

## Equal Opportunity, Discrimination and Prohibited Conduct Policy #P-13-2.22

Updated: July 18, 2023

Re: Policy and procedures related to EO, discrimination, and prohibited conduct definitions and complaints.

Approved: November 11, 2022

Effective: November 11, 2022

References: PA Non-Discrimination Plan and Non-Discrimination & Equal Opportunity Elements  
WIOA Sec. 188  
29 CFR §38.23  
29 CFR §38.24  
29 CFR §38.25  
29 CFR §38.26  
29 CFR §38.27  
29 CFR §38.28  
29 CFR §38.54

Author: Saranne Miller



### **I. Purpose:**

- A. In accordance with equal opportunity and discrimination laws cited in WIOA Section 188 and Section 29, Part 38, and all other federal and state contracts passed through SCPa Works, the Workforce Development Board for the South Central Pennsylvania Local Workforce Development Area has implemented this **Equal Opportunity Discrimination Complaint Policy and Procedure**.
- B. This SCPa Works Discrimination Complaint Policy and Procedure must be provided to all employees.
- C. SCPa Works employees and the employees of SCPa Works contracted vendors and service providers must ensure that all programmatic participants are fully aware of this policy to include the Complaint Procedures that are in place and implemented as a part of this policy.

### **II. Non-Discrimination:**

- A. It is unlawful for any WIOA Title I recipient to be discriminated against.
- B. SCPa Works requires non-discrimination practices and protocol at all times across all programing administered by SCPa Works, including delivery of all federal-funded services through the PA CareerLink® system.
- C. Equal opportunity will be afforded to all, and discrimination based on one or more of the following is expressly prohibited:
  1. Race;
  2. Color;
  3. Religion;

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4. Sex;
5. National origin;
6. Age;
7. Disability, including impaired vision or hearing;
8. Political affiliation or belief;
9. Gender identity;
10. Gender expression;
11. Sexual orientation;
12. Citizenship/lawful residency/work status; and
13. Program participation eligibility/status.

### III. **Notice of Non-Discrimination:**

- A. Notice of non-discrimination will continually be provided to:
  1. Programmatic applicants and registrants;
  2. Eligible program applicants and registrants;
  3. Program participants;
  4. Individuals who are applicants for employment;
  5. SCPa Works employees, staff members, and team members otherwise;
  6. Individuals who are members of unions or professional organizations holding collective bargaining or professional agreements with SCPa Works; and
  7. Individuals who are employed by contracted sub-recipients of WIOA Title I funding.

### IV. **WIOA Recipient:**

- A. For purposes of WIOA, the term "recipient" is defined to include the following:
  1. State-level agencies that administer, or are financed in whole or in part, with WIOA Title I funds;
  2. State employment security agencies;
  3. State and local workforce development boards;
  4. LWDA grant recipients;
  5. PA CareerLink<sup>®</sup> Operator;
  6. Service providers, including eligible training providers included on the State-issued Eligible Training Provider List (ETPL);
  7. On-the-job training (OJT) employers;
  8. Job Corps contractors, center operators, and national training contractors;
  9. Outreach and admissions agencies, including Job Corps contractors that perform these functions;
  10. Placement agencies, including Job Corps contractors that perform these functions; and
  11. PA CareerLink<sup>®</sup> partners, to the extent they participate in the PA CareerLink<sup>®</sup> system.

### V. **Equal Access:**

- A. Physical access and program access will both be assured.
  1. **Physical access** is the act or opportunity of approaching or entering a physical space or area, including a site, building, facility, or parts thereof.
    - a. Physical access generally refers to both the physical space and the physical equipment necessary for an individual to approach or enter the physical space in which the program or service activity is available.
    - b. Building elements that can have physical access issues include areas from the point of arrival through the interior of the facility and encompass parking, passenger drop-off and loading zones, exterior routes of travel, entrances and exits, walks and sidewalks,

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curb ramps, ramps, stairs, elevators, access lifts, doors and gates, access to and through rooms and spaces, restrooms, signs, alarms, and equipment such as computer desks or tables or the placement of chairs.

2. **Program access** is the act or opportunity of participating in and benefiting from programs and services.

- a. Program access generally refers to the ways in which information, programs, and services are presented and delivered, allowing individuals to interact with and fully benefit from them. Printed information, computer systems and programs, telephone devices for persons with hearing impairments, and the oral delivery of instructions or information are all program access items.

B. Physical access and program access are not mutually exclusive.

1. Special devices and auxiliary aids, as well as other forms of assistive technology, might reasonably fit under either definition.

## **VI. Equal Opportunity Statements:**

A. Materials made available to the public, including news media advertisements, online collateral, marketing materials, email correspondence, program policies and forms, and brochures originating from a PA CareerLink® must contain the following language:

1. *Auxiliary aids and services are available upon request to individuals with disabilities. Equal Opportunity Employer/Program.*

## **VII. Equal Opportunity Officer:**

A. The EO Officer's responsibilities for the South Central Region are as follows:

1. Monitor and ensure (with Site Administrator) site is compliant with all Equal Opportunity/Americans with Disabilities Act (EO/ADA) laws.
2. Coordinate EO activities and maintains an open line of communication with the Equal Opportunity Specialists (from the Office of Equal Opportunity, or OEO) on matters involving EO/ADA compliance.
3. Develop, maintain, and modify a written Policies and Procedures manual that describes discrimination complaint procedures. Ensure that all employees have a thorough understanding of all EO/ADA laws, requirements, and complaint processing procedures.
4. Receives inquiries regarding complaints from staff and OEO.
5. Resolve EO complaints informally, consults with/refers complaints to the EO Specialist, and assists in or investigates complaints as determined with the EO Specialist.
6. Provide complaint forms to those wishing to file a complaint and reviews the form with the individual for proper completion, and then submits the complaint to the Equal Opportunity Specialist (from the OEO).
7. Ensuring that training is provided to local UCSC/CareerLink® office staff on EO/ADA regulatory requirements at the recipient's expense. OEO encourages annual trainings on the general topics of Civil Rights, Confidentiality, Ethics, Conflict Management, Workplace Diversity, and Disability Sensitivity Training. Ensure that the Training Log is updated for each training completed at the LWDA's local PA CareerLinks® and is submitted to OEO at the end of each calendar year.
8. Assisting during State Employment Security Agency (SESA) Compliance Reviews:
9. Uses the NeoSeg self-assessment tool to ensure EO/ADA compliance;
10. Works closely with local Site Administrators to identify areas of non-compliance and offers recommendations for remedy;
11. Assists in gathering pertinent information needed during review;

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12. Schedules meetings with community-based organizations, employers and employees, if needed, for on-site reviews; attends entrance and exit conferences during the compliance review visit.
13. Disseminating information and updates sent by the OEO to UCSC and/or CareerLink® employees.
14. Maintaining the Complaint Log for each CareerLink® in the LWDA, including the following:
15. Maintain a docket system on all complaints to track complaints
16. Keep all complaints and notes of such in a confidential file separate from the personnel file; information that could lead to the identification of an individual who files a complaint must be confidential (29 CFR 38.38).
17. Submit the Complaint Log to the Office of Equal Opportunity on a quarterly basis, designating corrects the Federal Fiscal Year quarter. Retain Complaints for a period of three (3) years from the date of resolution.
18. Function as the contact person regarding the Americans with Disabilities Act ADA, Section 504 of the Rehabilitation Act of 1973, and Section 188 of the Workforce Innovation and Opportunity Act (WIOA).
19. Maintain open lines of communication with all staff.

**VIII. Equal Opportunity Liaison:**

A. Each PA CareerLink® site has designated an individual to act as the Equal Opportunity (EO) Liaison.

Their duties are as follows:

1. Ensure EO/ADA literature, forms, and equipment are current and accessible at all times.
2. Distribute any and all required posters and documentation regarding Equal Opportunity provisions. Be in possession of and understand the most current SCPa Works Equal Opportunity Policy and SCPa Works Discrimination Complaint Policy and Procedure.
3. Act as "the reader" for customers requiring assistance reading materials. This is to ensure that all customers are afforded the same opportunity to receive information, regardless of sight ability, as others who have the ability to see (and read) the brochures, pamphlets, etc. In the state plan, the federal government has been assured that this service is readily available as it is considered to be an "auxiliary service," which falls under the tagline of "Auxiliary aids and services are available upon request."
4. Furnish complaint forms to PA CareerLink® staff members and others upon request.
5. Maintain a site complaint log to submit to the Local WDA EO Officer on a quarterly basis; the EO Officer will then forward them to the Office of Equal Opportunity at the Department of Labor and Industry in Harrisburg (OEO).

The EO Liaisons for each PA CareerLink® in the South Central Region are:

PA CareerLink® Site	EO Liaison	Email Address
Adams County	Luis Gomez-Ruiz	Lgomez-ruiz@pa.gov
Capital Region	Todd Updegraff	tupdegraff@pa.gov
Cumberland County	Andres Boden	aboden@pa.gov
Franklin County	Rachel Sheaffer	rsheaffer@pa.gov
Lebanon County	Don Doughty	ddoughty@pa.gov

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York County	Kareem Dunston	kdunston@pa.gov
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**IX. Discrimination Complaints:**

- A. Complaints can be brought by a participant, an employee, an applicant for employment, a PA CareerLink® partner, a service provider, a contractor, the PA CareerLink® Operator, a participating employer (such as an on-the-job training (OJT) employer), eligible training providers, and any other interested party affected by the Local Workforce Development system.
- B. A formal discrimination complaint can be filed by anyone who has been discriminated against on the basis of the following:
  - 1. Race;
  - 2. Color;
  - 3. Religion;
  - 4. Sex;
  - 5. National origin;
  - 6. Age;
  - 7. Political affiliation or beliefs;
  - 8. Disability, including impaired vision or hearing;
  - 9. Gender identity;
  - 10. Gender expression;
  - 11. Sexual orientation;
  - 12. Citizenship, lawful residency, or work status; and
  - 13. Program participation eligibility or status.

**X. Prohibited Workplace Conduct:**

- A. Detailed accounts of discrimination or inappropriate behavior in the workplace include:
  - 1. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
  - 2. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, and comments about physical attributes;
    - a. Lewd descriptions, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
    - b. Displays of demeaning, insulting objects, pictures, or photographs relating to any protected class;
    - c. Demeaning, insulting, intimidating, written, recorded, or electronically transmitted messages, such as email, text messages, voicemail, and Internet materials, relating to any protected class or said content that incriminates or exposes the privacy of an employee or program participant;
    - d. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based upon or directed at any protected class; and
    - e. Any employment action or decision that adversely impacts a protected class of employees or applicants.
- B. Complaints regarding how services are delivered, rather than complaints related to discrimination based on specific individual traits, should be submitted in accordance with SCPa Works' Employment Services Complaint System Policy #P-11-10.22.

**XI. Confidentiality:**

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- A. The identity of any person who has given information relating to or assisting in an investigation of a possible complaint shall be kept confidential to the extent that a fair determination of the concern(s) can be made.
- B. In the event that such information is required to be submitted under the order of a local, state, or federal entity, such information may be disclosed.

**XII. Complaint Timeline:**

- A. EO, discrimination, and prohibited conduct complaints must be filed within 180 days from the date of the alleged occurrence of discrimination.
- B. Complaints filed after the 180-day time period will be forwarded to the Commonwealth of Pennsylvania Civil Rights Center (CRC).
  - 1. The Director of CRC, for good cause shown, may extend the filing time beyond 180 days.

**XIII. Individual Choice:**

- A. Individuals, specific classes of individuals, or authorized representatives send complaints and allegations of EO faults, discrimination, and prohibited conduct in regard to WIOA, TANF, and EARN programs to the following:
  - 1. The South Central Workforce Development Area Equal Opportunity Officer (Local EO Officer)
  - 2. Office of Equal Opportunity in Harrisburg (OEO)
  - 3. Civil Rights Center in Washington, D.C. (CRC).
- B. Detail regarding the submittal of a complaint is provided in the **Discrimination Complaint Procedures** section below.
- C. Note that Commonwealth employees may co-file with multiple other agencies as well, depending on the situation, including Pennsylvania Human Resources Commission, Civil Service Commission, and/or Equal Opportunity Commission, but please note that other deadline dates may apply to other agencies.
- D. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information related to any complaint, is prohibited.
  - 1. Retaliation includes, but is not limited to, any adverse action is taken or threat of adverse action in response to any of the following actions or any attempt to prevent an individual from taking any of the following actions:
    - a. Making a complaint of harassment or discrimination;
    - b. Making a request for reasonable accommodation;
    - c. Participating in a complaint investigation or proceeding; or
    - d. Otherwise opposing acts of discrimination. Any person who feels a respondent has violated this prohibition may file a complaint alleging retaliation.
  - 2. Retaliation is a separate complaint and a respondent can be found responsible for retaliation and thus subject to sanctions and penalties, even if there is no finding of discrimination on the underlying complaint.

**XIV. Procedures for Complaint Processing at the Local Workforce Development Area Equal Opportunity Officer Level:**

- A. Upon notification of a discrimination complaint, the EO Officer must inform the complainant of their right to file a complaint and have it investigated at the local, state, or federal level.
  - 1. All complaints filed with the LWDA Equal Opportunity Officer must be immediately reported to the EO Officer in the Department of Labor & Industry.
- B. If the complainant elects to attempt resolution at the local level, the SCPa Works EO Officer, based on consultation with the Department of L&I Office of Equal Opportunity, will conduct fact-finding/investigation at the local level in consonance with procedures outlined in the WIOA.

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- C. The SCPa Works Equal Opportunity Officer will meet with the complainant or his/her authorized representative within ten (10) business days from the date of receipt of the written allegations to conduct a fact-finding or investigation of the circumstances underlying the allegations and attempt to informally resolve the issue(s).
  - 1. The LWDA EO Officer's findings will be submitted in writing to the complainant not later than ten (10) business days following the fact-finding/investigation.
  - 2. The written notification shall include notice of the complainant's right to request a formal investigation by the EO Officer at the state level if a satisfactory resolution is not accomplished at the local level.
- D. If the complainant is dissatisfied with the attempted informal resolution, he/she must inform the SCPa Works EO Officer and the EO Officer at the State level within five (5) business days of receipt of the unsatisfactory decision and request a formal investigation by the Department of L&I Office of Equal Opportunity.
- E. All complaints filed at the local level must be documented on the WIOA/SESA local complaint log that is submitted to the Department of L&I Office of Equal Opportunity on a quarterly basis.

**XV. Procedures for Complaint Processing at the Department of L&I:**

**A. Acceptance of Complaint**

- 1. If it is determined that the Department of L&I has jurisdiction over the complaint/allegation filed, within ten (10) days of receipt, the Department of L&I will send an acknowledgment of receipt of the letter to the complainant and advise him/her of the following:
  - a. Their right to be represented in the complaint process;
  - b. A list of the issues raised in the complaint;
  - c. A statement of whether the issue will be accepted for investigation or rejected by the OEO; if rejected, the reason for the rejection; and
  - d. The right to seek resolution through the Alternate Dispute Resolution (ADR) process.
- 2. The respondent will be notified that a complaint alleging discrimination has been filed and is being processed.
  - a. He/she will also be advised if the complainant elects mediation as the means of resolution.
- 3. The Equal Opportunity Officer will meet with the complainant and/or his/her authorized representative and the respondent within 15 days from the date of receipt of the written allegations, to initiate a fact-finding or investigation of the circumstances underlying the allegations, and attempt to informally resolve the issue(s).
  - a. If the complaint is resolved informally, the resolution will be documented and maintained in the Department of L&I Office of Equal Opportunity files.
- 4. If the complainant is dissatisfied with the attempted informal resolution or prefers to have a formal investigation, an investigator will be assigned to the case.
  - a. The investigator will interview the complainant, respondent, and witnesses for both parties as identified by the parties.
  - b. At the conclusion of the investigation, a *Notice of Final Determination* will be issued. *The Notice of Final Determination* will be strictly based on the evidence obtained during the investigation.
  - c. The notice will be issued within 90 days of filing the complaint.
  - d. The written notice will include, for each issue raised, a decision on the issue(s), an explanation of the reasons underlying the decision, or a description of the way the parties resolved the issue(s) and notification of recourse.
- 5. If by the end of the 90 days, the Department of L&I Office of Equal Opportunity has not completed processing the complaint, or fails to issue a notice of Final Determination, the

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complainant or his/her representative may, within 30 days of the expiration of the 90-day period, file a complaint with the Director, Civil Rights Center (CRC) who may extend the 30-day time period for good cause shown.

6. If the Notice of Final Determination is issued during the 90-day period and the complainant is dissatisfied with the decision, the complainant is advised of his/her right to file a complaint with the CRC within 30 days of the date on which the complainant received the *Notice of Final Determination*.

**B. Non-Acceptance of Complaint**

1. If a complaint is not within the jurisdiction of the Department of L&I Office of Equal Opportunity or CRC, is not timely filed, or does not have apparent merit, the complainant will be immediately notified in writing stating the reason for the lack of jurisdiction, i.e.,
  - a. The basis for the complaint is not covered by the prohibitions set forth by 29 CFR Part 38;
  - b. The complaint was not filed within the prescribed 180-day time frame; or
  - c. The complaint is against an entity that is not a recipient of WIOA Title I financial assistance as defined by 29 CFR Part 38.
2. If the complaint is not within the jurisdiction of the Department of L&I Office of Equal Opportunity or the Civil Rights Center, but within the jurisdiction of another federal grant making agency, the complaint will be returned to the complainant, stating the reason(s) for the lack of jurisdiction.
  - a. The complainant will be advised of the appropriate agency that handles the complaint.
3. If a complaint alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant agency other than DOL but participates as a partner in a PA CareerLink®, the following will apply:
  - a. If the complaint alleges discrimination on a basis prohibited by Section 188 or Civil Rights laws, the Department of L&I Office of Equal Opportunity and the grant making agency will have dual jurisdiction over the complaint.
  - b. If the complaint alleges discrimination on the basis that is prohibited by Section 188 of WIOA but not by any Civil Rights laws enforced by the federal grant-maker, the complaint will be referred to CRC, who has sole jurisdiction over the complaint.

**XVI. Summary of Changes:** This policy is reviewed every 180 days by the SCPa Works Policy Department for necessary changes, edits, updates, and revisions.

Date of Change:	Changed by:	Summary of Change(s):	Effective Date
09/17/2022	Saranne Miller 	1. Added Section X; Prohibited Workplace Conduct 2. Added Section XV; Procedure	11/11/2022
07/18/2023	Saranne Miller 	Reviewed for changes. Completed grammatical edits.	07/18/2023

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