Section 188, the Nondiscrimination Provisions of WIOA
Part 4 of 4-Part Series on WIOA

LEAD Center WIOA Webinar Series
September 24, 2015
Welcome

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The National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD) is a collaborative of disability, workforce and economic empowerment organizations led by National Disability Institute with funding from the U.S. Department of Labor’s Office of Disability Employment Policy, Grant No. #OD-23863-12-75-4-11.

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LEAD CENTER MISSION

To advance sustainable individual and systems level change that results in improved, competitive integrated employment and economic self-sufficiency outcomes for individuals across the spectrum of disability.

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AGENDA

- Welcome
- Review Webinar Outcomes
- Presentations from a Federal, State, and Local Level
- Questions & Answers
- Final Thoughts
WEBINAR OUTCOMES

Attendees will learn about:

- Critical elements of Section 188
- Promising Practices with the Section 188 Disability Reference Guide
- Relationship between Section 188 and WIOA disability related provisions
- State and local perspectives on improving access and equal opportunity
TODAY’S SPEAKERS

Christopher Button, Ph.D.
Supervisor, Workforce Systems Policy
Office of Disability Employment Policy
US Department of Labor
Lee Perselay
Senior Policy Advisor
Civil Rights Center
US Department of Labor

Laura Ibañez
Unit Chief, Specialty National Programs Unit
Employment and Training Administration
US the Department of Labor
TODAY’S SPEAKERS, CONTINUED

Lisa Stern
Employment Policy Advisor
National Disability Institute
TODAY’S SPEAKERS, CONTINUED

Danielle Smith  
State WIA Equal Opportunity Officer  
Missouri Division of Workforce Development

Jim Sahaida  
Local WIA Equal Opportunity Officer  
St. Louis Agency on Training and Employment (SLATE)
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LEAD CENTER WIOA WEBINAR SERIES - PART 1

WIOA From a Disability Perspective: An Overview

February, 25, 2015

LEAD CENTER WIOA WEBINAR SERIES- PART 2

WIOA and the Unified State Planning Process

April 29, 2015

LEAD CENTER WIOA WEBINAR SERIES- PART 3

Understanding Changes Regarding Youth Services

- June 24, 2015
- Archive available here:
  http://www.leadcenter.org/webinars/understanding-changes-regarding-youth-services-part-3-4-part-series-wioa
Christopher Button, Ph.D.
Supervisor, Workforce Systems Policy
Office of Disability Employment Policy
US Department of Labor
Promising Practices in Achieving Universal Access and Equal Opportunity:

A Section 188 Disability Reference Guide

Featured Panel:

Chris Button, Policy Supervisor, ODEP
Kim Vitelli, Division Chief, ETA
Lee Perselay, Senior Policy Advisor, CRC
Lisa Stern, Policy Advisor, LEAD Technical Assistance Center
Diversity of Job Seekers

The American Job Center system is serving customers who are low-skilled, low-wage, disconnected, disadvantaged, and “at-risk”, with multiple employment challenges, many of whom have hidden disabilities.
Universal Access

to programs and activities.
On July 6, 2015, Secretary of Labor Tom Perez released *Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide*

The Reference Guide was jointly developed by:

- Civil Rights Center (CRC)
- Employment and Training Administration (ETA)
- Office of Disability Employment Policy (ODEP)
- With support and assistance from ODEP’s LEAD Technical Assistance Center at the National Disability Institute.
While the Reference Guide focuses on the American Job Center system, it is also a useful resource for:

- Governors;
- State Administrators;
- State Workforce Agencies;
- Equal Opportunity Officers; and
- State and Local Workforce Development Agencies.
Section 188 Disability Reference Guide

- **Part I:** contains continuum of examples highlighting some ways AJCs can meet their legal obligation broken out into sections on (1) universal access, (2) equal opportunity and (3) governance/Implementation.

- **Part II:** contains language from current Section 188 regulations that form the basis of the promising practices and includes hyperlinks directly to the promising practices in Part I.
The promising practices in the Guide correlate with the nondiscrimination (equal opportunity) and universal access requirements of Section 188 of the Workforce Investment Act (WIA):

• Reference Guide does not create new legal requirements or change current legal requirements;

• Promising practices do not preclude states and recipients from devising alternative approaches;

• Adoption of promising practices will not guarantee compliance.
Lee Perselay
Senior Policy Advisor
Civil Rights Center
US Department of Labor
PROMISING PRACTICES IN ACHIEVING UNIVERSAL ACCESS AND EQUAL OPPORTUNITY
WHAT IS SECTION 188?

- Section 188 implements the nondiscrimination and equal opportunity provisions of WIOA, which are contained in section 188 of the statute.
- Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, among other bases.
- Section 188 also requires that reasonable accommodations be provided to qualified individuals with disabilities in certain circumstances.
- Section 188 of WIOA contains provisions identical to those in Section 188 of WIA.
- The regulations for Section 188 of WIOA can be found at 29 CFR Part 38.
WHO DOES SECTION 188 APPLY TO?
(29 CFR §38.2, 38.4)

“Recipients” defined as:
Any entity to which financial assistance under WIOA Title I is extended, including:
- State level agencies that administer or are financed by WIOA Title I funds
- State Employment Security Agencies
- State and local Workforce Investment Boards
- One-Stop operators
- Service providers, including eligible training providers
- On-the-Job Training employers
- Job Corps contractors and center operators (excluding federally-operated Job Corps centers, and

Programs and activities that are part of the One-Stop delivery system that are operated by One-Stop partners
OTHER LAWS

While the Reference Guide addresses the equal opportunity provisions of the Section 188 regulations ensuring equal opportunity for individuals with disabilities, recipients may also be subject to the requirements of:

- Section 504 of the Rehabilitation Act, which prohibits discrimination against individuals with disabilities by recipients of Federal financial assistance;
- Title I of the ADA, which prohibits discrimination in employment based on disability; and
- Title II of the ADA, which prohibits State and local governments from discriminating on the basis of disability.
INDIVIDUAL WITH A DISABILITY

For the purposes of the Reference Guide, the term “individual with a disability” is the same as the ADA definition:

- An individual with a:
  - Physical or mental impairment that substantially limits one or more of the major life activities of such individual (prong 1);
  - A Record of such an impairment (prong 2); or
  - Being regarded as having such an impairment (prong 3).
REASONABLE ACCOMMODATIONS

- Covered entities are required to provide reasonable accommodations for individuals with disabilities to ensure equal access and opportunity.

- The term “reasonable accommodations” is defined in the Section 188 regulations as modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; or that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.
Equal Opportunity

- Covered entities are required to ensure that individuals with disabilities have equal opportunity to access their programs, benefits, and activities.

- Equal opportunity includes:
  - Prohibiting discrimination against individuals with disabilities;
  - Providing reasonable accommodations or reasonable modifications of policies, practices and procedures for individuals with disabilities;
  - Using the same processes for all customers, including individuals with disabilities for selecting participants in all programs;
  - Administering programs in the most integrated setting appropriate;
  - Ensuring effective communication, including by providing auxiliary aids and services where necessary; and
  - Providing programmatic and architectural accessibility.

- The reference to programmatic accessibility as part of Section 188 is new in WIOA. Programmatic accessibility includes, among other things, providing assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.
EQUAL OPPORTUNITY

EXAMPLES OF PROMISING PRACTICES

Prohibiting discrimination—

- Covered entities rejects all job offers from employers that will not accept applications from individuals with disabilities.
- Covered entities do not stereotype individuals with disabilities when evaluating their skills, abilities, interests, and needs.
- Covered entities select locations that are accessible and ideally, near a public transportation system.
- Covered entities regularly review eligibility criteria for training and other services to eliminate discriminatory criteria.
Providing reasonable accommodations

- Covered entities have a written reasonable accommodations policy in place, including:
  - Processes for handling requests for reasonable accommodations;
  - Training and information regarding the process of identifying and providing reasonable accommodations, including a description of the “interactive process” between staff and the individual with a disability that begins when an individual requests a reasonable accommodation;
  - A process for reviewing reasonable accommodations decisions where necessary; and
  - Posting the policies and procedures for providing reasonable accommodations on an accessible website and in public areas, and including them in written outreach materials.

Providing reasonable modification of policies, practices or procedures

- Covered entities have a written policy explaining their obligation to make reasonable modifications to policies, practices, and procedures to ensure equal opportunity for individuals with disabilities
EQUAL OPPORTUNITY

EXAMPLES OF PROMISING PRACTICES

Administration of programs in the most integrated setting appropriate—

- Covered entities’ staff do not automatically refer all job seekers with disabilities to State vocational rehabilitation programs, but makes individual case by case determinations.
- Covered entities administer programs so that individuals with disabilities have access to the full range of services available to all customers.
- Covered entities ensure that individuals with disabilities, including individuals with significant disabilities, are provided services that lead to competitive, integrated employment.
EQUAL OPPORTUNITY

EXAMPLES OF PROMISING PRACTICES

Effective communication—For individuals who are deaf and hard of hearing, effective communication may include the use of the following auxiliary aids, devices, and strategies:

- Qualified interpreters on site or through video remote interpreting services;
- Real-time computer aided transcription services;
- Open and closed captioning, including real-time captioning;
- Voice, text, and video-based telecommunications products and systems, including TTYs, videophones, and captioned telephones or equally effective telecommunications devices; and
- Videotext displays.
EQUAL OPPORTUNITY

EXAMPLES OF PROMISING PRACTICES

- Effective communication—For individuals who are blind or visually impaired, effective communication may include the use of the following auxiliary aids, devices, and strategies:
  - Qualified readers;
  - Taped texts;
  - Audio recordings;
  - Braille materials and displays;
  - Screen reader software;
  - Magnification software;
  - Optical readers;
  - Secondary audio programs; and
  - Large print materials.
EQUAL OPPORTUNITY

EXAMPLES OF PROMISING PRACTICES

- **Architectural and information and communication technology accessibility**—
  - Equal Opportunity Officers are involved from the beginning of any physical site planning and technology acquisitions to ensure equal access and opportunity for individuals with disabilities.
  - Staff involved in site planning and program development is trained in the equal opportunity and access requirements of Section 188.
  - Covered entities make technology accessible.
Laura Ibañez
Unit Chief, Specialty National Programs Unit
Employment and Training Administration
US the Department of Labor
• Promotes accountability, transparency, and data-driven decisions
• Improves American Job Center system
  – Customer-centered design
  – Certification against standard criteria
  – Joint funding of infrastructure, shared services
• Improves services to businesses
• Investments in disadvantaged populations
• TEGL 19-14 “Vision for the Workforce System and Initial Implementation of WIOA”
• TEGL 37-14 - Update on Complying with Nondiscrimination Reqs: Discrimination Based on Gender Identity, Gender Expression, Sex Stereotyping
• TEGL 03-15 - Guidance on Services Provided through the Adult and Dislocated Worker Programs under WIOA
• TEGL 04-15 “Vision for the One-Stop Delivery System under WIOA”
• Quick start action planners
• Customer-centered design
• Peer learning opportunities
• Convenings for state and local teams
• “Deep dive institutes”

❖ Wioa.workforce3one.org
❖ Doleta.gov/wioa
MISSOURI EQUAL OPPORTUNITY PRACTICE NETWORK
GOAL

- Consider how to incorporate strategies proven to be successful for people with disabilities as broad, universal strategies for all customers accessing the generic workforce system.

- Use Section 188 Disability Reference Guide as a blueprint for improving access and equal opportunity to the workforce development system and American Job Centers (Missouri Career Centers).
PILOT/PRACTICE NETWORK

- Using Section 188 (Disability Reference Guide) as a *blueprint* for improving access and *equal opportunity* to the workforce development system and American Job Centers

- Why focus on disability?
  - Disability cuts across: race; age; gender; sexual orientation and gender identity; ethnicity; religion; and socio-economic status
  - AND…it is the only minority group that *anyone* can join at *any time*
Jobseekers with disabilities regularly accessing the generic workforce system:
- Long-term unemployed
- WIA Adult and Dislocated Worker
- TANF
- Veterans
- Seniors
- Youth
- Limited English Proficient
- Etc., etc., etc.
WIB determines concentration area(s)

Goals are based on evidence of need

Ensure at least one state initiative is tied in to outcomes

Consider: VR and the workforce development system must work together on a mandatory unified state plan that meets Section 188 protection against discrimination and equal opportunity requirements
PROCESS IN MISSOURI

Step 1: Take the pulse of AJC staff to determine areas of greatest need, suggestions for improvement and evidence of success

- **Section I:** Basic demographic
- **Section II:** Providing universal access to programs, services and activities
- **Section III:** Ensuring Equal Opportunity
SECTION I: Basic Demographic Information

Please tell us a little about who you are and where you work.

1a. Which region best represents your primary work location?

1b. Please select the career center that best represents your current work location.

1c. If you are not located in a career center, please select the center with which you are most familiar.

1d. Approximately how many days per week do you spend (onsite) in one of Missouri's Career Centers?

1f. Please select the role that best describes your current duties.
SECTION II: Providing Universal Access to Programs, Services & Activities

BACKGROUND: The Missouri Career Center system is expected to meet the needs of their customers by ensuring universal access to their programs and activities for all eligible individuals.

HOW ARE WE DOING? Please rate the following areas and offer an example as evidence of our success and/or a suggestion for improvement in the space provided.

2a: UNDERSTANDING LOCAL NEEDS
*Refer to examples below (provided for illustrative purposes)

Evidence of Success (2a)  Suggestion (2a)
FILL IN  FILL IN

All examples used throughout the survey (and provided for illustrative purposes) were taken directly from the U.S. Department of Labor’s WIOA Section 188 Guide*. 
SECTION III: Ensuring Equal Opportunity

3a. Provide reasonable accommodations or reasonable modifications of policies, practices and procedures for individuals with disabilities

3b. Prohibit discrimination against individuals with disabilities (use the same processes for all customers)

3c. Administer programs in the most integrated setting appropriate

3d. Ensure effective communication, including providing auxiliary aids and devices where necessary

3e. Provide program and architectural accessibility and access to information and communication technology (ICT)

THANK YOU
If there is something you feel we did not address - or anything else you would like us to know, please use the space below.
SURVEY HIGHLIGHTS
REGION

- 451 unique views
- 67.8% conversion rate (306)
SURVEY RESULTS
CAREER CENTER LOCATION

- Branson: 0.33%
- Cape Girardeau: 2.95%
- Chillicothe: 1.64%
- Clinton: 2.62%
- Columbia: 3.93%
- Hannibal: 3.93%
- Independence: 1.97%
- Jefferson City: 3.93%
- Joplin: 1.97%
- Kansas City-FEC: 1.97%
- Kansas City-Northland: 0.98%
- Kirksville: 2.3%
- Lebanon: 2.62%
- Linn Creek: 3.93%
- Nevada: 0.98%
- Park Hills: 3.28%
- Poplar Bluff: 2.62%
- St. Louis County-North Oaks: 2.62%
- St. Louis County-Florissant: 0.60%
- St. Joseph: 4.59%
- Springfield: 8.85%
- Sikeston: 1.31%
- Sedalia: 2.95%
- St. Charles County: 9.04%
- St. Louis County-SLATE: 14.1%
- St. Louis County: 1.64%
- Washington: 0.66%
- Warrenton: 0.33%
- West Plains: 0.98%
- N/A: 0.98%
- Arnold: 3.93%
89% full-time in career center (5 days/week)
6% 1-4 days in career center
5% less than 1 day per week
SURVEY COMMENTS
REGIONAL OVERLAP AND COMMON THEMES

➤ Training (in person whenever possible)
➤ One comment made about a recent training (transgender population) that was very on point.

➤ EO Tagline on all material
➤ Tagline can be overlooked. Suggested bold type, different color or font size to make it stand out).

➤ Challenges
➤ Ideas and Suggestions
MOVING FORWARD

Next Steps for the State of Missouri

- Get real-time “Customer Perceptions”
  - Target all job seekers and employers who have accessed the workforce center in the past 6 months
- Case notes
  - Policy and training
- Additional training
  - Hidden disabilities
A LOCAL EXAMPLE

Accommodation for Success

- Half-day conference (no fee)
- Targeted employers
- Break-out sessions (employer-focused topics) offered by local community partners
  - Recruiting etiquette
  - Sourcing to Find Talent
  - Accommodations & Assistive Technology
  - Tax Credits
MESSAGING FROM THE MAYOR AND THE WIB

Why should the business community attend?

Mayor Francis G. Slay: “The business community has made great strides in integrating persons with disabilities into the workplace. However, every place of business can benefit substantially from the advice and resources that will be available at this event.”

SLATE Executive Director Michael Holmes: “Accommodation for Success is designed to provide practical advice on ways to diversify the workplace and ensure that everyone has the means to participate in the workforce.”
WIOA From a Disability Perspective

SECTION 188 QUESTION & ANSWER PANEL
How do you see the Section 188 Reference Guide helping states in implementing WIOA’s new disability-related provisions?
How can the Guide be used to inform the development of state and local plans under WIOA? How can the Guide be used to inform professional development efforts?
SECTION 188 PANEL: QUESTION 3

How has the process of using the 188 guide served as a proactive tool to examine not only disability issues but equal opportunity and equal access in the AJCs?
How did the idea for the Accommodation for Success conference come about – and what did you learn from the event that might help other states considering employer engagement activities?
What is the role of the state and local Workforce Development Boards to evaluate Section 188 implementation to improve access and equal opportunity for youth and adults with disabilities?
What advice do you have to help other states replicate the Missouri Equal Opportunity Practice Network
What advice do you have for state and local Workforce Development Boards to improve access and equal opportunity per Section 188 requirements to advance inclusive career services and pathways?
What advice do you have for state and local Workforce Development Boards to improve access and equal opportunity per Section 188 requirements to advance inclusive career services and pathways?
SECTION 188 PANEL: QUESTION 8

What do you see as the greatest barrier to Section 188 compliance at a community level?
WIOA From a Disability Perspective

FINAL THOUGHTS
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