

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION OWI
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 06-24

TO: AMERICAN JOB CENTERS
STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE AND LOCAL EQUAL OPPORTUNITY OFFICERS
STATE LABOR COMMISSIONERS
WORKFORCE INNOVATION AND OPPORTUNITY ACT SECTION 166
INDIAN AND NATIVE AMERICAN GRANTEES
WORKFORCE INNOVATION AND OPPORTUNITY ACT SECTION 167
MIGRANT AND SEASONAL FARMWORKER JOBS PROGRAM
GRANTEES
SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM GRANTEES
JOB CORPS CONTRACTORS AND CENTER OPERATORS
RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL ASSISTANCE
SUB-RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL
ASSISTANCE

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Civil Rights Center

SUBJECT: Complying with Nondiscrimination Requirements: Preventing and Addressing Gender-Based Violence in the Workforce Development System; Reducing Barriers Faced by Survivors of Gender-Based Violence in Seeking Jobs and Participating in Covered Programs and Activities

- Purpose.** To inform the public workforce system and other entities that receive federal financial assistance under Title I of the Workforce Innovation and Opportunity Act (WIOA), as well as education and training programs and activities receiving Department of Labor (DOL) financial assistance on how to: (1) prevent and address gender-based violence (GBV), which can be a form of sex discrimination prohibited by nondiscrimination and equal opportunity laws applicable to the workforce development system, and (2) reduce barriers that GBV survivors face in seeking jobs and participating in covered programs and activities.

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2. Action Requested. DOL is requesting the following actions:

- a. All recipients should use Attachment I when reviewing their existing policies and procedures and must make any changes necessary to implement the applicable equal opportunity and nondiscrimination requirements of Title IX of the Education Amendments of 1972 (Title IX) and Section 188 of WIOA.
- b. Equal Opportunity (EO) Officers should carefully investigate complaints of GBV in the public workforce system, as well as complaints alleging discrimination against applicants, participants, beneficiaries, and employees because they are survivors of GBV, to determine whether discrimination prohibited by Title IX or Section 188 of WIOA has occurred, as discussed in Attachment I. When investigating such allegations, EO Officers should interact with complainants, witnesses, and alleged victims in a trauma-informed, unbiased manner that recognizes the stresses of perceived and actual GBV and discrimination while pursuing neutral and objective investigative inquiries.¹

3. Summary and Background.

- a. Summary – This TEGL and the related attachment explain the legal authorities for the prohibition on discrimination, give some examples that may be prohibited discrimination, and suggest ways to prevent, identify, and address discrimination.
- b. Background – “Gender-based violence” is a term that generally refers to any harmful threat or act that is directed at an individual or group based on their sex or that disproportionately affects people based on their sex (including gender identity and sexual orientation).² GBV is a broad term that encompasses physical, sexual, psychological, emotional, economic, and technological abuse or harm; threats of such acts; harassment; coercion; and arbitrary deprivation of liberty.³

¹ Recipients should safeguard the confidentiality of survivors’ experiences with gender-based violence and should, as with any complainant, disclose their identity to others only with the complainant’s written consent and only so far as necessary to investigate the complaint.

² For related definitions of sex-based discrimination and harassment under WIOA section 188, *see* 29 C.F.R. §§ 38.7, 38.10.

³ Basile, K., et al., Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2014, available at https://www.cdc.gov/sexual-violence/communication-resources/sv_surveillance_definitions-2009-a.pdf?CDC_AAref_Val=https://www.cdc.gov/violenceprevention/pdf/sv_surveillance_definitions-2009-a.pdf; Breiding, M., et al., Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2015, available at https://www.cdc.gov/intimate-partner-violence/communication-resources/intimatepartnerviolence.pdf?CDC_AAref_Val=https://www.cdc.gov/violenceprevention/pdf/ipv/intimatepartnerviolence.pdf; Niolon, P. H., et al., Intimate Partner Violence Prevention: Resource Action, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2017, available at https://www.cdc.gov/violence-prevention/media/pdf/resources-for-action/IPV-Prevention-Resource_508.pdf; Basile, K., et al., Sexual Violence Prevention: Resource for Action, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2016, available at https://www.cdc.gov/violence-prevention/media/pdf/resources-for-action/SV-Prevention-Resource_508.pdf.

Surveys show that between 25% to 85% of women have experienced sexual harassment in the workplace, yet most cases are never reported formally. The risks of sexual violence, harassment, exploitation, and human trafficking are higher for certain groups of workers, including LGBTQI+ workers, and in workplaces where employees have limited bargaining power and fewer contractual and other rights at work.⁴ This includes work in fields where women are more likely to be underrepresented (e.g., trucking, commercial vessels at sea, construction, scientific field research, and the military), low-wage and tipped employment where workers have limited economic power to address mistreatment (e.g., restaurant, janitorial, agricultural, and migrant workers), and conditions of isolation where workers may be vulnerable to exploitation (e.g., domestic workers and home health aides). Workers frequently leave their jobs to avoid harassment or are retaliated against if they report this conduct and trainees may drop out of training and apprenticeship programs and go into debt.⁵

4. Equal Opportunity and Nondiscrimination Requirements. The equal opportunity and nondiscrimination provisions that apply to recipients of federal financial assistance, including recipients in the public workforce system, prohibit discrimination on the basis of sex, among other bases.

- a. **WIOA, 29 U.S.C. §§ 3101 *et seq.***, is the key source of federal financial assistance for state and local workforce development programs and activities. Sex is an explicitly protected basis under WIOA Section 188, which states that “[n]o individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under [Title IX]), national origin, age, disability, or political affiliation or belief.” 29 U.S.C. § 3248(a)(2).

The regulations implementing Section 188 of WIOA, 29 C.F.R. part 38, are administered and enforced by the Department of Labor’s Civil Rights Center (CRC). The WIOA Section 188 regulations:

- i. Provide that individuals “may not be excluded from participation in, denied the benefits of, or subjected to discrimination under any WIOA Title I-financially assisted program or activity based on sex.” 29 C.F.R. § 38.7(a).
- ii. Specify that unlawful sex discrimination includes “mak[ing] any distinction based on sex in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity. 29 C.F.R. § 38.7(b).
- iii. Provide that “[a] recipient’s policies or practices that have the effect of discriminating on the basis of sex and that lack a substantial legitimate justification constitute [unlawful] sex discrimination.” 29 C.F.R. § 38.7(c).

⁴ Sears, Brad, et al., *LGBT People’s Experiences of Workplace Discrimination and Harassment 2023*, UCLA School of Law Williams Institute, August 2024, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Aug-2024.pdf>.

⁵ EEOC Questions and Answers: Enforcement Guidance on Retaliation and Related Issues, U.S. Equal Employment Opportunity Commission, August 2016, available at <https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues>.

- iv. Prohibit “[d]iscrimination on the basis of sex stereotypes, such as stereotypes about how persons of a particular sex are expected to look, speak, or act.” 29 C.F.R. § 38.7(d).
 - One example of such **unlawful sex discrimination** is provided in paragraph (7): “Denying an individual access to, or otherwise subjecting the individual to adverse treatment in accessing, any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, based on sex stereotyping including the belief that a victim of domestic violence would disrupt the program or activity and/or may be unable to access any aid, benefit, service, or training.”
- v. Prohibit sex-based harassment. 29 C.F.R. § 38.10.
 - Unwelcome sexual advances, requests for sexual favors, offensive remarks about a person’s sex (and/or other protected categories), and other unwelcome verbal or physical conduct based on sex (and/or other protected categories) constitute **unlawful sex-based harassment** when:
 - “(1) Submission to such conduct is made either explicitly or implicitly a term or condition of accessing the aid, benefit, service, or training of, or employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity;
 - “(2) Submission to or rejection of such conduct by an individual is used as the basis for limiting that individual's access to any aid, benefit, service, training, or employment from, or employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity; or
 - “(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's participation in a WIOA Title I-financially assisted program or activity creating an intimidating, hostile or offensive program environment.”

These equal opportunity and nondiscrimination obligations apply to recipients of WIOA Title I funding as defined by the regulations, including programs and activities that are part of the public workforce system and are operated by American Job Center partners to the extent the programs are being conducted as part of the one-stop delivery system. 29 C.F.R. §§ 38.2(a)(2), 38.4(zz).

In addition, under the **Wagner-Peyser Act regulations at 20 C.F.R. part 652**, states are required to assure that “no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Wagner-Peyser Act in violation of any applicable nondiscrimination law.” 20 C.F.R. § 652.8(j)(1). The Wagner-Peyser Act regulations specifically require states to “[a]ssure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).” 20 C.F.R. § 652.8(j)(2).

- b. **Title IX, 20 U.S.C. §§ 1681 *et seq.***, applies to education programs and activities receiving federal financial assistance, including grantees that receive financial assistance under WIOA and/or the Wagner-Peyser Act. Title IX and its implementing regulations prohibit any program or activity receiving federal financial assistance from excluding from participation in, denying the benefits of, or subjecting anyone to discrimination under any such program or activity on the basis of sex. 20 U.S.C. § 1681(a).

DOL's regulations implementing Title IX, 29 C.F.R. part 36, apply to “any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance,” with certain exceptions. 29 C.F.R. § 36.400(a). DOL's Title IX regulations:

- i. Make it a condition of receiving federal financial assistance that recipients provide assurances “that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations” and in compliance with all applicable federal nondiscrimination laws, including Title IX. 29 C.F.R. § 36.115.
 - ii. Specify that recipients that assist outside agencies, organizations, and individuals in making employment available to the recipients' students “[s]hall assure itself that such employment is made available without discrimination on the basis of sex; and . . . [s]hall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.” 29 C.F.R. § 36.435(a).
 - iii. Provide that recipients “shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.” 29 C.F.R. § 36.540.
5. **Inquiries.** Inquiries about equal opportunity issues in the public workforce system should be addressed to CRC, by phone at 202-693-6502 (voice) or by e-mail at CivilRightsCenter@dol.gov. Individuals who are deaf, hard of hearing, or have a speech-related impairment may dial 7-1-1 to access telecommunications relay services.

Complaints alleging discrimination in covered programs and activities may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, 202-693-6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

6. References.

- WIOA Section 188, 29 U.S.C. § 3248
- WIOA Section 188 regulations, 29 C.F.R. part 38
- Wagner-Peyser Act regulations, 20 C.F.R. part 652
- Title IX, 20 U.S.C. §§ 1681 *et seq.*
- DOL's Title IX regulations, 29 C.F.R. part 36

7. Attachment.

- Attachment I: Fact Sheet: *Protecting Individuals from Discrimination on the Basis of Gender-Based Violence*