


EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION OWI
	CORRESPONDENCE SYMBOL OWI
	DATE November 22, 2024

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

FROM: JOSÉ JAVIER RODRÍGUEZ 
Assistant Secretary
Employment and Training Administration
Naomi M. Barry-Perez
NAOMI BARRY-PÉREZ
Director
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.

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

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 TEG 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*

FACT SHEET: Protecting Individuals from Discrimination on the Basis of Gender-Based Violence

The role of the Civil Rights Center at the Department of Labor

The Civil Rights Center (CRC) at the Department of Labor (DOL) assesses, investigates, and adjudicates discrimination complaints and conducts compliance reviews to administer and enforce equal opportunity laws. CRC enforces several legal authorities that protect individuals from discrimination, including the following:

- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq.
- DOL’s regulations implementing Title IX at 29 C.F.R. part 36
- Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248
- DOL’s regulations implementing WIOA Section 188 at 29 C.F.R. part 38

These legal authorities apply to 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, which are referred to as “recipients.” This fact sheet describes ways these legal authorities protect individuals from discrimination on the basis of gender-based violence, which may be a form of unlawful sex discrimination.

What is gender-based violence?

- The term “gender-based violence” generally refers to any harmful threat or act that is directed at an individual or group based on their sex or disproportionately affects people based on their sex (including gender identity and sexual orientation).
- Gender-based violence 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. Examples of gender-based violence include intimate partner violence, dating violence, sexual assault, stalking, and other forms of sex-based harassment.
- While gender-based violence can impact anyone, women and girls, as well as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons, are disproportionately impacted.

How might gender-based violence occur in federally funded programs and activities?

- When gender-based violence occurs in connection with participation in federally funded programs and activities, it may be a form of sex discrimination prohibited by the statutes listed above and therefore within CRC’s authority to investigate. Gender-based violence is within CRC’s authority to investigate if it occurs in connection with participation in federally funded programs or activities as well as if it occurs outside the context of federally funded programs in certain instances, as described below.
- Gender-based violence may occur in connection with participation in federally funded programs or activities, for example, when:
 - Engaging in activities in offsite locations;
 - Taking breaks, such as in break rooms or between classes;
 - Communicating online, such as through email, social media, or other virtual platforms;

- Traveling in a vehicle, such as between program sites;
- Living in program-sponsored housing; or
- Interacting with coworkers or customers, such as in work-based learning programs.
- Gender-based violence that takes place outside the context of federally funded programs and activities (in other words, in one's personal or private life) can also have spillover effects, potentially affecting a participant's performance, attendance, or ability to access or participate in federally funded programs and activities. If a federally funded program or activity considers this information in a manner that adversely affects the participant's ability to participate, the program or activity may be engaging in sex-based discrimination.

What are recipients' obligations to prevent and address gender-based violence and discrimination based on gender-based violence?

- Recipients are prohibited from discriminating on the basis of sex and sex stereotypes, including, for example, making a decision about participation in a program or activity by an individual who is a victim of domestic violence based on a sex-stereotypical belief that they would disrupt the program or activity and/or may be unable to access any aid, benefit, service, or training because of the violence they are experiencing or previously experienced.
- Recipients are required to notify applicants, participants, beneficiaries, and employees about their rights under nondiscrimination and equal opportunity laws.
- Recipients must have procedures in place for individuals to file complaints of sex discrimination internally, including complaints that gender-based violence occurred in their program or activity. The complaint procedures must be prominently displayed in a conspicuous physical location as well as being made available online.
- Recipients must respond promptly and effectively to complaints of sex discrimination, including complaints of gender-based violence, occurring in their covered programs and activities. Among other requirements, recipients must investigate the circumstances underlying the complaint; attempt to resolve the complaint; and, within 90 days of the date on which the complaint was filed, issue a written Notice of Final Action, which must include notice that the complainant has a right to file a complaint with CRC within 30 days of receipt of the Notice of Final Action.
 - When investigating allegations of gender-based violence and related forms of discrimination, Equal Opportunity Officers and others with related responsibilities should interact with complainants, witnesses, and alleged victims in a trauma-informed manner that recognize the stresses of actual and perceived gender-based violence and discrimination while pursuing neutral and objective investigative inquiries. Every recipient except small recipients and service providers must designate a recipient-level Equal Opportunity Officer.
- If gender-based violence occurs in a covered program or activity, the recipient that provides the program or activity must take immediate action to eliminate the gender-based violence, prevent its recurrence, and address its effects.
- Recipients are prohibited by law from retaliating against individuals because they filed a complaint, testified, or participated in any manner in an investigation or other equal opportunity proceeding. Recipients also must take appropriate steps to prevent such retaliation.

Examples of incidents that could raise Title IX and/or WIOA Section 188 concerns

A student in a covered residential job training program reports to the program’s health staff that she has been sexually assaulted by another student. The program’s health staff fail to conduct a medical examination of the victim, to provide her with medication to treat sexually transmitted diseases, or to offer follow-up counseling for her. Instead, the program center sends both students home on unpaid administrative leave pending the outcome of its investigation of the alleged incident of sexual violence.

A participant in a covered reentry program tells the career counselor that she has experienced intimate partner violence and is interested in pursuing a career in social work. The counselor refuses to connect her with training resources, stating that the participant is not suited for a career in social work if she cannot even take care of her own “family problems.”

A participant requests the day off from his covered on-the-job training program because he needs to move into a shelter immediately to escape violence from his partner. The program tells him not to bother coming back to work at all, saying the employee must be lying because “someone like you” would obviously not be a victim of intimate partner violence.

A participant in a covered job training program tells her instructor that her former boyfriend, a participant in the same training program, has started stalking her online. The participant tells her instructor that she is afraid to continue her training because of the threatening emails he is sending her. The instructor tells the participant there’s nothing she can do because the conduct is occurring outside the program.

A participant in a covered program offered by an eligible training provider advises her program counselor that she recently moved into a domestic violence shelter with her small children and requests to shift her evening class schedule to comply with the shelter’s curfew requirements. The counselor declines the participant’s request despite having granted other participants’ requests for alternate course schedules, stating, “Sorry, I can’t give you special treatment based on what’s happening in your personal life, and anyway, as a mother, you should really be focusing on your children right now.”

What can a person do if they experience gender-based violence or discrimination based on gender-based violence in a program or activity funded by DOL?

Anyone who believes that discriminatory actions have been taken in a covered program or activity may file a complaint with CRC. For more information about filing a complaint, please visit www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm.

For assistance and additional resources, please visit CRC’s homepage at www.dol.gov/oasam/programs/crc/, or contact CRC by phone at 202-693-6502 or by email at CRCEXternalComplaints@dol.gov. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Please note that this resource does not have the force and effect of law. CRC’s authority to enforce Title IX and WIOA Section 188 comes from the statutes and their implementing regulations.