



EASTERN

**LIMITED ENGLISH PROFICIENCY
Policy and Plan**

**Rev. #1 – added assessment language to be compliant with OWDI #04-2019.
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Purpose:

This policy provides the guidance and establishes the procedures regarding the prohibition against national origin discrimination as it affects persons with Limited English Proficiency (LEP).

Scope:

The guidance in this policy applies to the Eastern Workforce Area (EWB) and Workforce Innovation and Opportunity Act (WIOA) Title I grant Service Provider and One-Stop Operator.

References:

- WIOA(Public Law 113-125) Section 188
- Title 29 Code of Federal Regulations (CFR) Part 38
- Department of Labor (DOL) Training and Employment Notice (TEN) 28-16, Subject: *Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans (January 9, 2017)*
- *OWDIs #17-2017*

Background:

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.

Policy and Procedures:

National origin discrimination now includes LEP under 29 CFR Section 38.9 and specifically states that in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including LEP. Additionally, 29 CFR Section 38.41 added “LEP and preferred language” to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registant, participant, and terminee.

Relevant Factors in providing LEP access:

In determining how to provide effective and meaningful access to LEP customers, the U.S. Department of Labor has established the following four guidelines (68 Fed. Reg. 32290, 32294 (May 29, 2003)), which are also in HRS § 321C-3(a) (1)-(4):

1. The number or proportion of LEP persons eligible for service or likely to seek services from a program.
2. The frequency with which LEP persons encounter a program.
3. The nature and importance of the program, activity, or service provided by the program to LEP persons.
4. The resources available to the program and the costs of providing interpretation/translation services.

The touchstone of this four-factor analysis is reasonableness—reasonableness as measured by balancing:

- (1) the size, needs, and the nature of assistance to the LEP population served, and
- (2) EWB’s service provider’s capacity and available resources.

Note: Where there is not a "significant" number or proportion of LEP persons in the community serviced by EWB, EWB’s service provider will make reasonable efforts to meet the particularized language needs of limited-English speaking individuals who seek services or information.

Definitions:

For the purposes of this policy, the following definitions apply:

Babel Notice – a short notice included in a document or electronic medium (e.g. web site, “app”, email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages (29 CFR Section 38.4(i)).

Employment-related training – training that allows or enables an individuals to obtain skills, abilities, and/or knowledge that are designed to lead to employment (29 CFR Section 38.4(t)).

LEP Individual – an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. A LEP individual may be competent in English for certain types of communication (e.g. speaking or understanding), but still be LEP for other purposes (e.g. reading or writing) (29 CFR Section 38.9 Appendix).

LEP Plan – A written language access plan which assists in ensuring that LEP individuals have meaningful access to WIOA Title I - financially assisted programs and activities (29 CFR Section Appendix).

Meaningful Access – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individuals. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compare to programs or activities provided to English proficient individuals.

Primary Language – An individuals’ primary language is the language in which an individual most effectively communicates, as identified by the individual.

Reasonable Steps to Ensure Meaningful Access for LEP Individuals

The Service provider is required to take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities. Reasonable steps may include, but are not limited to, the following:

- Conducting an assessment of a LEP individuals to determine their language assistance needs.
- Providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals.
- Conducting outreach to LEP communities to improve services delivery in needed languages.
(29 CFR Section 38.9[b][1])

Reasonable steps for providing meaningful access to training programs may include, but are not limited to, the following:

- Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization.
- Oral training content in appropriate non-English languages through in-person or telephone translation.
(29 CFR Section 38.9[b][2][i][ii])

Furthermore, the service provider will ensure that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how a LEP individual may effectively learn about, participate, in, and/or access any aid, benefit, service, or training available to them. It should also be noted that as new methods for the delivery of information or assistance are developed, service provider staff will be required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training available to them (29 CFR Section 38.9[c]).

Assessment

(Refer to OWDI #04-2019 for complete assessment instructions.)

for general assessment the OWDI should be followed and the TABE Complete Language Assessment System – English (CLAS-E) – English Language Learners (ELL) Reading, Listening, Writing, and Speaking Skills should be administered to LEP individuals and requires a minimum of 50 hours instruction (60-95 recommended).

Other options that might be appropriate for LEP individuals may be found in OWDI #04-2019.

Language Assistance Services

Language assistance generally comes in two forms: oral interpretation or written translation. The Service provider will ensure that above all, these services are free of charge and provided in a timely manner. A LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service or training (29 CFR Section 38.9[d] and [e]).

Interpreter Services

The Service provider will not require a LEP individual to provide their own interpreter. Furthermore, the Service provider will not rely on a LEP individual's minor child or adult family or friend to interpret or facilitate communication, except for the following circumstances:

- In emergency situations while awaiting a qualified interpreter.
- When the information conveyed is of minimal importance to the services to be provided.
- When a LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual. If a Service provider permits an accompanying adult to serve as an interpreter for a LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter.

Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, the Service provider may still provide their own, independent interpreter, even if a LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established. (29 CFR Section 38.9[f])

Concerning Vital Information

For languages spoken by a significant portion of the population eligible to be served or likely to be encountered, the Service provider will translate vital information in written materials into these languages. These translations must in turn be readily available upon request in hard copy or electronically. Written training materials offered or used within employment-related training programs (see definitions section) are excluded from these translation requirements. However, in all cases, the Service provider will take reasonable steps to ensure meaningful access for LEP individuals.

For languages not spoken by a significant portion of the population eligible to be served or likely to be encountered, the Service provider will take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service or training that is available to them. Vital information may be conveyed orally if not translated.

The Service provider must also be sure to include a Babel Notice, indicating that language assistance is available in all communications of vital information. This includes letters or decisions in hard-copy or electronic formats. (29 CFR 38.9[g])

Finally, to the extent otherwise required by 29 CFR Part 38, once made aware of the non- English preferred language of a LEP beneficiary, participant, or application for aid, benefit, service, or training, all vital information must be conveyed in the individuals preferred language. (29 CFR Section 38.9[h])

Developing a Written LEP Plan

In order to ensure reasonable steps are taken to allow meaningful access for LEP individuals, the state highly recommends that EWB develop a written LEP Plan. WIBs that develop, implement, and periodically revise a LEP plan are more likely to fulfill their obligation of taking reasonable steps to ensure meaningful access to programs and activities by LEP individuals. Furthermore, developing and implementing a LEP plan has many benefits, including providing service provider staff with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP individuals receive the necessary assistance to participate in the programs and activities in the Service provider.

When developing an LEP plan, EWB ensures the service provider staff will address the following elements as they provide a clear framework that will ensure meaningful access to LEP individuals.

- The process the Service provider will use to determine the language needs of individuals who may or may seek to participate in programs and activities (self-assessment or needs assessment) that receive financial assistance under WIOA Title I.
- The results of the assessment (e.g. identifying the LEP populations to be served by the Service provider).
- Timelines for implementing the LEP plan.
- All language services to be provided to LEP individuals.
- The manner in which LEP individuals will be advised of available services.
- Steps LEP individuals should take to request language assistance.
- The manner in which service provider staff will provide language assistance services.
- What steps must be taken to implement the LEP Plan (e.g. creating or modifying policy documents, employee manuals, employee training material, posters, web sites, outreach materials, contracts, electronic and information technologies, applications, or adaptations).
- The manner in which service provider staff will be trained.
- Steps the EWB will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees.
- The manner in which the Service provider will document the provision of language services.
- The schedule for revising the LEP plan.
- The individual(s) assigned to oversee implementation of the LEP plan (e.g. LEP Coordinator or Program Manager).
- Allocations of resources to implement the LEP plan.

It should be noted that the elements of a successful LEP plan are not fixed and must be tailored to the service provider's specific programs and activities. Over time, LEP plans will need to be revised to reflect the following:

- New recommendations and government guidance.
- Changes in the Service provider's operations as well as the experiences and lessons learned.
- Changing demographics.
- Stakeholder and beneficiary feedback. (2CFR Section 38.9 Appendix)

For additional information on best practices and resources for serving individuals with substantial cultural and language barriers to employment, refer to Department of Labor Training and Employment Notice TEN 28-16.

INQUIRIES:

If you have any questions, please contact the Compliance Manager/ Equal Opportunity Officer at (918) 683-8553.



EWB POLICY APPROVAL REGISTER

Each required policy of the Workforce Innovation and Opportunity Act (WIOA) and the Eastern Workforce Board (EWB) shall be submitted to the Policy Committee for review and comment who will then present policy(s) to the Executive Committee for its recommendation for approval. The Executive Committee recommendation for approval will be presented at the next scheduled board meeting.

Title Of Policy	Limited English Proficiency		
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Author	JH		
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Rev. #1 – added assessment language to be compliant with OWDI #04-2019.

Executive Director:
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Signature: Date:

Board Chairman:
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Signature: Date: