sanctions are imposed.
2. Explain that the severity of the noncompliance will determine the sanctions imposed.
3. Provide a table or listing of the potential sanctions that may be imposed.
4. Detail the notification process including rights of the respondent, time frames involved, and provisions for a hearing.
5. Identify the individuals who have responsibility for carrying out the various steps in the sanctions process and the role of the State EO Officer and local EO Officer in this process.

F. Noncompliance, Corrective Action, and Sanctions Guidelines Table - See the attached table that is the model adopted by DWD based on the corrective action/sanction process, used by CRC.

**NON-COMPLIANCE, CORRECTIVE ACTION
AND SANCTION GUIDELINES**

AREA OF NON-COMPLIANCE	CORRECTIVE ACTION	PRE-SANCTION AND SANCTION
<p>1. PRACTICES AND POLICIES</p> <p>A. Policies or procedures which discriminate, or have the effect of excluding identifiable groups of individuals or denying the administration of benefits, participation in, employment, or other activities in connection with WIA.</p>	<p>1. Technical Assistance.</p> <p>2. Elimination or modification of policies, practices and procedures which have been found to be discriminatory within a time period specific by the State's procedures.</p>	<p>1. Warning of non-compliance.</p> <p>2. Recommendation of reduction of funding.</p> <p>3. Reduction of funding.</p>
<p>B. Programs, activities, or services that are inaccessible to disabled or limited English-speaking individuals.</p>	<p>1. Technical Assistance.</p> <p>2. Identification of inaccessible features, and modification of inaccessible features, within time frame specified by the State's procedures.</p>	<p>1. Warning of non-compliance.</p> <p>2. Reduction of funding.</p> <p>3. Disallowance of costs in inaccessible programs, activities, or services.</p> <p>4. Elimination of funding.</p>
<p>C. Non-existent, incomplete, or inadequate accessibility assessment tool on file as required by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.</p>	<p>1. Acquisition of technical assistance materials.</p> <p>2. Production of such a document within a time period specified by the State's procedures.</p>	<p>1. Warning of non-compliance.</p> <p>2. Reduction of funding.</p>
<p>D. Policies, practices, or procedures which are not in compliance with Section 188, 29 CFR 37, or other civil rights legislation.</p>	<p>1. Acquisition of technical assistance materials.</p> <p>Prompt modification or elimination of non-complaint policies, practices, and procedures within a time specified by the State's procedures.</p>	<p>3. Warning of non-compliance.</p> <p>4. Reduction of funding.</p> <p>5. Elimination of funding.</p>

AREA OF NON-COMPLIANCE	CORRECTIVE ACTION	PRE-SANCTION AND SANCTION
E. Non-existence of a staff analysis by race, sex, and age.	1. Completion of staff analysis within 1 month of receipt of non-compliance.	<ol style="list-style-type: none"> 1. Warning of non-compliance. 2. Recommendation of reduction of funding. 3. Reduction of funding.

AREA OF NON-COMPLIANCE	CORRECTIVE ACTION	PRE-SANCTION AND SANCTION
II. ADMINISTRATIVE DUTIES A. Lack of implementation of procedure for resolving complaints alleging a violation of the WIA, or relating to terms and conditions of employment.	Obtain technical assistance, and take necessary steps to achieve compliance.	1. Warning of non-compliance. 2. Terminate federal financial assistance.
B. Service provider complaint procedures which are not in compliance with 29 CFR 37.	Obtain technical assistance and take necessary steps to achieve compliance.	1. Warning of non-compliance. 2. Suspension of federal financial assistance. 3. Discontinue federal financial assistance.
C. Failure to comply with equal opportunity directives issued by Governor's liaison or the state EO officer, as his designee, and with applicable laws and regulation.	Take prompt action to comply within a time frame specified in the state's procedures.	1. Warning of non-compliance. 2. Discontinue federal assistance.
D. Failure to carryout oversight responsibilities by monitoring equitable service performance of its subcontractors.	Require immediate implementation of oversight and written report of the results to the state EO office within 3 months of the receipt of report of noncompliance.	