

CHAPTER 8

Non-Discrimination and Equal Opportunity

Overview

Introduction

Chapter 8 Program Guide explains the policies and procedures established by San Bernardino County Local Workforce Development Area (LWDA) to ensure compliance with the non-discrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) Public Law 113-128 Section 188, as implemented by Part 38 of Title 29 of the Code of Federal Regulations (29 CFR Part 38) and Title VI of the Civil Rights Act of 1964.

References

This handbook chapter contains information regarding WIOA regulations, signed into law in 2014 and State directives received from the U.S. Department of Labor (DOL) and/or Employment Development Department (EDD):

- Training and Employment Notice [\(TEN\) 28-16](#)
- Training and Employment Guidance Letter [\(TEGL\) 05-23](#)
- [DOL Fact Sheet](#) – Protecting individuals from discrimination based on actual or perceived religion, shared ancestry, or ethnic characteristics
- [Title VI, Civil Rights Act of 1964](#)
- Workforce Services Directive [\(WSD\) 17-03](#) and [WSD 21-04](#)

Chapter forms

The following forms are available in the AJCC Resources & Forms folder on the **WDD Share Drive**:

Form #	Title
WIOA 188	Equal Opportunity is the Law (English and Spanish)
WIOA 188.1	Discrimination Complaint Procedures (English and Spanish)
WIOA 188.2	Request for Language Services/Accommodations (English and Spanish)

In this section

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Non-Discrimination and Equal Opportunity Policy

Introduction

The Workforce Innovation and Opportunity Act (WIOA) Section 188, Title 29 CFR part 38 contains the equal opportunity and nondiscrimination provisions, which prohibit discrimination based on:

- Race/Color,
 - Religion,
 - Sex,
 - Age/Disability,
 - National origin (including harassment),
 - Shared ancestry or ethnic characteristics (i.e., skin color, physical feature, style of dress or a person's accent or foreign name, etc.)
 - Political affiliation or belief,
 - The basis of a beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or
 - His/her participation in a WIOA Title-I financially assisted program or activity.
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County policies

County of San Bernardino Policy Numbers 06-01, 06-08, 06-13, and 06-13SP were enacted by the Board of Supervisors to ensure:

- County programs and services are free of discrimination;
 - Individuals with disabilities have access to County facilities, programs, services, and activities; and
 - County departments do not discriminate on the basis of disability in admission or access to programs, services, or activities.
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LWDA policy

It is the policy of San Bernardino County Local Workforce Development Area (LWDA) to ensure equal opportunity and nondiscrimination in the operation of WIOA programs and activities. Programs shall be open to all qualified individuals.

The LWDA must accommodate an individual's religious practices or beliefs unless doing so would result in "undue hardship" to the recipient. Religious accommodation requests can involve:

- Schedule changes or leave for religious observances,
- Exemptions from or modifications to uniform, dress, or grooming requirements that conflict with religious practices, or
- Providing a quiet area for prayer during break time

No one shall be excluded from participation, denied benefits, or subjected to discrimination because of race, color, national origin, age, disability, sex, religion, political affiliation or belief, or citizenship/status as a lawfully admitted immigrant authorized to work in the United States.

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Non-Discrimination and Equal Opportunity Policy, Continued

Applicability to one-stop delivery system

WIOA nondiscrimination and equal opportunity regulations apply to programs and activities that are part of the one-stop delivery system, including:

- Workforce Development Department (WDD) as the one-stop center operator;
 - Providers of services or training funded under the WIOA, including eligible training providers and on-the-job training employers; and
 - Partner agencies as defined in Section 121 (b) of WIOA, to the extent they participate in the one-stop delivery system.
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Protected individuals

San Bernardino County Local Workforce Development Area (LWDA) does 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.

Title VI and WIOA Section 188 protect individuals of all religions from discrimination based on race, color, or national origin, including, but not limited to:

- Jewish,
- Christian,
- Muslim,
- Sikh,
- Hindu, and
- Buddhist.

Additionally, protection from religious discrimination under WIOA Section 188 extends not only to people who belong to traditional, organized religions, but also to others who have sincerely held religious, ethical or moral beliefs.

Examples

The following are two (2) examples of incidents that could, depending on the circumstance, raise Title VI and/or WIOA Section 188 concerns:

- A Catholic employee requests a schedule change from his On-the-Job Training employer so that he can attend a church service on Good Friday. The employer refuses, even though there is another qualified employee available to cover the shift.
- A Sikh young adult participating in a covered career transition program is questioned at length by a staff member who does not recognize him and perceives him as a security threat due to his religiously mandated beard and turban. The staff member demands to know where the young man is from and what his religious background is, refusing to allow him to begin the program until his supervisor intervenes.

Note: Refer to the [DOL Fact Sheet](#) for additional examples.

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Non-Discrimination and Equal Opportunity Policy, Continued

Criminal Record

The state understands the importance of reducing barriers to employment for justice involved individuals because gainful employment is essential to support self-sufficiency and reduce recidivism for them. WDD staff must use safeguards to prevent discrimination and promote employment opportunities for formerly incarcerated individuals with criminal records.

Note: Refer to Administrative Handbook Section 11 for additional information on criminal record.

Right to file a discrimination complaint

Any person who believes he/she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIOA has the right to:

- File a complaint,
- Have an investigation conducted,
- Have witnesses participate in the investigation, and
- Obtain a determination as to whether or not discrimination occurred.

Note: Refer to the complaint process described in Chapter 9 of the WDD Program Guide for additional information.

Retaliation is not allowed

WDD may not discharge, intimidate, threaten, coerce, discriminate, or otherwise retaliate against a person who has:

- Filed a discrimination complaint,
 - Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA,
 - Furnished information to, or assisted or participated in any manner in an investigation, hearing, review or other activity related to the nondiscrimination and equal opportunity provisions of WIOA, and/or
 - Otherwise exercised any rights and privileges guaranteed under the nondiscrimination and equal opportunity provisions of WIOA.
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Right to file a retaliation complaint

Any person who believes he/she has been retaliated against may file a complaint with the Workforce Development Department Equal Opportunity Officer, the Department of Labor Civil Rights Center (CRC) or with the Employment Development Department (EDD).

Equal Opportunity Officer

Introduction This section provides information on the Workforce Development Department (WDD) Equal Opportunity Officer (EOO).

EOO for LWDA The EOO for San Bernardino County Local Workforce Development Area (LWDA) is:

Fred Burks
Workforce Development Department Administration
290 North D Street – Suite 600, San Bernardino, CA 92415-0046

Phone: (909) 387-9845
TTY: Use the California Relay Service (711)
Fax: (909) 387-9870
Fburks@wdd.sbcounty.gov

Note: Refer to WDD Program Guide *Chapter 9, Grievances and Complaint* process for additional information on the EOO for LWDA.

Equal Opportunity Notice and Communication Requirements

Introduction	This section provides information about the Equal Opportunity Requirements for the America's Job Center of California (AJCC).
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Posting requirements	The AJCCs must display the <i>Equal Opportunity is the Law</i> poster in prominent locations, including lobbies, resource rooms and break rooms, to advise customers and staff of the Local Workforce Development Area (LWDA) nondiscrimination policies and of his/her right to file a discrimination complaint. These posters are available from the Workforce Development Department (WDD) Equal Opportunity Officer (EOO).
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Orientation workshops	Orientation workshops must include a discussion of customers' rights, including the right to nondiscrimination and equal opportunity, the right to file a discrimination complaint, and the right to request a reasonable accommodation and interpreter services. The <i>Equal Opportunity is the Law</i> form (WIOA 188) is included in the Application Disclosure Documents.
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Accessible formats	<p>Provide the <i>Equal Opportunity is the Law</i> form (WIOA 188) and <i>Discrimination Complaint Procedures</i> form (WIOA 188.1) in accessible formats (e.g., large print, Braille, computer disk, and audiocassette tapes) for customers with visual, learning, or other disabilities.</p> <p>Document the provision of the WIOA 188 or 188.1 in an alternative format (e.g., Braille, large print, audiocassette tape, or computer disk) in the customer's case file.</p>
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Language translations	<p>Whenever possible, provide the <i>Equal Opportunity is the Law</i> form (WIOA 188) and <i>Discrimination Complaint Procedures</i> form (WIOA 188.1) to customers in his/her preferred language.</p> <p>Spanish language translations are available in the Spanish Forms folder located on the Intranet in the Spanish Forms – Adult & Dislocated Worker tab and in the In-School or Out of School Youth forms tab. Translation assistance for other languages is available in the Intranet in the Miscellaneous/Referral Forms tab or from the Workforce Development Department Equal Opportunity Officer.</p>
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Written Communications

Introduction	This section outlines the written communication requirements for the Nondiscrimination and Equal Opportunity for the America's Job Center of California (AJCC).
Formats and languages	<p>AJCCs must ensure, to the maximum extent possible, information and written materials are accessible to customers in the languages and formats he/she prefer (e.g., large print, Braille, computer disk, audiocassette tape).</p> <p>The Workforce Development Department (WDD) Equal Opportunity Officer (EOO) can assist staff with obtaining forms and other written materials in alternate formats and languages.</p>
California relay service number	Any time a phone number is included on written materials distributed to the public (e.g., letterhead, business cards, posters, fliers, and brochures); the California Relay Service number (711) must also be included.
Required taglines for marketing materials	<p>Program information published or broadcast in the news media and publications and other communications distributed to the public promoting Workforce Innovation and Opportunity Act (WIOA) programs and activities, including notices of special events such as job fairs and workshops, must include the following taglines:</p> <p><i>This WIOA Title-I financially assisted program or activity is an Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. For Federal Funding Disclosure information, visit workforce.sbcounty.gov/about/ffd/.</i></p>
Positive images on marketing materials	Recruitment and other marketing materials should include pictures, graphics, and/or illustrations depicting positive images of people with disabilities receiving services alongside people without disabilities.
Meeting notices	<p>Notices of public meetings, including workshops, should include language explaining how a person with a disability may request a reasonable accommodation. At a minimum, the notice should include a contact phone number and a timeframe for the request.</p> <p><u>Example:</u></p> <p><i>If you need a special accommodation to participate in the meeting/workshop/event, such as a sign language interpreter or large print materials, please contact <u>(individual's name)</u> at least <u>(timeframe)</u> business days before the meeting/workshop/event at <u>(telephone number)</u> or through the California Relay Service (dial 711).</i></p>

Data and Information Collection and Maintenance

Introduction In compliance with Section 188 of the Workforce Innovation and Opportunity Act (WIOA), as implemented by Part 38 of Title 29 of the Code of Federal Regulations, San Bernardino County Local Workforce Development Area (LWDA) collects data on race/ethnicity, sex, age, and disability status, using the WIOA Application/Questionnaire form. Retain records for three (3) years from the close of the applicable program year.

Confidentiality Demographic data collected regarding WIOA customers is confidential and may only be used:

- For record keeping and reporting purposes,
- To determine eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities, and
- By state and federal civil rights agencies for statistical purposes, and
- To verify compliance with nondiscrimination laws.

Medical records A customer who requests a reasonable accommodation and his/her disability is not obvious; the Workforce Development Specialist (WDS) may ask the customer to provide medical verification of the person's functional limitations requiring an accommodation.

Examples of acceptable documentation retained in the customer's case folder include:

- Ruth cannot take written notes.
- Joe cannot read printed materials.
- Mark cannot sit for longer than 60 minutes at a time.
- Sue cannot walk farther than 100 feet without resting.

The WDS may not request documentation of a customer's medical diagnosis. A customer who voluntarily provides medical records that include a medical diagnosis, immediately return the records to the customer or destroy the records. Under no circumstances should documentation of a customer's medical diagnosis be retained in the customer's case folder.

Case notes Case notes must be limited to relevant facts and be free of personal biases and opinions. Case notes:

- **May** include the functional limitations resulting from a person's disability,
- **Must** include a customer's request for an accommodation, and the type of accommodation provided or the reason the accommodation is denied, and
- **Must not** include information about a customer's medical diagnosis (e.g., Human immunodeficiency virus (HIV)/Acquired immunodeficiency syndrome (AIDS)).

Universal Access for Customers with Disabilities

Introduction

This section provides information on universal access for customers with disabilities.

Universal access

A core principle of the one-stop delivery system is to provide universal access to one-stop services for all qualified job seekers. Chapter 7 of the Workforce Development Department (WDD) Program Guide, *Disability Resource Guide*, provides information and guidelines to assist WDD staff in complying with the universal access requirements of WIOA Section 188.

Affirmative Outreach for Limited English Proficient Customers

Introduction	Executive Order 13166, <i>Improving Access to Services for Persons with Limited English Proficiency</i> , mandates individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities.
Limited English Proficient	Limited English Proficient (LEP) is the term used for individuals whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
National origin discrimination	<p>National origin discrimination includes LEP under 29 CFR Section 38.9. Regulations specifically states in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including LEP.</p> <p>Title 29 CFR Section 38.41 added “LEP and preferred language” to the list of categories of information each recipient must record about each applicant, registrant, eligible applicant/registant, participant, and terminee.</p>
Effective communication	<p>Effective communication is the key to ensuring meaningful access for LEP customers. Meaningful access is language assistance resulting in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals. Effective communication can be achieved by:</p> <ul style="list-style-type: none">• Conducting an assessment of an LEP individual to determine his/her language assistance needs,• Advising customers of his/her right to free language assistance,• Providing interpreter assistance and document translation in a timely manner, and• Recording LEP status in the customer’s file to ensure consistent communication in the appropriate language.

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Affirmative Outreach for Limited English Proficient Customers, Continued

Signage	Directional and instructional posters and signage at the America's Job Center of California (AJCC) must be displayed in both English and Spanish.
Using friends and family members as interpreters	AJCC staff may not require, suggest, or encourage an LEP customer to use friends, family members, or minor children as interpreters, as this could compromise the effectiveness of service and/or result in a breach of confidentiality.
Interpreter Services exceptions	<p>There are exceptions when the AJCC may use a minor child, adult family or friend to interpret or facilitate communication for interpreter services. The circumstances are as follows:</p> <ul style="list-style-type: none">• Emergency situations while waiting for a qualified interpreter.• The information conveyed is of minimal importance to the services provided.• The LEP individual specifically requests an accompanying adult provide language assistance and he/she agrees to assist the individual. AJCC staff:<ul style="list-style-type: none">– Is required to case note he/she permitted an accompanying adult to serve as an interpreter for the LEP individual.– Can still provide an independent interpreter for complete and accurate interpretations/translations of information and/or testimony critical for adjudicatory or legal reasons or competency of the interpreter requested by the LEP.
Customer choice	A customer who declines an offer of free interpreter services and chooses to use a family member or friend as an interpreter, staff is required to document the offer and declination of language assistance and case note and/or have the LEP complete the <i>Request for Language Services/Accommodations</i> form (WIOA 188.2).
Babel Notice	A Babel Notice informs the reader the communication contains vital information, and explains how to access language services to have the contents of the communication provided in other languages (Title 29 CFR Section 38.4[i]). The AJCC must include a Babel Notice indicating language assistance is available when sending documents/decisions via mail or electronic format to the LEP.

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Affirmative Outreach for Limited English Proficient Customers, Continued

Written materials

Written materials routinely provided to customers must be available in languages other than English, such as Spanish. These materials include:

- Applications to participate in a WIOA program or activity
 - Consent forms
 - Participation requirements
 - Notices that require a response from the customer
 - Notices regarding the availability of free language assistance
 - Information about the right to file complaints of discrimination
 - Notices pertaining to the reduction, denial, or termination of services
 - Information about services for individuals with disabilities
 - Outreach brochures and materials
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Translations

Many department forms are available in English and Spanish. Assistance with translating forms, brochures, letters and other written documents into additional languages is available from the Workforce Development Department Equal Opportunity Officer.

Oral interpreter services

WDD staff certified by the County as having the necessary competency to provide oral interpreting services for customers who speak Spanish are located at each AJCC. On-site and phone interpretation services for languages other than Spanish not provided by Certified County staff may be obtained by contacting the Contracted Providers.

Internet resources

Several resources are available on the Internet, including:

- EDD's Labor Market (<https://labormarketinfo.edd.ca.gov/customers/job-seekers.html>) provides information about:
 - Job Search tools: provides a comprehensive range of employment and training services and tools in order to assist job seekers in finding and securing employment in his/her chosen field.
 - Occupation in Demand: provides descriptions of many entry-level jobs in the clerical, construction and repair, education, food service and lodging, health care, manufacturing, protective services, sales, service, and transportation and outdoor occupational groups.
 - How to Find a Job: provides job-search resources, such as EDD services, One-Stop Centers, libraries, job fairs, government jobs, and Internet resources.
 - Tips for Success: includes job application, resume, and interview tips.
 - EDD's California Occupational Guides provide statewide information about job duties, working conditions, employment outlook, wages, benefits, entrance requirements and training for individual occupations or groups of related occupations (www.labormarketinfo.edd.ca.gov/occguides).
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