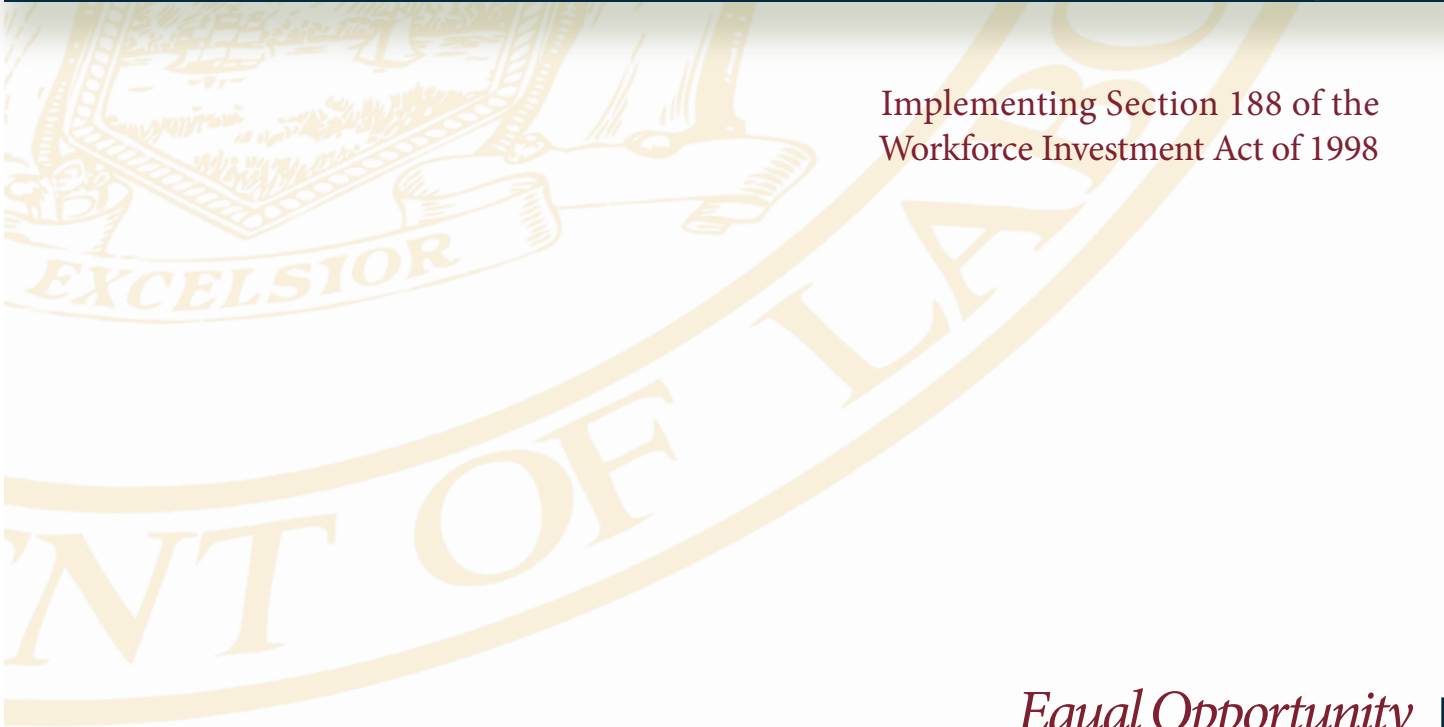




New York State's **Methods of Administration**
Corrective Actions/Sanctions

Element 9



Implementing Section 188 of the
Workforce Investment Act of 1998

Equal Opportunity
IS THE LAW

Element 9: Corrective Action/Sanctions (29 CFR 37.54 (D) (2) (vii))

- a. Describe the standard for corrective and remedial actions to be applied when violations of WIA Section 188 or 29 CFR Part 37 are found. Corrective and remedial action must be designed to completely correct each violation. For each corrective action a time frame should be established that sets the minimum time necessary to completely correct the violation. In the case of a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including, but not limited to back pay) and prospective relief (e.g. training, policy development and communication) to ensure that the discrimination does not recur.**
- b. Describe the procedures for follow-up monitoring to ensure that commitments to take corrective action and remedial action are fulfilled.**
- c. Describe the reports required from the violating recipient regarding actions to correct the violation(s).**
- d. Describe the sanction procedures to be followed where voluntary compliance cannot be achieved.**

The New York State Department of Labor (NYSDOL) has developed and published procedures to prevent and/or redress violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA) and the implementing regulations.¹ NYSDOL developed the procedures during the 2004-2005 New York City WIA Compliance Review for, both, state and local level. The procedures provide remedies for technical or discrimination violations of Section 188 of WIA and 29 CFR Part 37 discovered as the result of compliance reviews, complaints, desk audits, community concerns and/or information submitted by the LWIAs. Corrective actions vary in accordance with the severity of the violation. All of the required components are included in these procedures, including specific time frames for completion of corrective actions and the individual responsible for follow-up action. Elements 7 and 8 of the Methods of Administration outline the State's Compliance/Monitoring plan and its WIA Equal Opportunity and Nondiscrimination Complaint Processing Procedures. These policies also contain the requirements that WIA grant recipients must meet for providing initial and continuing notice of nondiscrimination to WIA participants.

Corrective action means any action designed to eliminate a violation. Violations identified through compliance reviews prompted by request, through a complaint or series of complaints, and/or by an apparent or observed trend of disparity will incur corrective actions. Corrective actions are necessary when a violation of the nondiscrimination and equal opportunity provisions of WIA is identified. The Local Workforce Investment Area (LWIA) is advised at the Compliance Review, Exit Conference or Technical Assistance Training that follow-up monitoring can occur at any time. Instances where deficiencies are identified and corrective action plans are submitted, on-site follow-up may occur within 30 days from receipt of the corrective action plans to assess the adequacy of the corrective action plan.

Corrective action focuses on the problem and corresponds to the seriousness of the violation. Corrective actions vary in severity from a technical violation to a discrimination violation. *Technical violations* may include, but are not limited to: failure to designate an Equal Opportunity Officer who is a senior level employee whose responsibilities and activities are not in conflict with other duties, failure to include required language in assurances and failure to display an EO poster notice. *Discrimination Violations* may include, but are not limited to, findings of disparate treatment, disparate impact, and failure to provide reasonable accommodation.

Technical Violations

Corrective actions for technical violations are tailored specifically to each finding and designed to correct the problem completely. Technical violations or deficiencies may require a different time frame for corrections than discrimination findings. The State-level EO Officer will notify the recipient in writing of the deficiencies found during EO monitoring reviews, as well as a suggested corrective action plan. A written assurance certifies that a deficiency has been corrected and noted in the corrective action. The assurance will attest that the recipient will continue to take steps to correct the deficiency and avoid recurrences. When appropriate, the corrective actions also include training for the staff responsible for its implementation. For each corrective action, the recipient and NYSDOL will establish the minimum time frame necessary to correct the violation completely. Technical assistance is provided to assist with deficiencies or noncompliance that cannot be resolved or corrected voluntarily. Follow-up visits are conducted where necessary to evaluate the degree of progress made towards resolving existing noncompliance factors. Corrective action can be completed within 45 days of the recipient's written notification of the deficiency and when the deficiency involves technical issues (posting required notices, revising assurance language in contracts, revising complaint procedures), not discrimination issues.

Discrimination Violations

Corrective actions may include, but are not limited to, preventative and corrective requirements designed to prevent a recurrence of the discrimination; nondiscriminatory referral; cessation provisions; and make whole relief. As described in 29 CFR 37.94 (b) (2), make whole relief for discrimination violations, includes, as appropriate: back pay (which must not accrue from a date more than two years before the filing of a complaint or the initiation of a compliance review or other monetary relief); hiring or reinstatement; retroactive seniority; promotions; benefits or other services discriminatorily denied; and such other remedial or affirmative relief as NYSDOL deems necessary. It may include, but is not limited to, outreach, recruitment, and training designed to ensure equality. Monetary relief may not be paid from federal funds. Corrective actions involving discrimination are tailored specifically to the deficiency, designed to correct the problem completely and include a timetable not to exceed 45 days for completing the action.

Initial Determination

When a determination is made that a violation of the nondiscrimination and equal opportunity provisions of WIA has occurred, the State-level EO Officer notifies the violating recipient through the issuance of an Initial Determination. The Initial Determination must include:

- the specific findings of the investigation or review;
- the corrective or remedial action that the State-level EO Officer proposes;
- the time by which the corrective or remedial action must be completed;
- the opportunity to engage in voluntary compliance negotiations; and
- whether it will be necessary for the recipient to enter into a written assurance that the violation has been corrected, or whether it will be necessary to enter into a Conciliation Agreement, or both.

Written Assurance and/or Conciliation Agreement

A written assurance must list the deficiency and corrective actions as specified in the State-level EO Officer's written Initial Determination; describe the corrective actions taken to correct the deficiency and the dates those corrective actions were taken; and include a statement that the recipient is taking and will continue to take steps to assure that the deficiency does not recur. In addition, the written assurance must provide documentation that the violations listed in the Initial Determination have been corrected.

A Conciliation Agreement must be in writing; address each cited violation; specify the corrective or remedial action to be taken within a stated period of time to come into compliance; provide for periodic reporting on the status of the corrective and remedial action; provide that the violation will not recur; and provide for enforcement for a breach of the agreement. The schedule for periodic reporting from the violating recipient on the status of any corrective or remedial action will be established by the State-level EO Officer. The State-level EO Officer will determine whether follow-up visits or some other additional monitoring is necessary based on the information/documentation provided in the reports.

The violating recipient will be required to provide, at a minimum, written quarterly reports of the actions it has taken to correct the violation. The report will include a thorough description of the actions taken by the violating recipient and any planned additional actions.

Follow-Up Monitoring

The State has adopted the monitoring instruments from USDOL CRC, such as the Monitoring Checklist, Computer Checklist and the Premise Review Accessibility Guide.

All are used at present. No written procedures were developed. A new EO Monitoring Guide (encompassing all those areas) and procedure are in development at present.

Notification of Breach of Conciliation Agreement

When it becomes known to the State-level EO Officer that a Conciliation Agreement has been breached, he or she will issue a Notification of Breach of Conciliation Agreement to the recipient and any other parties to the agreement. The Notification must:

- specify any efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;
- identify the specific provisions of the Conciliation Agreement violated;
- determine liability for the violation and the extent of the liability; and
- indicate that failure of the violating party to come into compliance within ten (10) days of the receipt of the Notification of Breach of Conciliation Agreement may result in the termination or denial of the grant, discontinuation of assistance, or recoupment of funds, as appropriate, or in referral to the New York State Attorney General or the United States Department of Justice with a request to file suit against the recipient.

When to Impose Sanctions

A sanction is any official action implemented to penalize or censure a non-complying recipient. After all attempts to provide technical assistance and correction of deficiencies fail, the imposition of sanctions will be considered. If the State-level EO Officer concludes that compliance cannot be secured by voluntary means, he or she must:

1. issue a Final Determination; and
2. take such other action as may be provided by law.

The **Final Determination** must contain the following information:

- A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
- A statement of those matters upon which the recipient and the State-level EO Officer continue to disagree;
- A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination;
- A statement of the recipient's liability and, if appropriate, the extent of that liability;
- A description of the corrective or remedial actions that the LWIA or recipient must take to come into compliance;
- A notice that if the recipient fails to come into compliance within ten (10) days of the date on which it receives the Final Determination, one or more of the following consequences may result: WIA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, or

- a demand for the recoupment of funds, as appropriate; NYSDOL may refer the case to the New York State Attorney General or the United States Department of Justice with a request to file suit against the recipient; or NYSDOL may take any other action against the recipient that is provided by law; and
- A Notice of the recipient's right to appeal the Final Determination.

Appeal of Final Determination

A recipient has the right to appeal a Final Determination to the Commissioner of Labor. The appeal must be in writing and made within twenty (20) days after the mailing of the Final Determination. Such an appeal, however, will not forestall the initiation of sanctions unless the Commissioner extends the deadline.

¹ Workforce Development System Technical Advisory #02-5, New York State's Methods of Administration : Element 9: Corrective Actions/Sanctions" which may be found at <http://www.workforcenewyork.org/ta/ta02-5.htm>