

Equal Opportunity Policies in Practice

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WorkSource Academy
Breakout Session 4

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Section 188 of the Workforce Innovation and Opportunity Act

- Section 188 is titled “Nondiscrimination” and is in Subtitle E of Title I.
 - 29 U.S.C. §3248
 - Link: <http://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter32&edition=prelim>
- January 3, 2017: Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act regulations.
 - 29 C.F.R. Part 38
 - Link: http://www.ecfr.gov/cgi-bin/text-idx?SID=12d0ef178b0b816419860f7e961cb974&mc=true&tpl=/ecfrbrowse/Title29/29cfr38_main_02.tpl
- On April 3, 2019, TEN 24-18, Updated Promising Practices in Achieving Nondiscrimination and Equal Opportunity: A Section 188 Disability Reference Guide, was published. It includes a 78-page Best Practices Reference Guide. This is an update to the last Guide published in 2015.
 - TEN 24-18
 - Link: https://wdr.doleta.gov/directives/attach/TEN/TEN_24-18.pdf

Overview of Part 38, Subpart A: Purpose and Application

- Subpart A provides the foundational definitions and requirements.
- Purpose: Part 38 “clarifies the application of the nondiscrimination and equal opportunity provisions of WIOA and provides uniform procedures for implementing them” and reiterates the prohibition on discrimination “on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program or activity.”

Overview of Part 38, Subpart A: Purpose and Application

- Application: Part 38 applies to:
 1. Any **recipient**, as defined in §38.4;
 2. Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and
 3. The **employment practices of a recipient and/or One-Stop partner**, as provided in §38.18.

Overview of Part 38, Subpart A: Recipient Defined

- Part 38 defines a *recipient* as,
 - “any entity to which financial assistance under WIOA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him or her under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient.”
- Further, *recipient* specifically includes:
 1. State and local Workforce Investment Boards;
 2. LWDA grant recipients;
 3. One-Stop operators;
 4. Service providers, including eligible training providers;
 5. On-the-Job Training (OJT) employers;

Overview of Part 38, Subpart A: Specific Discriminatory Actions Prohibited on Other Than Disability

Bases

- A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited ground (*race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA Title I—financially assisted program or activity*):
 1. Deny an individual any aid, benefits, services, or training provided under WIOA;
 2. Provide any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others;
 3. Subject an individual to segregation or separate treatment in any matter related to his/her receipt of any aid, benefits, services, or training under WIOA; or
 4. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under WIOA.
- A recipient must not, directly or through contractual, licensing, or other arrangements refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship.

Continued Overview of Part 38, Subpart Specific Discriminatory Actions Basis of Disability

A: Prohibited on

- In providing any aid, benefits, services, or training under a WIOA, a recipient must not on the ground of disability:
 1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training made available under WIOA;
 2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
 3. Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 4. Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, **unless such action is necessary** to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others.
- A recipient **must not** place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.

Reasonable Accommodation

- **Reasonable accommodation means:**
 - Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or
 - Modifications or adjustments that enable a qualified individual with a disability **to perform the essential functions of a job**, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:
 - The environment where work is performed or aid, benefits, services, or training are given; or
 - The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or
 - Modifications or adjustments that enable a qualified individual with a disability **to enjoy the same benefits and privileges** of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

Reasonable Accommodation Continued

- Reasonable accommodation includes, but is not limited to:
 - Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees **readily accessible to and usable** by individuals with disabilities; and
 - Restructuring of a job or a service, or of the way in which aid, benefits, services, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities.

Reasonable Accommodation Continued

- To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- This part does not require a recipient to provide any of the following to individuals with disabilities:
 - Personal devices, such as wheelchairs;
 - Individually prescribed devices, such as prescription eyeglasses or hearing aids;
 - Readers for personal use or study; or
 - Services of a personal nature, including assistance in eating, toileting, or dressing.

Reasonable Accommodation Continued

- With regard to any aid, benefit, service, training, and employment, a recipient **must provide reasonable accommodations** to qualified individuals with disabilities, **unless providing the accommodation would cause undue hardship**. *(See the definitions of “reasonable accommodation” and “undue hardship” in §38.4(rrr)(1)).*
 - In those circumstances where a recipient believes that the proposed accommodation **would cause undue hardship**, the recipient has the burden of proving that the accommodation would result in such hardship.
 - The recipient **must** make the decision that the accommodation would cause such hardship only **after** considering all factors listed in the definition of “undue hardship” in §38.4(rrr)(1). The decision must be accompanied by a **written statement** of the recipient's reasons for reaching that conclusion. The recipient **must provide a copy** of the statement of reasons to the individual or individuals who requested the accommodation.
 - If a requested accommodation would result in undue hardship, the recipient **must**, after consultation with an individual with a disability (or individuals with disabilities), take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the service provided by the recipient.

Reasonable Accommodation Continued

- With regard to any aid, benefit, service, training, and employment, a recipient **must also make reasonable modifications** in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, **unless** making the modifications would **fundamentally alter** the nature of the service, program, or activity. (*See the definition of “fundamental alteration” in §38.4(z).*)
 - In those circumstances where a recipient believes that the proposed modification would fundamentally alter the service, the recipient has the burden of proving that the modification would result in such an alteration.
 - The recipient **must** make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of “fundamental alteration” in §38.4(z). The decision **must** be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient **must** provide a copy of the statement of reasons to the individual or individuals who requested the modification.
 - If a modification would result in a **fundamental alteration**, the recipient **must** take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the service provided by the recipient.

Overview Of Part 38, Subpart A: Communications with Individuals with Disabilities

- A recipient must furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a WIOA Title I-financially assisted service, program, or activity of a recipient.
- Recipients must ensure that communications with individuals with disabilities are as effective as communications with others.
 - Where a recipient communicates by telephone, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

Overview Of Part 38, Subpart A: Communications with Individuals with Disabilities

- A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.
 - The signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 102-76.65. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.
 - The international symbol for accessibility must be used at each primary entrance of an accessible facility.

Overview Of Part 38, Subpart B: Equal Opportunity Officers

- Every recipient except small recipients and service providers, as defined in §38.4(hhh) and (ggg), must designate a recipient-level Equal Opportunity Officer (recipient-level EO Officer), who reports directly to the individual in the highest-level position of authority for the entity that is the recipient.
 - *Small recipient* means a recipient who: Serves a total of fewer than 15 beneficiaries during the entire grant year; and Employs fewer than 15 employees on any given day during the grant year.
 - **Must** designate an individual who will be responsible for adopting and publishing complaint procedures, and processing complaints
 - *Service provider* means any operator of, or provider of aid, benefits, services, or training to: Any program or activity that receives WIOA Title I financial assistance from or through any State or LWDA grant recipient or Any participant through that participant's Individual Training Account (ITA); or certified Eligible Training Provider.
 - The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part rests with the Governor or LWDA grant recipient.

Continued Overview Of Part 38, B: Equal Opportunity Officers

Subpart

- All recipients have the following obligations related to their EO Officers:
 - Ensuring that the EO Officer is a senior-level employee reporting directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the Local Workforce Development Board, the Chief Executive Officer, the Chief Operating Officer, or an equivalent official;
 - Designating an individual who can fulfill the responsibilities of an EO Officer as described in §38.31;
 - Making the EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) public;
 - Ensuring that the EO Officer's identity and contact information appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs;
 - Assigning sufficient authority, staff, and resources to the EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part; and
 - Ensuring that the EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

Continued Overview Of Part 38, Subpart B: Equal Opportunity Officers

- Equal Opportunity Officer responsibilities include, but are not limited to:
 - Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I-financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I and this part;
 - Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
 - Developing and publishing the recipient's procedures for processing discrimination complaints, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, making sure that those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;
 - Conducting outreach and education about equal opportunity and nondiscrimination requirements and how an individual may file a complaint; and,
 - Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff.

Overview Of Part 38, Subpart B: and Communication

Notice

- A recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground.
- Notice must include specific wording which is set forth at § 38.35.
- Notice must be published at a minimum in the following places:
 1. Posted prominently, in a reasonable numbers and places;
 2. Disseminated in internal memoranda and other written or electronic communications;
 3. Included in handbooks or manuals; and
 4. Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.
- Services and information must be made available in other languages when a significant number or proportion of the population eligible to be served, or likely to be directly affected, by WIOA may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity.

Overview Of Promising Practices: Access To Programs And Activities

Equal

- Equal access includes performance of the following functions related to customer services and services integration:
 - Understanding local needs;
 - Assess and consider needs of local population
 - Include individuals with disabilities who represent the full spectrum of physical, mental, cognitive, and sensory disabilities, in all planning, including development of policies, manuals, and guidance
 - Create LWDB Committee focused on EO
 - Marketing and outreach;
 - General marketing and recruitment materials (including photos and advertisement copy) for the AJC programs mention individuals with disabilities as one of the groups served, contain positive images of individuals with disabilities, and indicate a commitment to hire and/or effectively serve individuals with disabilities
 - Presentations to community organizations, partner agencies, job seekers, and others explain that individuals with challenges to employment, including individuals with disabilities, are encouraged to take advantage of the programs and services offered at the AJC
 - Work with mandatory partners, particularly VR, to develop strategic outreach plans that reach people across the spectrum of disabilities and other underserved populations

Overview Of Promising Practices: Access To Programs And Activities

Equal

- Equal access includes performance of the following functions related to customer services and services integration:
 - Effecting collaboration, including partnerships and linkages;
 - Coordinates using funds and in-kind resources available to/through AJC programs and other agencies that improve common outcome measures related to career advancement, such as employment, job retention, and earnings.
 - For example, staff may identify job opportunities that match interests and skills sets of customers with disabilities; Vocational Rehabilitation (VR) funds may pay for on-the-job assessments and training; Medicaid may pay for personal assistance services on and off the job site; and Temporary Assistance for Needy Families (TANF) funds may be used to pay for after-school child care support, if needed.
 - In determining cost sharing arrangements, review extensive guidance jointly published by DOL and ED, Training and Employment Guidance Letter (TEGL) No. 17-16, “Infrastructure Funding of the One-stop Delivery System” (January 18, 2017)
 - Staff training

Overview Of Promising Practices: Access To Programs And Activities

Equal

- Equal access includes performance of the following functions related to customer services and services integration:
 - Intake, registration, and orientation;
 - AJC program staff asks all registrants (including individuals with disabilities) whether they need assistance during the application/registration process.
 - AJC program staff offers assistance to all individuals, including individuals with disabilities, in filling out forms and application materials. If a person needs assistance, this process is done one-on-one in a private room, where the individual's responses will not be overheard.
 - All customers are routinely offered the option of meeting with staff in private offices.
 - All customers are asked if they will need some type of accommodations or assistance to take full advantage of services and supports.
 - Service delivery
 - Employ dedicated staff, such as Disability Resource Coordinators, with expertise on disability-related issues as part of their core staff and information on their availability is provided to all job seekers
 - Hold regular case conferencing sessions between AJC program, VR, and/or other cross systems partners to provide an ongoing opportunity to share ideas and brainstorm career solutions for individuals who have multiple resource challenges, while protecting the confidentiality of individual customers

Overview Of Promising Practices: Nondiscrimination And Equal Opportunity Policies, Practices, And Procedures

- Prohibit Discrimination Against Individuals With Disabilities Practices
 - Reject all job orders from any employer that specifies that it will not accept applications from individuals with disabilities or from applicants with certain disabilities
 - If an AJC program is located in a service delivery area without a public transportation system, the AJC takes steps to make all its programs and activities available to customers who do not drive or have a car.
 - Staff regularly reviews eligibility criteria for training and other services to eliminate criteria that screen out individuals with disabilities, unless such criteria are directly related to specific training or services and are essential
 - For example, Any requirement designating a driver's license as the only acceptable form of identification (unless the training program involves driving as an essential function for a job), because such a requirement would unnecessarily screen out individuals whose disabilities prevent them from obtaining drivers' licenses

Overview Of Promising Practices: Nondiscrimination And Equal Opportunity Policies, Practices, And Procedures

- Provide Reasonable Accommodation for Individuals With Disabilities
 - Interactive Process, the individual and the AJC program staff should identify the precise impact(s) resulting from the disability and potential reasonable accommodations that could help to mitigate those issues.
 - The process of identifying and providing a reasonable accommodation should be done as quickly as possible to avoid delaying access to services.
 - Establishing and implementing an effective process for requesting, identifying, and providing a reasonable accommodation effectively and efficiently is essential to ensuring equal opportunity for individuals with disabilities.
 - Medical information obtained in connection with the reasonable accommodation process **must be kept confidential**.
 - This confidentiality requirement means that all medical information AJC programs obtain in connection with a request for a reasonable accommodation **must be kept in a separate file from the individual's service or personnel file**. This includes the fact that a reasonable accommodation has been requested or approved, and information about functional limitations. It also means that AJC program staff who obtain this information must follow these confidentiality guidelines.

Overview Of Promising Practices: Nondiscrimination And Equal Opportunity Policies, Practices, And Procedures

- AJC programs must ensure that they have policies and procedures in place regarding the provision of reasonable accommodations, and that AJC program staff receives regular training about accommodations.
- Effectively Communicate With Individuals With Disabilities
 - Each AJC program has a list, in an accessible format, of all currently available assistive technology devices and services. For example, the list might indicate that DVD players and video/TV monitors have closed caption capability; that ZoomText has been installed in computers available in resource areas; and that Pocket Talkers are provided for hard of hearing customers
 - AJC program staff receives training on how to use equipment, ensure equipment is in good working condition, maintain an inventory of equipment, and closely monitor and test equipment

Overview Of Promising Practices: Additional Affirmative Obligations

- Notice and Communication
 - AJC programs must include language indicating that the WIOA Title I-financially assisted program or activity in question is an “equal opportunity employer/program,” and that “auxiliary aids and services are available upon request to individuals with disabilities,” in any recruitment brochures or other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large
 - The Notice must be made available in alternate formats, such as Braille or large print, taped texts, or audio recordings
 - When a telephone number is included in official AJC programs’ stationery, business cards, civic newsletters, web sites, social media, posters, and other materials, the materials must indicate a TTY number or an equally effective means of communication with individuals who are deaf or hard of hearing (e.g., the number for the telephone relay service)

Overview Of Promising Practices: Additional Affirmative Obligations

- Monitor for Compliance and Continuous Improvement
 - Develop and implement tools to assist in reviewing policies, practices, and procedures to ensure equal opportunity for individuals with disabilities
 - Evaluate the composition of the applicant, registrant, and participant pool to determine whether any groups or populations are being underserved and, if so, plans are developed to address significant findings with regard to universal access
 - To the extent customer satisfaction surveys are used by AJC program staff, consideration is made to disaggregating the data to determine the satisfaction of individuals with disabilities who voluntarily disclose their disability

Thanks for Attending

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