



TECHNICAL ASSISTANCE

Date: 01/26/2022
Contact: eo@dwd.in.gov
Program: Workforce Innovation and Opportunity Act (WIOA) Equal Opportunity
Subject: DWD Technical Assistance 2021-07
Complaint Procedures for WIOA Nondiscrimination and Equal Opportunity Provisions

Purpose

To provide guidance regarding the requirement that recipients¹ develop and publish complaint processing procedures in accordance with the equal opportunity and nondiscrimination provisions within WIOA Section 188 and its implementing regulations at 29 CFR Part 38. This guidance provides minimum requirements and procedural guidance to local workforce development boards (local WDBs or LWDBs), subrecipients of WIOA Title I grant funds, service providers, and WorkOne American Job Centers (AJCs) regarding the development, maintenance, and implementation of local-level discrimination complaint processing procedures. This guidance is primarily intended to assist Local Equal Opportunity Officers (Local EO Officers) in processing locally received complaints.

References

- WIOA Section 188
- 29 CFR Part 38
- DWD Policy 2016-09 *Equal Opportunity and Nondiscrimination Guidance Letter*

Content

All grant recipients/program providers under Title I of WIOA are responsible for complying with the discrimination complaint procedures consistent with 29 CFR Part 38, as outlined in this technical guidance. Any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIOA Title I has the right to file a complaint within 180 calendar days of the alleged discrimination. The filing period may be extended for good cause in some limited circumstances. However, only the Director of the CRC may extend the filing time.

¹ See 29 CFR 38.4(zz). A recipient is any entity that receives financial assistance under WIOA Title I, either directly from the US Department of Labor or through the Governor or another recipient. American Job Center Partners are considered recipients to the extent that they participate in the one-stop delivery system.

The WIOA nondiscrimination regulations prohibit discrimination in all aspects of the administration, management, and operation of WIOA programs, services, and activities. DWD has adopted the following procedures for processing complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIOA Title I-funded programs.

Responsibilities of the LWDB/Local Area

Recipients, such as local WDBs, must develop and publish complaint processing procedures for use by their service providers. Procedures must state that a Notice of Final Action (NFA) will be issued within **90 days** of the complaint filing date. At a minimum, the procedures must also include the elements listed below.²

- a. An initial written notice to complainant that:
 - i. Acknowledges receiving the complaint;
 - ii. Provides notice that complainant has right to be represented in the complaint process;
 - iii. Provides notice of rights contained in 29 CFR 38.35; and
 - iv. Provides notice that complainant has right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages.³
- b. A written statement of the issue(s) to complainant that includes:
 - i. A list of the issues raised in the complaint; and
 - ii. For each issue, a statement whether recipients will accept issue for investigation or reject, and reasons for each rejection.⁴
- c. Stated period⁵ for fact-finding/investigation of the circumstances of the complaint.
- d. Stated period⁶ that recipient attempts to resolve complaint, including alternative dispute resolution (ADR).⁷
- e. Written NFA provided to complainant within **90 days** of the date on which the complaint was filed. The NFA must include for each issue in the complaint:
 1. Either the decision on the issue and explanation of reason of that decision or description on how issue was resolved; and
 2. Notice that the complainant has the right to file a complaint with the US Department of Labor's Civil Rights Center (CRC) within **30 days** from date the NFA is received if complainant is dissatisfied.⁸
 3. Must provide for ADR, which may be attempted at any time between the filing date of the complaint and the issue of the NFA and only the complainant can decide whether to use ADR or follow customary process. If parties do not reach an agreement under ADR, complainant may file complaint with CRC.⁹

² 29 CFR 38.73.

³ As required in 29 CFR 38.4(h) and (i), 38.34, and 38.36.

⁴ See Attachment B *Example: Initial Written Notice of Receipt*.

⁵ Locally defined. Must meet 90-day requirement.

⁶ Locally defined. Must meet 90-day requirement.

⁷ In ADR, a neutral party is used to resolve issues between complainant and respondent. ADR may be attempted any time between the filing date of the complaint and the issuance of the notice of final action (NFA). Only the complainant can decide whether to use ADR or to follow customary process.

⁸ See Attachment C *Example: Notice of Final Action*.

⁹ As described in 29 CFR 38.69 – 38.71.

Local EO Officers are primarily responsible for complaint processing in their respective local areas and must ensure that procedures are followed. See the *Discrimination Complaint Process* section below for additional information and steps to be followed by Local EO Officers.

Each local area, through their designated Local EO Officer, must track and process all local discrimination complaints per their local complaint processing procedures. The Local EO Officer must inform and keep the State EO Officer updated of all complaints, including forwarding a copy of the filed discrimination complaint to the State EO Officer. Local EO Officers must complete and submit a Quarterly Complaint Log¹⁰ to the State EO Officer via email to the DWD Equal Opportunity inbox (EO@dwd.in.gov) on April 5th, July 5th, October 5th, and January 5th.

Discrimination Complaint Process

Step 1: Filing a Complaint

A complainant or complainant representative files a discrimination complaint with the local area by completing the CRC Discrimination Complaint Form¹¹ or by using a locally developed form¹² or they can file directly with the CRC.¹³ These forms are available from the Local EO Officer, the State EO Officer, or from the CRC. Filing a complaint with the local area does not affect a complainant's right to file with the CRC if complainant is not satisfied with the resolution provided by the local area. Regardless of with whom the complainant files the discrimination complaint, the following information must be provided by complainant:¹⁴

- The complainant's name, mailing address, e-mail address, if available, and telephone number (or another means of contacting the complainant).
- The identity of the respondent (the individual or entity that the complainant alleged is responsible for the discrimination).
- A description of the complainant's allegations. This description must include enough detail to allow the local area, the DWD, or the CRC to decide whether:
 - Local, State, or the CRC, as applicable, has jurisdiction over the complaint;
 - The complaint was timely filed (within **180 days**); and
 - The complaint has merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA. Completing and submitting either local, State, or the CRC Complaint Form may provide the information required by this paragraph.
- The complainant's written or electronic signature, or the written or electronic signature of the complainant's authorized representative.

¹⁰ State Form 46001.

¹¹ Please visit: <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/how-to-file-complaint> to obtain the CRC Discrimination Complaint Form.

¹² Any locally developed form must contain all the necessary and relevant complaint information as outlined in the CRC's form and this guidance. Existing forms should be examined to make sure they align with these expectations and are modified if needed.

¹³ Although 29 CFR 38 outlines the federal complaint processing procedures, sometimes complainants elect to file through other means (e.g., the Indiana Civil Rights Commission). If this occurs, the Local EO Officer should immediately notify the State EO Officer of notification from ICRC.

¹⁴ 29 CFR 38.70.

Complainants with disabilities must be provided, upon request and at no cost to them, appropriate accommodations, auxiliary aids, and services to file their complaint. Customers who are limited English proficient (LEP) must be provided, upon request and at no cost to them, language assistance services, including oral interpretation and/or written translation to file their complaint.

Step 2: Jurisdiction

Upon receipt of a discrimination complaint, the Local EO Officer must log the complaint on the Quarterly Complaint Log and, if necessary, confer with the State EO Officer prior to determining jurisdiction over the complaint. If it is determined that another entity has jurisdiction, the Local EO Officer must promptly refer the discrimination complaint to the State EO Officer and notify the complainant in writing and include the reasons for the referral. If it is under the jurisdiction of the local area, the Local EO Officer must issue a letter to the complainant acknowledging receipt of the complaint, outline the issues identified, and include that the complainant has the right to file a complaint with the Director of the CRC within **30 calendar days** of the date on which the complainant received the notice.

If the discrimination complaint contains insufficient information or is missing requirements, the Local EO Officer should attempt to obtain information from the complainant. If complainant fails to provide information, the local area can reject the complaint.

If the complaint is a state level complaint, the State EO Officer will work with the program point of contact to follow the steps for their particular program.

If the discrimination complaint is sent directly to the State EO Officer, and it falls under the jurisdiction of the local level, the State EO Officer will contact the Local EO Officer to address the complaint locally.

Step 3: Notice of Receipt Letter¹⁵

The Local EO Officer must issue an initial written Notice of Receipt letter to complainants that contains the following information:

- Acknowledgement of receipt of the discrimination complaint;
- Notice that the complainant has the right to be represented in the discrimination complaint process;
- Equal Opportunity is the Law notice;
- Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that the notice will be translated into the appropriate non-English language;¹⁶

The following information needs to be provided in a written statement to the complainant and it is suggested to include them in the Notice of Receipt Letter:

- A list of each issue raised in the discrimination complaint and, for each issue, a statement that the issue is accepted for investigation or is not accepted. The reason(s) must be provided for rejection; and

¹⁵ See Attachment B *Example: Initial Written Notice of Receipt*.

¹⁶ As required in 29 CFR Part 38.34, 29 CFR Part 38.36, and 29 CFR Part 38.9.

- The complainant must be given an invitation to participate in ADR.¹⁷

Step 4: Begin the Investigation

The Local EO Officer must begin an investigation of the discrimination complaint immediately after issuance of the Notice of Receipt.

The total time allowed for processing the discrimination complaint is **90 calendar days** from the date on which the complaint was filed. If by the end of the **90 days** from the filing date, the recipient has failed to issue a Notice of Final Action, the complainant may file a complaint with the CRC Director within 30 days of the expiration of the 90-day period (i.e., within **120 days** of filing date).

If the complainant elects to file with the CRC, the complainant must be informed that the local area has **90 calendar days** to process the discrimination complaint and that CRC will not investigate the complaint until the **90 calendar-day** period has expired.

Step 5: Alternative Dispute Resolution

If the complainant chooses to participate in ADR to mediate the complaint, they or their designee must respond in writing and it must be dated, signed by the complainant, and include the relief sought. Complainants may request ADR at any time after they have filed a written complaint, but before they have received NFA. The choice whether to use ADR or the customary investigative process rests with the complainant. If the complainant chooses ADR, the respondent will be notified, and a mediator will be assigned. Each LWDB should assign a designated mediator. Mediators must be neutral, third-party individuals who can assist the complainant and respondent in communicating concerns and reaching mutual agreement to resolve the dispute. The mediator does not rule as who is right or wrong, take sides or advocate for one side or another, or impose a decision on the parties. Rather, mediators work to turn points of agreement into a fair result for both parties. Mediation procedures are as follows:

1. Parties will receive notice of where and when the mediation will be conducted. If the parties do not reach an agreement, a notice will be issued outlining the facts or circumstances relevant to the attempt to settle the issues. Notice will be given that the complaint has been referred for investigation. If mediation was used successfully, a description of the resolution will be provided. A copy of the agreement will be provided to the complainant and respondent from the conclusion of the mediation session and the agreement will contain the following:
 - a. Signatures of mediator, complainant, and respondent;
 - b. Description of the settlement of the issues; and
 - c. If the parties do not reach an agreement under mediation, the complaint will be referred for investigation.
2. If possible, the ADR process should be completed within **30 calendar days** of receipt of the discrimination complaint. This will assist in keeping within the **90 calendar-day** timeframe of the written NFA if the ADR is not successful.

¹⁷ For more information, see the *Alternative Dispute Resolution (ADR) Process* section below.

3. If resolution is reached under ADR, the agreement will be in writing. A copy of the signed agreement will be sent to the State-Level EO Officer. If an agreement is reached under ADR but a party to the agreement believes the agreement has been breached, the non-breaching party may file a complaint with the CRC within **30 calendar days** of the date on which the non-breaching party learns of the alleged breach.
4. If the parties do not reach resolution under ADR, the Local EO Officer will continue with the investigation, or the complainant may file a complaint with the CRC.

Step 6 Provide a written Notice of Final Action¹⁸

After the Local EO Officer investigates the discrimination complaint and/or participates in ADR, a written NFA must be provided to the complainant within **90 days** of the date on which the complaint was filed. The notice will contain, for each issue raised in the complaint, a statement of either:

- The recipient's decision on the issue and an explanation of the reasons underlying the decision; or
- A description of the way the parties resolved the issue; and
- A statement that the NFA is issued during the **90-day** period, and the complainant is dissatisfied with the decision. The complainant, or his or her representative, has a right to file a complaint with the Civil Rights Center within **30 days** of the date on which the complainant receives the NFA. Only the Director of the Civil Rights Center may extend the **30-day** time limit for good cause. The complainant has the burden of proving, to the Director of the Civil Rights Center, that the time limit should be extended.

If, by the end of the **90 days** from the date on which the complainant filed the complaint, the Local EO Officer has not completed its processing of the complaint or failed to issue a NFA, the complainant, or the complainant's representative, may file a complaint with the Civil Rights Center within **30 days** of the expiration of the **90-day period**. In other words, the complaint must be filed with the Civil Rights Center within **120 days** of the date on which the Local EO Officer received the complaint.

Action

Local areas must develop discrimination complaint procedures as required in 29 CFR 38.72 and 29 CFR 38.73.

Attachments

Attachment A - Discrimination Complaint Process Flowchart

Attachment B - Example: Initial Written Notice of Receipt Letter

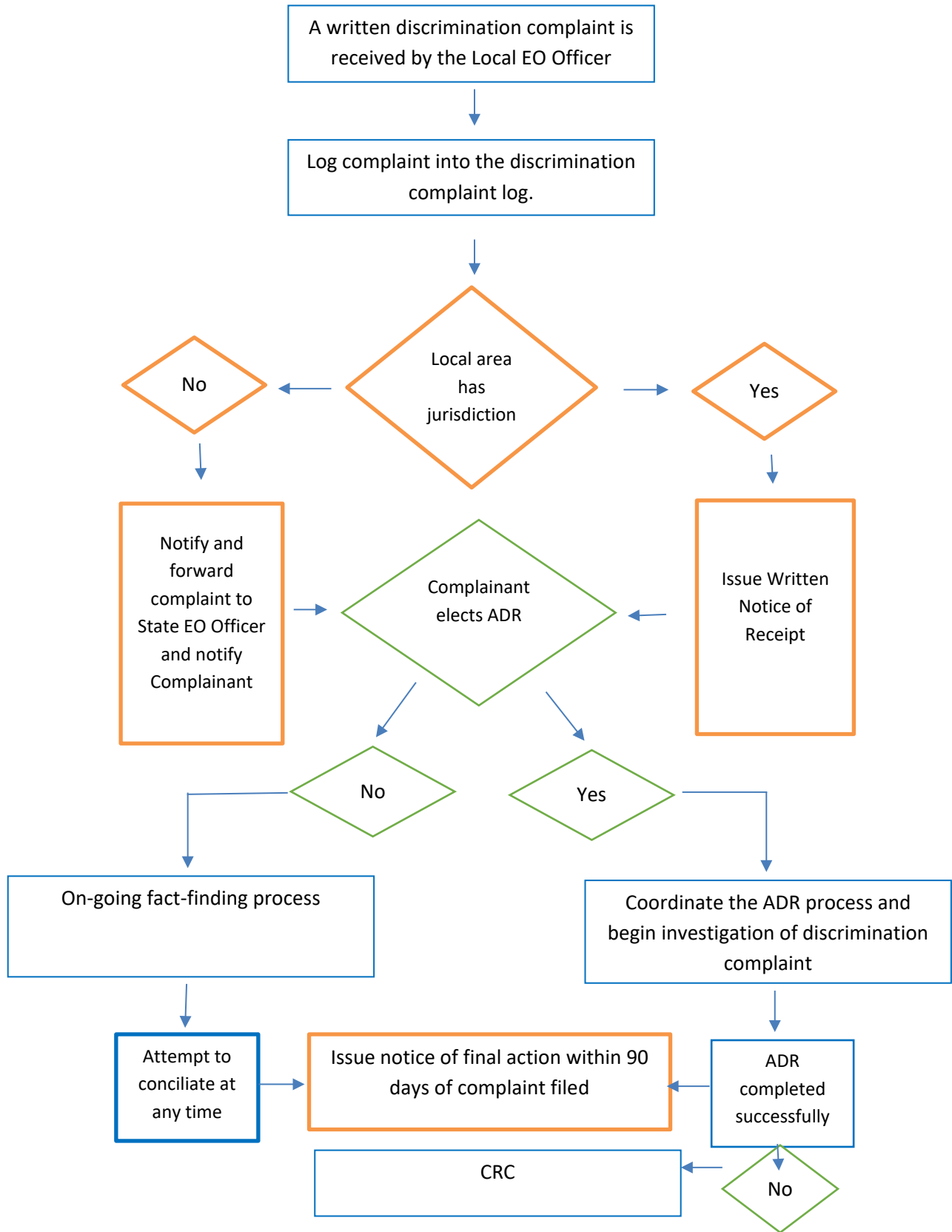
Attachment C - Example: Notice of Final Action Letter

Additional Information

Questions regarding the content of this publication should be directed to eo@dwd.in.gov.

¹⁸ See Attachment C Example: Notice of Final Action.

**Attachment A
Discrimination Complaint Process**



Attachment B
Example: Initial Written Notice of Receipt Letter

NOTICE OF RECEIPT

Date:

Attorney or Complainant Name
Attorney or Complainant Address
Attorney or Complainant City, State, Zip

Re: WIOA Complaint by (name of complainant)

Dear

The (recipient) received the discrimination complaint (“Complaint”) dated XXXXXX, submitted by name of complainant (“Complainant”) by counsel XXXXXX.

Notices required by 29 CFR § 38.72(b)(1)

Pursuant to 29 CFR §38.72(b)(1)(i), the Department acknowledges that the Complaint has been received.

Pursuant to 29 CFR §§ 38.71 and 38.72(b)(1)(ii), Complainant has the right to be represented by an attorney or other individual of their choice.

Pursuant to 29 CFR § 38.72(b)(1)(iii), find enclosed a notice of rights.

Pursuant to 29 CFR § 38.72(b)(1)(iv), Complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and this notice will be translated into the non-English languages as required in 29 CFR §§ 38.4(h) and (i), 38.34, and 38.36.

The Complaint

The Complaint alleges the (Recipient) discriminated against Complainant due to Complainant’s xxxxxx. Specifically, the Complaint alleges the following:

Issue #1 – On (date), at the (location), xxxxxxxx.

Acceptance of Issues for Investigation & Procedure

The (recipient) accepts the issue in the Complaint for investigation.

The (recipient) will conduct a 60-day fact finding and attempt a satisfactory resolution with Complainant, by counsel. At any point within those 60 days, any party can request the use of an Alternative Dispute Resolution (ADR) process, such as mediation.

The (recipient) will issue a Notice of Final Action on the complaint within 90 days of the date the Complaint was filed. Therefore, the (recipient) may issue a Notice of Final Action in this matter on or before **(date)**. If Complainant is dissatisfied with the (recipient's) decision or resolution, the Complainant may file a complaint with the Director of the Civil Rights Center (CRC) for the U.S. Department of Labor at <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/how-to-file-complaint>. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

If the Department does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

Sincerely,

(Name of Local EO Officer)
Equal Opportunity Officer
Address:
Phone:
(email)
(web)

Attachment C
Example: Notice of Final Action Letter

Complainant or Representing Attorney

Date:

Name and Address

Re: WIOA Complaint by (complainant)

Dear (Complainant or representing attorney):

Notice of Final Action (NFA)

By Notice of Acceptance dated (enter date), the parties were notified of an accepted complaint of discrimination filed by (Name of Complainant”), against the (recipient’s name).

The Complainant alleges that the (recipient) discriminated against the Complainant on the basis of XXXXX, in violation of Section 188 of the Workforce Innovation and Opportunity Act (“WIOA”). The complaint was filed timely, and all other jurisdictional requirements are met.

Issues Accepted

The following issues were accepted for investigation in the Notice of Acceptance and are the subject of this Notice of Final Action:

Issue #1 – On (date), at the (location of complaint), XXXXXXXX.

Findings of Fact

Based on documentation during the investigation, the (recipient) makes the following findings of fact:

1. XXXXXXXX.

Conclusion

Regarding the Issues Accepted for this investigation, and based on the foregoing Findings of Fact, it is concluded that XXXXXXXX.

Remedies

The (recipient) is committed to providing equal opportunity and equal access to all individuals in programs and activities funded by Title I of the Workforce Innovation and Opportunity Act (WIOA) (29 USC 3248) and its implementing Regulations (Final Rule, 29 CFR Part 38). Based on our investigation, the following actions have been or will be taken to ensure those remedies are addressed.

XXXXXXXXXX

Notice of Right to File with Civil Rights Center

If the Complainant is dissatisfied with this Notice of Final Action, you may file a complaint with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20210.¹⁹ The complaint must be filed within 30 days of the date on which you receive this Notice of Final Action.

Sincerely,

(Name of EO Officer)

Equal Opportunity Officer

(Name of Recipient)

(Recipient address, phone, email,
and web address)

¹⁹ See <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/how-to-file-complaint>.