



To: All Golden Sierra Staff and Subrecipients
Subject: Discrimination Complaint Processing Procedures
Effective Date: September 25, 2018
Revision Number:

Purpose

To establish local procedures for resolving allegations of noncompliance with the nondiscrimination and equal opportunity provisions in Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and 29 CFR Part 38.

Complaint Processing Procedures

Any complaint alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity or retaliation for filing a complaint may be filed with either Golden Sierra’s Equal Opportunity (EO) Officer or directly with the Civil Rights Center (CRC).

Complaints must be filed, in writing, on an official Golden Sierra complaint form (GSC 20-10) within 180 days of the alleged discrimination. All complaints must include the following information:

- The complainant’s name, address, or other contact information.
- Identity of the respondent.
- A description of the complainant’s allegation(s) in sufficient detail to allow the CRC or EO Officer, as applicable, to determine whether (1) the CRC or Golden Sierra has jurisdiction over the complaint, (2) the complaint was filed timely, and (3) the complaint has apparent merit.
- The signature of the complainant or complainant’s authorized representative.

Option 1: Filing a Complaint with Golden Sierra’s EO Officer

Upon receiving a written complaint on an official complaint form, Golden Sierra’s EO Officer will issue a written notice to the complainant that contains the following information:

- An acknowledgement the complaint was received;
- Notice that the complainant has the right to be represented by an attorney or another individual of his or her own choice during the complaint process.
- Notice that the complainant has the option to use the alternative dispute resolution (ADR) process.

If the complainant elects not to participate in the ADR process, Golden Sierra’s EO Officer shall investigate the circumstances underlying the alleged complaint. At any point in the investigation of the complaint, the complainant, respondent, or Golden Sierra’s EO Officer may request the parties attempt conciliation. The EO Officer shall facilitate such conciliation efforts.

Golden Sierra shall be allowed 90 days to issue a Notice of Final Action from the date on which the complaint was filed. If, during the 90-day period, Golden Sierra issues a decision that is not acceptable to the complainant, the complainant may file a complaint with the CRC within 30 days after the date on which the complainant receives the Notice.

If the 90 days expire and the complainant does not receive a Notice of Final Action from Golden Sierra, or Golden Sierra failed to issue a Notice of Final Action, the complainant may file a complaint with the CRC within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the CRC within 120 days of the date on which the complaint was filed with Golden Sierra. The CRC may extend the 30-day time limit if the complainant is not notified or for other good cause shown.

Golden Sierra shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIOA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC within 30 days of receipt of the Notice.

During the resolution process, Golden Sierra's EO Officer shall assure all parties involved are given due process. Due process includes:

- A notice to all parties of the specific charges.
- A notice to all parties of the responses to the allegations.
- The right of both parties to representation.
- The right of each party to present evidence, and to question others who present evidence.
- A decision made strictly on the evidence on the record.

Per WSD17-01, Golden Sierra shall forward one copy of the alleged complaint and one copy of the issued Notice of Final Action to EEOMAIL@edd.ca.gov or

Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001

Option 2: Filing a Complaint with the CRC

A complaint must be filed within 180 days of the alleged discrimination. The CRC, if shown good cause, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the CRC and does not create a defense for the respondent.

When the CRC accepts a complaint for investigation, it shall:

- Notify the LWDA and the complainant of the acceptance of the complaint for investigation; and
- Advise the LWDA and complainant on the issues over which the CRC has accepted jurisdiction.

Golden Sierra, the complainant, or a representative may contact the CRC for information regarding the complaint filed. When a complaint contains insufficient information, the CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.

The CRC may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.

Where the CRC lacks jurisdiction over a complaint, the CRC shall:

- Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of the WIOA or 29 CFR Part 38.
- Refer the complainant to the appropriate federal, state, or local authority, when possible.

The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.

The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).

If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., the CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation as appropriate. The CRC will advise the complainant and the LWDA of the referral.

Under the one-stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grant making agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:

- If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the federal grant making agency, the CRC and the grant making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant making agency for processing. The grant making agency's regulations will govern the processing of the complaint.
- If the complainant 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 making agency, the CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 37. The CRC will advise the complainant and the LWDA of the referral.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

- The mediation is voluntary; the parties must consent before the mediation process will proceed.
- The mediation will be conducted under the guidance issued by the CRC.
- If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.

After making such a cause finding, the CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and Golden Sierra, in writing, of:

- The specific findings of the investigation;
- The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- Whether it will be necessary for Golden Sierra to enter into a written agreement; and
- The opportunity to participate in voluntary compliance negotiations.

Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and Golden Sierra. The Final Determination represents the Department of Labor's final agency action on the complaint.

The Alternative Dispute Resolution Process

When filing a complaint with Golden Sierra, the complainant has the choice to use the customary process (options 1 or 2) or the alternative dispute resolution (ADR) process to resolve the complaint. By electing the ADR process, the complainant has the option of mediating the complaint. The mediation will be conducted under the guidance issued by Golden Sierra's EO Officer. If the complainant's choice is ADR, Golden Sierra will do the following:

- Choose an impartial mediator/facilitator that is acceptable to both the complainant and the other party.
- Determine the location of the ADR.
- Schedule the date and time of ADR.
- Notify both parties of the ADR location, date, and time.

If a resolution is achieved through ADR, the mediator will prepare a settlement agreement that includes a description of how the parties resolved the issue. This agreement will become documentation/notice of final action. If they agree to the settlement, the parties will be asked to sign the agreement. A copy of the signed agreement will be given to the parties. The agreement will contain the names of the parties, date of agreement, and any time limits or terms of agreement.

A party to any agreement reached under ADR may file a complaint with the CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- The non-breaching party may file a complaint with the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
- The CRC must evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his or her original allegation(s), and the CRC will waive the time deadline for filing such a complaint.

If the parties do not reach an agreement under ADR, the complainant may file directly with the CRC as described in option 2.

Intimidation and Retaliation Prohibited

Golden Sierra shall not discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.
- Furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38.

References

WIOA (Public Law 113-128) Sections 121(b), 183(c), and 188

Title 20 Code of Federal Regulations (CFR) §658.400

Title 29 CFR Parts 31, 32, 34, 38, and 1690-1691

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