



DWD Issuance 17-2012

Issued: March 1, 2013

Effective: Immediately

Subject: Nondiscrimination in Job-Seeker Screening and Referrals

1. Purpose:

This Issuance provides information about employer exclusions based upon screening and referral criteria; and how those exclusions are relevant to the existing nondiscrimination obligations applicable to the Division of Workforce Development (DWD) and local program operators.

2. Background:

Nondiscrimination requirements prohibit DWD and local program operators from discriminating against job-seekers because of race, color, religion, sex, national origin, age, disability, or political affiliation or citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in any financially assisted program or activity. Further, DWD and local program operators are prohibited from using “standards, procedures, criteria, or administrative methods” that have the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipient’s administration of programs providing aid, benefits, services, training, or facilities “in any manner.” *See* 29 C.F.R. Part 37.6(d).

These nondiscrimination provisions prohibit both “disparate treatment” – intentionally treating members of protected groups differently based upon their protected status; and “disparate impact” – the use of policies or practices that are neutral on their face, but have a disproportionate impact on members of protected groups and are not job related and consistent with business necessity. This Issuance sets forth DWD’s policies with regard to the application of nondiscrimination requirements to job-seeker screening and referrals, and describes the practical procedures that DWD and local program operators should take to ensure compliance with applicable statutes and regulations.

3. Substance:

DWD and local program operators should conduct their activities using safeguards to prevent discrimination and promote employment opportunities for all job-seekers. While DWD cannot guarantee that local program operators will ultimately avoid liability under laws described herein by following this Issuance, this Issuance represents practical steps to aid compliance with the law.

DWD and local program operators should refrain from screening and refusing to make referrals due to any criteria that may have a disparate impact upon a protected class and is not job related and consistent with business necessity. Such criteria may include, but is not limited to, a job-seeker’s:

1. Criminal history or arrest record;
2. Job skills assessment scores;
3. Medical or personality tests;
4. Credit history;
5. Ability to present proof of United States citizenship; and
6. Degree or licensing requirements.

If an employer requests that DWD or a local program operator screen or refuse to make referrals to that employer based upon any criteria that may have a disparate impact upon a protected class, that program operator is encouraged to consult with the requesting employer to ensure that such requirements are job related and consistent with business necessity.

4. Action: This Issuance is effective immediately.
5. Contact: Direct questions or comments regarding this issuance to Danielle Smith, State Workforce Investment Act (WIA) Equal Opportunity Officer, at (573)751-2428 or email danielle.smith@ded.mo.gov.
6. References: Title VII of the Civil Rights Act of 1964, as amended: 42 U.S.C. 2000e-2(a) (disparate treatment), 2000e-2(b) (employment agency practices, 2000e-2(a)(2) and 2000e-2(k) (disparate impact by employers and employment agencies).
- Title VI of the Civil Rights Act of 1964: 42 U.S.C. 2000d (nondiscrimination by recipients of federal financial assistance) and implementing regulations 29 C.F.R. 31.3(b)(2) (disparate impact), 31.3(c)(1) (nondiscrimination in employment practices), 31.3(d)(1) (selection and referral for employment or training).
- WIA: 29 U.S.C. 2938 (nondiscrimination by recipients of federal financial assistance under WIA) and implementing regulations 29 C.F.R. 36.2(a)(2) (programs operated by One-Stop partners as part of the One-Stop system must comply with nondiscrimination regulations), 37.6(d)(1) (administration of programs cannot have discriminatory purpose or effect).
- Wagner-Peyser Act: 20 C.F.R. 652.8(j)(1) (nondiscrimination by recipients of federal financial assistance under Wagner-Peyser).
7. Rescissions: None.
8. Attachments: None.



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