

MEMORANDUM

DATE: January 3, 2011

TO: See Distribution

FROM: William H. Mann, Jr., Executive Vice President and Chief Operating Officer

SUBJECT: Standard Operating Procedure 2011-13  
Nondiscrimination and Equal Employment Opportunity

PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to inform Peninsula Council for Workforce Development/Federal Division (PCFWD) Staff and Subcontractors of all aspects pertaining to the federal Equal Employment Opportunity (EEO) and Nondiscrimination requirements. This SOP will provide individuals with a better understanding of EEO and assist in making important personnel decisions.

1. Policy Statement

The PCFWD affirms its commitment to the policy of assuring nondiscrimination and equal employment opportunity for all in the conduct of programs funded under the Workforce Investment Act of 1998, as amended (Public Law 105-220). Any person, who believes he or she has been subject to discrimination based on race, sex, national origin, color, religion, political affiliation, physical disability, age (except where bona fide occupational qualifications concerning physical requirements are necessary for proper and efficient functioning on the job or in the training activity being proposed) nor any other non-merit factor and for the beneficiaries only, citizenship, or participation in WIA, has the right to file a complaint within 180 days of the alleged discrimination. This policy applies to all phases of employment including job structuring and upward mobility, recruitment, selection, training, compensation, benefits, layoffs, transfer administration relative to the PCFWD staff, the staffs of Subcontractors, recipients and to participants in PCFWD's program activities.

2. Documentation

- A. Title VI of the Civil Rights Act of 1964, as amended, which provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving financial assistance from DOL, 42 U.S.C. Section 200d;
- B. Federal Regulations, 29 CFR, Section 37 - Implementation of Nondiscrimination and Equal Opportunity requirements of the WIA which requires that a recipient\* provide initial and continuing notice that it does not discriminate against applicants, eligible applicants, participants, applicants for employment, employees, union or professional organizations holding collective bargaining or professional agreements with the recipients, and members of the public;
- C. The Age Discrimination Act of 1975, which provides that no person shall, on the basis of age, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving financial assistance from DOL, 42 U.S.C. Section 6102;
- D. The Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified person shall, solely on the basis of physical or mental handicap, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving financial assistance from DOL, 29 U.S.C. Section 794;
- E. Title IX of the Education Amendments of 1972, as amended, which provides that no person shall, on the basis of sex, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any education or training program or activity receiving financial assistance from DOL, 20 U.S.C., Section 1681;
- F. Section 188 of the Workforce Investment Act of 1998, as amended, which provides that no person shall, on the basis or race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, be excluded from participation in, denied the benefits of, be subjected to discrimination under, or denied employment in the administration of or in connection with any program or activity funded under the Act; WIA further requires that any such program or activity be open to participation by citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States, 29 U.S.C. Section 1559.

- G. Americans with Disability Act (ADA) of 1990 -The American with Disability Act prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and activities of state and local government. Telecommunications relay services must be available. In terms of employment, the law defines a "qualified individual with a disability" as a person with a disability who can perform the essential functions of the job with or without reasonable accommodation.

### 3. Definitions

- A. Equal Employment Opportunity - is an employer's posture that all personnel activities will be conducted in a manner, which will assure equal opportunity for all. Such activities will be based on individual merit and fitness of applicants and employees related to the specific jobs and without regard to non-merit factors such as race, sex, age, national origin, color, religion, handicapped disability, political affiliation or belief.
- B. Affirmative Action - is a planned, aggressive, coherent management program to provide for equal employment opportunity. The Affirmative Action Plan (AAP) is the written document through which management assures equal opportunity. It is a result-oriented instrument designed to achieve equal opportunity rather than simple policy assurance of non-discrimination.
- C. Recipient - means any entity to which Federal financial assistance under any title of WIA is extended, either directly or through the Governor or through another recipient (including any successor, assignee, or transferee or a recipient), but excluding the ultimate beneficiaries of the WIA-funded program or activity and the Governor. Recipient includes, but is not limited to: Job Corps Centers and Center operators (excluding federally-operated Job Corps Centers), State Employment Security Agencies, State-level agencies that administer WIA funds, LWIA grant recipients, and Subcontractors, as well as National Program recipients.

### 4. Implementation

- A. The Executive Vice President and Chief Operating Officer, PCFWD will have the overall responsibility for the Equal Employment Opportunity Program. The Executive Vice President and Chief Operating Officer's principal adviser will be the PCFWD's EEO Officer. The PCFWD's EEO Officer's foremost responsibility or function is to inform the Executive Vice President and Chief Operating Officer of the EEO posture of the organization. To do this, the PCFWD's EEO Officer will have at least three broad responsibilities:
  - (1) To advise and assist PCFWD Vice President, One Stop Executive Director and Program Coordinators, and PCFWD Subcontractors on EEO policy and EEO assurance responsibilities;

- (2) To perform periodic reviews of all activities and programs within PCFWD, and;
- (3) To assure that recommended corrective action measures are followed through, as appropriate.

B. Additional responsibilities of the PCFWD EEO Officer are to:

Implement this program.

- (1) Initiate and conduct pre-award, post-award compliance reviews and investigates grievances against PCFWD and/or PCFWD Subcontractors.
- (2) Monitor for compliance in EEO standards.
- (3) Review and analyze management data and operating reports for initiating and/or recommended appropriate action.
- (4) Provide expertise and technical assistance in the reconciliation and negotiation of EEO matters.
- (5) Provide training and technical assistance to staff components relating to EEO responsibilities and programs.
- (6) Develop and maintain liaison with federal, state, or local EEO units and community based organizations. Keep the VCCS EEO Officer informed of information pertaining to EEO complaints and violations.
- (7) Review planned advertisements to ensure the inclusion of the EEO statement in such advertisements as required by Title VI of the Civil Rights as amended.
- (8) Maintain a compliant log.
- (9) Upon request, issue complaint forms to facilitate filing complaint in proper format.
- (10) Provide a written determination of the complaint and offer resolution within 90 days of the date on which the complaint was filed.
- (11) Determine if a complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIA. The EEO Officer will notify the complainant in writing that he or she does not have jurisdiction over the complaint. Where possible the complaint will be referred to the appropriate federal, state or local authority.

- (12) If an investigation results in a reasonable cause finding, the EEO Officer will seek concurrence from the State EO Officer. The State review of all findings that a violation occurred must be accomplished within 30 days. If the State EO Officer concurs, the EEO Officer will issue a written determination for each issue raised in the complaint, a statement of either the recipient's decision or the way the parties resolved the issue.
- (13) When a no cause finding is made, the complainant will be notified in writing and advised that they can file a complaint within 30 days to the Director, Civil Rights Center.
- (14) Complainants will be provided an initial written notice that contains an acknowledgement that PCFWD has received the complaint and notify the complainant that they have the right to be represented.
- (15) A written statement of the issues will be provided to the complainant that includes a list of the issues raised in the complaint and for each issue, a statement whether PCFWD will accept the issue for investigation or reject the issue, and the reasons for each rejection.
- (16) PCFWD will have 30 days for fact-finding and/or investigation of complaints.
- (17) PCFWD will have a period of 15 days to attempt resolution of complaint through mediation.

5. Grievance Procedures

Pursuant to Section 188 of the WIA Regulations (Public Law 105-220), all WIA program participants have a right to file a grievance. Grounds for a grievance involve individual discrimination based on race, color, religion, sex, national origin, age disability, and political affiliation or belief of discrimination during employment in the administration of, or in connection with, any WIA-funded program or activity.

If a participant thinks that he/she has been subjected to discrimination under a WIA-funded program or activity, a complaint can be filed within 180 days from the date of the alleged violation with the Subcontractors (LWIA) Equal Employment Opportunity

(EEO) officer, or the participant may file complaint directly with the Director, Civil Rights Center (CRC). A complaint may be filed by the individual or on the behalf of the individual by an authorized representative. It is recommended that the complaint be filed on PCFWD's Complaint Form.

Subcontractors will make every effort to resolve complaints using their own informal mediation procedures at their level. If a resolution cannot be achieved, the complainant has the option of contacting the PCFWD EEO officer or going to the Director, Civil Rights Center in Washington, D. C.

Procedure If a participant believes that he/she has a complaint regarding a violation of his/her civil rights, he/she can take the following steps:

- Step 1: Go to the LWIA's EEO within 180 days of the alleged violation and bring the problem to that organization's attention. The LWIA has 90 days to respond.
- Step 2: If the LWIA does not respond within 90 days, the participant can file the complaint directly with the CRC within 30 days of the expiration of the 90 day period.
- Step 3: If the LWIA responds within the 90 day limit and the participant is not satisfied with the resolution of the complaint, he/she can file directly with the Director, Civil Rights Center. This latter filing to the CRC must be completed within 30 days of the date you receive notice of the LWIA's proposed resolution.
- Step 4: If the participant chooses, he/she may by-pass the LWIA and go directly to the CRC. The filing must be done within 180 days from the date of the alleged violation. Address of the CRC is shown below:

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

CivilRightsCenter@dol.gov

6. Miscellaneous

- A. All PCFWD internal time limits for complaints will be strictly adhered to unless it is not possible due to schedule limitations. The Executive Vice President and Chief Operating Officer, PCFWD, will approve/disapprove any requests for an extension on complaints based on the facts of the case. The Director of the Civil Rights Center is the only person who can grant extensions on time limits regarding discrimination complaints.
- B. A copy of the grievance form and civil rights form will be given to each participant for their review and signature. The original copy of this form will be placed in their participant folder.

- C. The PCFWD's EEO Officer is Ms. Shannon Trochuck, 757-826-3327. If you have any questions, please discuss them with your counselor first and Ms. Trochuck later if the participant needs additional information. For the hearing impaired, the Virginia Telecommunications Relay Service is a service that relays a conversation between a person with a speech or hearing disability using a TTY (Text Telephone) and a hearing person using a regular telephone. To reach Virginia Relay simply dial 711. Additionally, Peninsula Worklink has a Text Telephone located in its telephone bank and the number to this telephone is 757-766-4928.
- D. Complaints not resolved at the Subcontractor's level will be referred directly to this office for resolution. If a suitable solution is not attained at this level, the next step is to forward the complaint directly to the Director, Civil Rights Center, Washington, D.C., as per instruction contained in paragraph 5 above. Ms. Trochuck is available as the technical advisor for both the Subcontractor and the complainant. WIA participants, PCFWD staff and Subcontractors should feel free to contact Ms. Trochuck for advice should a need arise.
- E. To communicate the discrimination complaint policy, "Equal Opportunity Is The Law" posters in English and Spanish shall be placed in prominent locations which are accessible to applicants, eligible applicants, participants, terminees, applicants for employment and employees, applicants for funding and other interested parties. The poster contains a nondiscrimination and equal opportunity statement, as well as information about filing a complaint.
- F. The USDOL required EO Tag Line, "Equal Opportunity Employer/Program - Auxiliary aids and services are available upon request to individuals with disabilities" must be included on Websites, recruitment brochures, and other materials communicated in written or electronic format. Also, a TDD number must be indicated when a telephone number is indicated. The tag line does not have to be included on business cards, envelopes, and letterhead. However, if the letterhead indicates a telephone number, a TDD number must be indicated. Refer back to 6. C of this procedure for TDD and TTY telephone numbers.
- G. The U.S. Department of Justice has issued a Language Identification Card (attachment 1) to assist program staff in identifying what particular language a customer is speaking. The card includes 38 languages. PCFWD recommends that you distribute the Card to all staff members.

This SOP will be distributed to all responsible personnel within the PCFWD's Service Delivery Area, including all staff and Subcontractors. Copies of the Agency's nondiscrimination Policy and Complaint policy will be posted in a prominent place on each organization's bulletin board. In addition Subcontractors will include information contained in this SOP in their Career Development Specialists' orientation of participants during the enrollment process.