
GST MICHIGAN WORKS! POLICY 18-08 Change 1
(Board Approved 3-8-2024)

TO: GST Michigan Works! One-Stop Partners, Service Providers, Employer-Based Training Employers, Participants, Other Interested Parties, and Employees

FROM: Jody Kerbyson, CEO

SUBJECT: Discrimination Complaint Processing Procedures and Policy

EFFECTIVE: February 1, 2024

PROGRAMS AFFECTED: All programs and activities that are conducted as part of the Workforce Innovation and Opportunity Act (WIOA) Title I or part of the One-Stop delivery system.

RECISSIONS: GST Michigan Works PI 18-08

REFERENCES: 29 Code of Federal Regulations (CFR) Parts 38.69 – 38.77

BACKGROUND: This policy provides detailed discrimination complaint processing procedures relevant to the GST Michigan Works! Nondiscrimination and Equal Opportunity Requirements Policy. The GST Michigan Works! Equal Opportunity Officer is responsible for processing different kinds of complaints. Depending upon the complaint, different procedures will apply. Generally, WIOA complaints can be divided into two categories: (1) program complaints, and (2) discrimination complaints. Program complaints are processed in accordance with the GST Michigan Works! "Grievance & Complaint Policy." Discrimination complaints are processed utilizing the GST Michigan Works! "Discrimination Complaint Processing Procedures and Policy," which is in accordance with Civil Rights Center (CRC) regulations and is contained herein.

POLICY: This policy applies to all entities/recipients (as defined in 29 CFR Part 38.4[zz]) receiving financial assistance under Title I of the WIOA, One-Stop partners, GST Michigan Works! subrecipients, programs, and activities that are part of the One-Stop delivery system, and the employment practices of the MWA, its subrecipients and/or One-Stop partners in connection with programs and activities that are being conducted as part of the WIOA Title I or the One-Stop delivery system. The term "recipients" includes, but is not limited to:

- State-level agencies which administer or are financed with the WIOA Title I funds and State Workforce Agencies.
- State and Local Workforce Development Boards.

- Local Workforce Development Area (LWDA) grant recipients; e.g. GST Michigan Works! (MWA);
- One-Stop operators;
- GST MWA subrecipients, service providers, and training providers;
- On-the-Job Training employers;
- Job Corps contractors and center operators;
- Job Corps national training contractors;
- Outreach and admissions agencies, including Job Corps contractors that perform these functions;
- Placement agencies, including Job Corps contractors that perform these functions, and
- Other National Program recipients.

COMPLIANCE

ASSISTANCE: Questions and/or requests for assistance in implementing the requirements of this policy are to be directed to:

Kelly Cook, E.O. Officer
 GST Michigan Works!
 3270 Wilson Street
 Marlette, MI 48453
 Phone: 989-635-3561, extension 223
 Fax: 989-635-2230
 TTY: 711
 Email: jlewis@gstmiworks.org

ACTION: Those entities included in the *Policy/Applicability* section above shall take the appropriate actions necessary to comply with this policy and shall ensure that the information contained herein is disseminated to all appropriate staff. 29 CFR Part 38 can be found in its entirety at:

www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-27737.pdf

or

www.federalregister.gov/d/2016-27737

SIGNED:



Jody Kerbyson, C.E.O.
 GST Michigan Works!

2-1-2024

Date

GST Michigan Works! Discrimination Complaint Processing Procedures

Prohibition Against Discrimination [29 CFR Part 38.5 and 29 CFR Part 38.35]

It is against the law for recipients of Federal financial assistance to discriminate on the following bases: against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including Limited English Proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I–financially assisted program or activity.

Recipients must not discriminate in any of the following areas: deciding who will be admitted, or have access, to any WIOA Title I–financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

Definition of a Discrimination Complaint

The GST Michigan Works! Equal Opportunity Officer is required to process various complaints which can generally be divided into two categories: (1) program complaints, and (2) discrimination complaints. Program complaints and discrimination complaints can look similar as both types of complaints include an *issue*, which is something the individual is complaining about. However, a complaint is considered a discrimination complaint if it includes, as a reason for the unfair treatment, one of the prohibited bases listed in WIOA Section 188: race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of WIOA, on the basis of the individual's citizenship status or participation in any WIOA Title I–financially assisted program or activity.

A complaint cannot be processed as both a program complaint and as a discrimination complaint. Program complaints are processed in accordance with the GST Michigan Works! "Grievance & Complaint Policy." Discrimination complaints are processed utilizing the GST Michigan Works! "Discrimination Complaint Processing Procedures and Policy," which is in accordance with the CRC regulations, and is contained herein.

Discrimination Complaint Procedures Applicability [29 CFR Part 38.2]

CRC discrimination complaint processes apply to any recipient, as defined in 29 CFR Part 38.4(zz); to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and as provided in 29 CFR Part 38.18, to the employment practices of a recipient and/or One-Stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as part of the WIOA Title I or the One-Stop delivery system.

The term “recipient” means any entity to which financial assistance under Title I of WIOA is extended, directly from USDOL or through the Governor or another recipient. The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In addition, One-Stop partners, as defined in section 121(b) of WIOA, are treated as “recipients,” and are subject to the nondiscrimination and equal opportunity requirements, to the extent that they participate in the One-Stop delivery system. “Recipient” includes, but is not limited to:

1. State-level agencies that administer or are financed in whole or in part, with WIOA Title I funds;
2. State Workforce Agencies;
3. State and Local Workforce Development Boards;
4. LWDA grant recipients (GST Michigan Works!);
5. One-Stop operators;
6. Service providers, including eligible training providers;
7. On-the-Job (OJT) employers;
8. Job Corps contractors and center operators;
9. Job Corps national training contractors;
10. Outreach and admissions agencies, including Job Corps contractors that perform these functions;
11. Placement agencies, including Job Corps contractors that perform these functions;
12. Other National Program recipients.

Who May File a Discrimination Complaint [29 CFR Part 38.69]

1. Any person or the person’s representative who believes he or she, or any specific class of individuals, has been or is being discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including Limited English Proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the WIOA, on the basis of the individual’s citizenship status, or participation in any WIOA Title I-financially assisted program or activity, or,
2. either the person, or any specific class of individuals, has been or is being retaliated against, may file a complaint.

Where to File a Discrimination Complaint [29 CFR Part 38.69]

Any person or their representative may file a written complaint if they are being discriminated against on any covered basis or if they have been or are being retaliated against. **Complaints must be filed within 180 days of the alleged discrimination or retaliation.** If a complaint is filed directly with the Civil Rights Center (CRC) Director, the Director may extend the 180 days filing time for good cause shown.

A complainant may file a complaint with either the GST Michigan Works! Equal Opportunity Officer or The Civil Rights Center (CRC):

Kelly Cook, E.O. Officer
GST Michigan Works!
3270 Wilson St.
Marlette, MI 48453

or

Director
Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW, Room N-4123
Washington, DC 20210

A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the MWA's Equal Opportunity Officer or from CRC at the address above.

The forms are available electronically on CRC's Website, and in hard copy via postal mail upon request. <https://www.dol.gov/oasam/programs/crc/>.

Required Contents of a Discrimination Complaint [29 CFR Part 38.70]

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

1. The complainant's name, mailing address, and if available, email address (or another means of contacting the complainant).
2. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
3. A description of the complainant's allegations. This description must include enough detail to allow the MWA's Equal Opportunity Officer or the Civil Rights Center Director, as applicable, to decide whether;
 - (a) The MWA or CRC, as applicable, has jurisdiction over the complaint;
 - (b) The complaint was filed in time; and
 - (c) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or this part.
4. The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice. [29 CFR Part 38.71]

Required Elements of a Recipient's Discrimination Complaint Processing Procedures [29 CFR Part 38.72]

The MWA's Equal Opportunity Officer will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed. At a minimum, the procedures will include the following elements:

1. Initial, written notice to the complainant that contains the following information:
 - (a) An acknowledgment that the MWA has received the complaint; and
 - (b) Notice that the complainant has the right to be represented in the complaint process;
 - (c) Notice of rights contained in 29 CFR Part 38.35 ("Equal Opportunity Is the Law" Notice/Poster); and
 - (d) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in 29 CFR Parts 38.4(h) and (i), 38.34, and 38.36.
2. A written statement of the issue(s), provided to the complainant, which includes the following information:
 - (a) A list of the issues raised in the complaint; and
 - (b) For each such issue, a statement whether the MWA will accept the issue for investigation or reject the issue, and the reasons for each rejection;
3. A period for fact-finding or investigation of the circumstances underlying the complaint.
4. A period during which the MWA attempts to resolve the complaint. The methods available to resolve the complaint will include alternative dispute resolution (ADR)/mediation, as described in paragraph 6 of this section.
5. A written Notice of Final Action, 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:
 - (a) The MWA's decision on the issue and an explanation of the reasons underlying the decision; or
 - (b) A description of the way the parties resolved the issue; and
 - (c) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the MWA's final action on the complaint.
6. The MWA's alternative dispute resolution (ADR)/mediation procedures provides that:
 - (a) The complainant may attempt ADR/mediation at any time after the complainant has filed a written complaint with the MWA, but before a Notice of Final Action has been issued.
 - (b) The choice whether to use ADR/mediation or the customary process rests with the complainant.
 - (c) A party to any agreement reached under ADR/mediation may file a complaint with the Civil Rights Center Director in the event the agreement is breached. In such circumstances, the following rules will apply:
 - The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;
 - The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the MWA's procedures.
 - If the parties do not reach an agreement under ADR/mediation, the complainant may file a complaint with the Director as described in 29 CFR Parts 38.69 through 38.71.

MWA's Obligations When It Determines That It Has No Jurisdiction Over a Complaint
[29 CFR Part 38.74]

If the MWA's Equal Opportunity Officer determines that the MWA does not have jurisdiction over a complaint, he/she will notify the complainant, in writing, within five (5) business days of making such determination. This Notice of Lack of Jurisdiction must include:

1. A statement of the reasons for that determination; and
2. Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

If the Complainant is Dissatisfied After Receiving a Notice of Final Action
[29 CFR Part 38.75]

If the MWA issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the MWA's decision on the complaint, the complainant or the complainant's representative may file a complaint with the Civil Rights Center Director within 30 days after the date on which the complainant receives the Notice.

MWA Fails to Issue Notice of Final Action Within 90 Days After the Complaint Was Filed
[29 CFR Part 38.76]

If by the end of 90 days from the date on which the complainant filed the complaint, the MWA has failed to issue a Notice of Final Action, the complainant or the complainant's representative may file a complaint with the Civil Rights Center Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Civil Rights Center Director within 120 days of the date on which the complaint was filed with the MWA.

Intimidation and Retaliation Prohibited *[29 CFR Part 38.19]*

1. A recipient, as defined in 29 CFR Part 38.4(zz), must not discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has:
 - (a) Filed a complaint alleging a violation of Section 188 of WIOA or this part;
 - (b) Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA or this part;
 - (c) Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:
 - (i) Administration of the nondiscrimination and equal opportunity provisions of WIOA or this part;
 - (ii) Exercise of authority under those provisions; or
 - (iii) Exercise of privilege secured by those provisions; or
 - (d) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA or this part.
2. The sanctions and penalties contained in Section 188(b) of WIOA, or this part may be imposed against any recipient that engages in any such retaliation, or intimidation, or fails to take appropriate steps to prevent such activity.