



# The Employment Service and Employment-Related Law Complaint System: An Overview

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September 2021



# OBJECTIVES

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At the conclusion of the presentation, attendees will be able to do the following:

- Understand the historical background of the Employment Service and Employment-Related Law Complaint System;
- List the types of complaints received by career center staff; and
- Understand how career centers process complaints and apparent violations.

# JUDGE CHARLES RICHEY COURT ORDER

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Violations of the civil rights of migrant and seasonal farmworkers (MSFWs) in state Employment Service offices.

- 1972 - Lawsuit filed by the National Association for the Advancement of Colored People (NAACP) with the U.S. District Court in Washington, D.C.
- 1974 - Judge Charles Richey signed a court order that required the implementation and maintenance of a federal and state monitoring and advocacy system, non-discriminatory services, benefits and protections to MSFWs, and a complaint system.

# WAGNER-PEYSER ACT EMPLOYMENT SERVICE

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- Wagner-Peyser Act of 1933 established the Employment Service (ES) system.
  - Seeks to bring together employers seeking workers and workers seeking employment.
- In 1998, the Wagner-Peyser Act was amended to make the Employment Service part of the one-stop delivery system under the Workforce Investment Act (WIA).
- In 2014, the Wagner-Peyser Act was updated to integrate services required under the Workforce Innovation and Opportunity Act (WIOA).

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# Complaint System for the Employment Service System



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# COMPLAINT SYSTEM REGULATIONS

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20 CFR 658.400 sets forth regulations governing the Complaint System for the Wagner-Peyser Act Employment Service at the state and federal levels.

20 CFR 658.410 sets forth regulations requiring the establishment of local and state complaint systems.

# WHAT IS A COMPLAINT?

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A complaint is an allegation or a representation made or referred to a state or local career center of a violation of Employment Service regulations and/or other federal laws enforced by the United States Department of Labor (USDOL) Wage and Hour Division (WHD) or the Occupational Safety and Health Administration (OSHA), as well as other federal, state or local agencies enforcing employment-related laws.

# CONFIDENTIALITY

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The identity of the complainant(s) and any person(s) who furnish information relating to, or assisting in, an investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable laws and a fair determination of the complaint.

# COMPLAINT SYSTEM – TYPES OF COMPLAINTS

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WIOA regulations amended the name of the Complaint System from the Employment Service Complaint System to the Employment Service and Employment-Related Law Complaint System.

There are two types of complaints handled by the Complaint System:

- Employment Service Complaints
- Employment-Related Law Complaints

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## Employment Service Complaints



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# EMPLOYMENT SERVICE COMPLAINT - DEFINITION

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An Employment Service complaint is a complaint filed against an employer about the specific job to which the applicant was referred to through the career center.

It also involves complaints involving the failure of employers to comply with Employment Service regulations under 20 CFR 651,652,653 and 654.

# EMPLOYMENT SERVICE COMPLAINTS

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- Complaints may be filed against an Employment Service office (career center) in violation of Employment Service regulations.
  - An Employment Service office may violate Employment Service regulations through action or omission.
- Employer-related complaints may be filed against an employer in violation of the terms and conditions of a job order.
- The complaint may be filed for a specific job to which the complainant was referred by the Employment Service system.

Note: Complaints regarding Employment Service regulations must be handled to resolution, only if made within two years of the alleged occurrence.

# EMPLOYMENT SERVICE COMPLAINTS - CATEGORIES

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Employment Service complaints fall into the following four categories:

- Violation of Wagner-Peyser administrative regulations by staff of a career center;
- Violation of terms and conditions of a job order by an employer for a job the jobseeker was referred to by the Employment Service;
- Involves an employer in another state or another state agency; or
- Involves another career center or more than one center statewide.

# EMPLOYMENT SERVICE COMPLAINTS - EXAMPLES

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## **Violation of terms and conditions of job orders by an employer.**

Example: A worker was referred to a job by career center staff. The job order stated the worker would be paid \$11.00/hour. The employer pays the worker \$10.00/hr.

## **Career center violation through action or omission.**

Example: A career center staff refuses to provide a migrant farmworker with a job referral to a non-agricultural job.

## **An employer in another state or another state agency.**

Example: A job seeker files a complaint against an employer in Georgia.

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## Employment-Related Law Complaints



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# EMPLOYMENT-RELATED LAW DEFINITION

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Employment-Related Law means those laws that relate to the employment relationship,\* such as those enforced by U.S. Department of Labor, Wage and Hour Division, Occupational Safety and Health Administration, or by other federal, state or local enforcement agencies.

\*Note: Laws that relate to the employment relationship include laws such as the Fair Labor Standards Act (FLSA), Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Civil Rights Act and other similar federal, state and local laws.

# EMPLOYMENT-RELATED LAW COMPLAINTS - EXAMPLES

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## **Involves a violation of federal law.**

Example: A seasonal farmworker wants to file a complaint against his employer because pesticides are being sprayed while the workers are working in the field. The complainant was not referred to the job by a career center.

## **Involves a violation of the FLSA.**

Example: A non-MSFW wants to file a complaint against her employer, because she is not being paid minimum wage. The career center did not refer the worker to the job.

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## Complaints Not Applicable to the Complaint System



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# COMPLAINTS NOT APPLICABLE TO THE COMPLAINT SYSTEM

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Complaints alleging violations under the following programs are not covered in 20 CFR 658.400 subpart E:

- Reemployment Assistance
- WIOA Title I Programs
- Complaints by veterans alleging employer violations of mandatory listing requirements under 38 U.S.C. 4212

DEO Final Guidance 00-004 provides procedural guidance on how to process complaints/grievances not applicable to the Employment Service system.

# ALLEGATIONS OF UNLAWFUL DISCRIMINATION

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The Equal Opportunity (EO) Officer for the Local Workforce Development Board (LWDB) and the Department of Economic Opportunity (DEO) Office for Civil Rights (OCR) have the authority to process complaints alleging unlawful discrimination.

All complaints received by career centers must be immediately referred to either the Equal Opportunity (EO) Officer for the LWDB, or the Equal Employment Opportunity Commission (EEOC).

A complainant may file a discrimination complaint directly with the Director of the Civil Rights Center as required by 29 CFR 38.35 and 29 CFR 38.69.

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## The Performance of the Complaint System



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# PERFORMANCE OF THE COMPLAINT SYSTEM

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Career center managers are responsible for the operation and performance of the Complaint System. Responsibilities include:

- Centralized control procedures for processing complaints; and
- Documentation and submission of complaint and apparent violation logs.

# PERFORMANCE OF THE COMPLAINT SYSTEM (CONT.)

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- Each LWDB must follow federal regulations and state guidance as it relates to the Complaint System.
- All career centers must display information about the Complaint System by posting the Department of Labor, Employment and Training Administration (ETA)-approved Complaint System poster.
- A trained Complaint Specialist must be in each career center and satellite office.
  - As a recommendation, career centers are encouraged to have a back-up Complaint Specialist.

# PERFORMANCE OF THE COMPLAINT SYSTEM (CONT.)

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- All complaints filed through the local career center must be processed by a trained Complaint Specialist.
- Career center staff should receive training on the Complaint System, including how to receive complaints.
- The complainant must be provided appropriate career center services.

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# The Complaint Filing Process



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# COMPLAINT FILING PROCESS

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- All individuals interested in filing a complaint must be provided with an explanation of the Complaint System process.
- Complaints may be received in person, by signed letter or via email.
- Career center staff must determine if the complaint involves the Employment Service system.
- Career center staff must determine if the complainant is a MSFW.

# MIGRANT OR SEASONAL FARMWORKER (MSFWs)

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Migrant Farmworker – Seasonal farmworker who travels to do farm work and is not reasonably able to return to his/her permanent residence within the same day.

Seasonal Farmworker – Individual who is employed, or was employed in the preceding twelve months, in farm work of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence.

A worker who moves from one seasonal activity to another while employed in farm work is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year, if he/she was not employed in farm work year-round by the same employer.

# IN-PERSON COMPLAINTS

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Career center staff must:

- Explain the operations of the Employment Service Complaint System (including the process for handling allegations of unlawful discrimination).
- Determine the type of complaint being filed:
  - Employment Service
  - Employment-Related Law
- Assist complainant with completing the Employment and Training Administration (ETA) Form 8429, if appropriate.

# COMPLAINT VIA SIGNED LETTER

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If a complaint is received in the form of a signed letter, career center staff must:

- Determine if allegations of unlawful discrimination have been reported. If so:
  - Refer to Equal Opportunity Officer or DEO Office of Civil Rights
  - A complaint may be filed directly with the Director of the Civil Rights Center
  - Log complaint
- Determine if the letter contains the following required components:
  - Complainant's name and contact information;
  - Respondent's name and contact information;
  - Description of complaint;
  - Sufficient information to determine the type of complaint; and
  - Complainant's signature.

# COMPLAINT VIA SIGNED LETTER – REQUIREMENTS

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## If the letter contains the required components:

- Treat the letter like a properly completed ETA Form 8429.
- Mail a letter to the complainant notifying him/her of receipt of the complaint and the initiation of an investigation.

Note: A letter signed by an attorney representing the complainant, or other representative designated by the complainant, should be treated like a properly completed ETA Form 8429, provided it contains all required elements necessary to conduct an investigation (and as noted on the ETA Form 8429). Correspondence should be directed to the attorney or designated individual.

# COMPLAINT VIA SIGNED LETTER – INSUFFICIENT INFO

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**If the letter does not contain sufficient information to investigate the complaint quickly:**

- Request additional information from the complainant in writing.
- Allow complainants time to respond to the request:
  - 40 working days for MSFWs
  - 20 working days for non-MSFWs

# COMPLAINTS VIA EMAIL

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When a complaint is received by email:

- The Complaint Specialist should send an ETA Form 8429 to the email address with a request to complete only Part I of the Form, including signature.
- The complainant may return the completed ETA Form 8429 via fax, mail, email or hand deliver it to any career center.

Note: It is not necessary to send complainant the ETA Form 8429, if the email contains sufficient information to begin an investigation.

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## H-2A Complaints



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# H-2A COMPLAINTS

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Complaints made against H-2A employers may include complaints filed by:

- Workers employed by an H-2A employer, whether or not the worker was referred to the job through the career center.
- Job seekers who applied for an H-2A job or made clear their intent to apply for an H-2A job.
- Other job seekers whether or not the job seekers were employed by the H-2A employer.
- Job seekers against an employer who applied for, but was not granted, H-2A labor certification, irrespective of whether an employer/employee relationship exists.

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## Processing Complaints



# PROCESSING EMPLOYMENT SERVICE COMPLAINTS

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For all Employment Service complaints:

- Determine if the complainant is a MSFW;
- Attempt informal resolution;
- Request additional information, if needed; and
  - Within five (5) business days for MSFWs
  - 15 business days for non-MSFWs
- Offer to refer the complainant to other career services, if interested.

# PROCESSING EMPLOYMENT SERVICE COMPLAINTS (CONT.)

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- Obtain all information necessary to investigate the complaint.
- Request the complainant list all addresses where he/she may be contacted during the investigation.
- Advise the complainant to maintain contact with the career center staff during the investigation.
- Advise the complainant to contact the career center staff before leaving the area.

# EMPLOYMENT-RELATED LAW COMPLAINT

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When a complaint is filed regarding an Employment-Related Law the Complaint Specialist must:

- Determine if the complainant is a MSFW;
- If the complainant is a non-MSFW, refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization or a consumer advocate organization for assistance; and
- Once the referral has been completed, no follow-up is required by the Complaint Specialist.

# EMPLOYMENT-RELATED LAW COMPLAINT (CONT.)

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If the complainant is a MSFW, the Complaint Specialist must:

- Obtain as much information as possible about the alleged violation of the Employment-Related Law;
- Attempt to resolve the issue informally at the local level;
- If resolution is not achieved within five (5) business days, refer to the appropriate enforcement agency, another public agency, a legal aid organization or a consumer advocate organization for assistance; and
- Offer to refer the MSFW to other career services, if interested.

# EMPLOYMENT-RELATED LAW COMPLAINT (CONT.)

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If the Complaint Specialist determines that the complaint must be referred to a state or federal agency, he/she must refer the complaint to the Department of Economic Opportunity's (DEO) State Monitor Advocate (SMA).

The SMA must immediately refer the Employment-Related Law complaint to the appropriate enforcement agency for investigation.

The Complaint Specialist must provide the SMA's contact information to the complainant.

The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

# EMPLOYMENT-RELATED LAW COMPLAINT (CONT.)

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If a final determination is made by an enforcement agency that an employer violated an Employment-Related Law, and the complaint is **attached to a job order**, the following steps must be taken:

- DEO or the local career center must begin the process of discontinuation of services to the employer; and
- DEO or the local career center must notify the complainant and employer of such action.

# PROCESSING H-2A COMPLAINTS

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When processing H-2A complaints, career center staff must take the following steps:

- The complainant must complete the ETA Form 8429.
- Log the complaint on the Complaint Log.
- Prepare a referral memo to forward to DEO.
- Send the memo, a copy of the ETA Form 8429 and copies of any relevant documents to DEO's State Monitor Advocate.
- Give the complainant a copy of the complaint form and memo sent to DEO.
- Offer appropriate career center services.

# RESOLUTION OF COMPLAINTS

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In general, a complaint is considered resolved when the complainant:

- Indicates satisfaction with the outcome.
- Chooses not to elevate the complaint to the next level of review.
- Fails to respond to written requests for additional information.
- Exhausts final level of review by an enforcement agency.
- Enforcement agency makes a final determination.

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# MSFW Apparent Violations



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# MSFW APPARENT VIOLATIONS

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MSFW apparent or suspected violations arise when career center staff observes, has reason to believe or is in receipt of information regarding a suspected violation of Employment-Related Laws or Employment Service regulations by an employer.

- Staff must document suspected violations in writing and refer them to the career center manager or designated associate.
- May also involve violations of administrative regulations such as noncompliance of job order assurances.
- Work-related laws enforced by other agencies.

# PROCESSING MSFW APPARENT VIOLATIONS

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Once a suspected violation is reported, the career center manager or designated associate must:

- Determine if a job order was filed with the employer within the past 12 months.
- Determine if the suspected violation involves Employment Service regulations or Employment-Related Law.

# Job Order Filed Within Past 12 Months

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If the employer has filed a job order within the past 12 months:

- Contact the employer and attempt informal resolution within five working days.
- If informal resolution is unsuccessful, procedures for the discontinuation of services to the employer shall be initiated.
- Forward the suspected violation to the State Monitor Advocate.
- Violations of Employment-Related Law must be referred in writing to the appropriate enforcement agency.
- Request the final determination of the enforcement agency to be provided to the career center manager.

# NO JOB ORDER FILED WITHIN PAST 12 MONTHS

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If no job order has been filed within the past 12 months, and it involves a violation of Employment-Related Law:

- Career center manager or designated associate must refer the violation to the appropriate enforcement agency.
- The referral must be in writing.
- Do not attempt informal resolution of the violation.

# QUESTIONS

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## Thank You!



If you have questions or comments about this presentation; please contact our office.



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