

# PENNSYLVANIA GUIDELINES FOR PA CAREERLINK® EMPLOYMENT SERVICES CUSTOMER COMPLAINTS

Guide for Complaint System Representatives

# Employer Services Customer Complaint Procedures

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## Employer Services Customer Complaint Procedures

### INTRODUCTION

The purpose of this resource is to provide guidelines for the PA CareerLink® Employment Services (ES) Complaint System procedures. These guidelines will standardize forms and procedures for the ES and employment law complaint system used in each Local Workforce Development Area (LWDA) and the state workforce agency, or SWA. These guidelines will also ensure that local-level ES Complaint System Representatives and staff serving customers are aware of and compliant with a standardized process for processing customer complaints.

Any individual, employer, organization, association, or other entity may file an ES-related complaint.

### ACRONYMS FREQUENTLY USED

Acronym	Meaning
AJC	American Job Center® Network
ALJ	Administrative Law Judge
BWPO	Bureau of Workforce Partnership and Operations
CEO	Chief Elected Official
CNPC	Chicago National Processing Center
ELL	English Language Learner
EO	Equal Opportunity
ES	Employment Services
ETA	Employment and Training Administration
L&I	PA Department of Labor and Industry
LWDA	Local Workforce Development Area
LWDB	Local Workforce Development Board
MSFW	Migrant and Seasonal Farmworker
OEO	Office of Equal Opportunity
OSHA	Occupational Safety and Health Administration
SMA	State Monitor Advocate
SWA	State Workforce Agency
USDOL	United States Department of Labor
WHD	Wage and Hour Division
WIOA	Workforce Innovation and Opportunity Act

### DEFINITIONS

Terms associated with the ES Complaint System are located at 20 CFR 651.10; many other workforce development terms are defined at WIOA Title I, Section 3.

**American Job Center® Network, or AJC**, is the common identifier to be used by each one-stop delivery center as required by the Workforce Innovation and Opportunity Act (WIOA) and is to be used alongside the PA CareerLink® brand. It is a unifying name and brand that identifies online and in-person workforce development services as part of a single network.

**Apparent Violation** (20 CFR 658.419) means a suspected violation of employment-related laws or ES regulations by an employer, which an ES staff member observes, has reason to believe, or regarding which an ES staff member receives information (other than a complaint as defined within 20 CFR 651.10).

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**Business Partners** are any entity identified by statute, regulation, or contract as being an agent of the Commonwealth of Pennsylvania. A business partner connection is an interface for connecting business partners to the Commonwealth of Pennsylvania network.

**Bureau of Workforce Partnership and Operations, or BWPO**, is the SWA sub-agency charged with establishing and maintaining the ES Complaint System.

**Chief Elected Official, or CEO**, is the chief executive officer of a unit of general local government in a local workforce development area, or LWDA; or in the case of the commonwealth, is the governor.

**Chief State Administrator** is the governor who is also the designated chief SWA official.

**Complainant** means the individual, employer, organization, association, or other entity filing a complaint.

**Complaint** means a representation made or referred to a state or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, state, or local agencies enforcing employment-related law.

**Complaint System Representative** means a trained ES staff individual who is responsible for processing complaints.

**Employment-related laws** means those laws that relate to the employment relationship, such as those enforced by the United States Department of Labor (USDOL), WHD, OSHA, or by other Federal, state, or local agencies.

**Employment Service, or ES, and Employment-Related Law Complaint System (Complaint System)** process complaints involving failure to comply with Wagner-Peyser ES regulations and complaints against an employer about the specific job to which the applicant was referred through the ES. The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws. The SWA establishes and maintains the complaint system.

**Employment Service, or ES, Program** is a nationwide system of public employment offices that provide labor exchange services. The ES program is designed to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. See **Wagner-Peyser Act Employment Service** below.

**Employment Service, or ES, Office** means a site that provides ES services as a one-stop partner program. All ES Offices are co-located in PA CareerLink® offices.

**Employment Service (ES) Office Manager** means the ES staff person in charge of ES services provided in a one-stop center. The ES Office Manager is also identified within the Commonwealth's one-stop system as the PA CareerLink® Program Supervisor.

**Employment Service, or ES, Staff** means individuals who are funded, in whole or in part, by Wagner-Peyser Act funds to carry out activities authorized under the Wagner-Peyser Act.

**Enforcement agency** is a government or public agency responsible for the administration, education, and enforcement of the relevant law appropriate to the reported complaint.

**Farmwork** means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and

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harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the processing, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities are all commodities produced on a farm including crude gum (oleoresin) from a living tree product processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under 20 CFR 655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official USDOL guidance.

**Migrant farmworker (MSFW)** means a seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day.

**PA CareerLink®** is the registered trademark for Pennsylvania's online job matching system for jobseekers and employers as well as the name of Pennsylvania's one-stop centers.

**Pennsylvania Department of Labor & Industry (L&I)** has been designated by the governor to serve as the state administrative entity and as the SWA.

**Respondent** means the individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or state agency.

**Seasonal farmworker (MSFW)** means an individual who is employed, or was employed in the past 12 months, in farmwork of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

**State agency or State Workforce Agency, or SWA** means the State ES agency designated under sec. 4 of the Wagner-Peyser Act. The ES agency for L&I is the SWA.

**State hearing official** means a state official designated to preside at state administrative hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter. means the PA Department of State designated hearing officer who presides over hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter.

**State Monitor Advocate (SMA) means** a state workforce agency official that is responsible for ensuring the SWA is in compliance with ES regulations in serving MSFWs on an ongoing basis. ES regulations 20 CFR 653.108 provides a comprehensive list of SMA responsibilities.

**Wagner-Peyser Act Employment Service also known as Employment Service (ES)** means the national system of public ES offices described under the Wagner-Peyser Act. ES services are delivered through a nationwide system of one-stop centers and are managed by SWAs and the various local offices of the SWAs and funded by the United States Department of Labor.

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**WIOA** means the Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 et seq.).

### DESIGNATION OF STATE AND LOCAL ES COMPLAINT SYSTEM REPRESENTATIVES

At the state level, the BWPO Director will designate a statewide ES Complaint System Representative.

At the local area level, the ES Office Manager, a.k.a. the PA CareerLink® Program Supervisor, is responsible for the day-to-day management of the local area ES Complaint System. The ES Office Manager may identify a designee, referred to as an ES Complaint System Representative, to process and investigate complaints at the PA CareerLink® site. The local-level ES Complaint System Representative will handle, process, and investigate complaints at the PA CareerLink® sites. The ES Office Manager must ensure that an ES Complaint System Representative is available during normal business hours to accept complaints and explain how the ES Complaint System works. In the absence of a local-level ES Complaint System Representative, other PA CareerLink® merit staff must maintain a working knowledge of the ES Complaint System for the purpose of assisting customers until a designated representative is available.

Each PA CareerLink® site has a BWPO-designated Complaint System Representative and backup. The backup Complaint System Representative can be the ES Office Manager unless the state-level Complaint System Representative designates an alternative backup.

### NOTICES AND POSTERS

All direct recipients of WIOA Title III (Wagner-Peyser Act) funds are required to prominently display within the public's view, official posters and other public notice materials as supplied by L&I. Approved poster(s) and other supporting documents are found on the [L&I website](#) hosting this policy and guidance.

1. **Posters:** All PA CareerLink® sites and locations where employment services are provided must prominently post USDOL Employment and Training Administration's (ETA) **approved Employment Service and Employment-Related Law Complaint System Poster**. The posters are to be printed in English and in Spanish. Each PA CareerLink® must modify the supplied posters so that each contains the contact information of the site's Complaint System Representative and the SMA in the designated field office. This can be done by hand printing the information, affixing a sticker, or stapling a business card to the poster. The posters must be in the vicinity of the required **Equal Opportunity (EO) is the Law** posters.
2. **Website:** L&I must publish both the English and Spanish posters on the official L&I Commonwealth of Pennsylvania website. The website posters must contain the contact information for the Director of BWPO and the SMA in the designated fields.
3. **ES Complaint System Handout:** An ES complaint system handout indicating complaint system information such as customer rights must be made available to all PA CareerLink® customers. PA CareerLink® staff must communicate to the customer via script what the ES complaint system handout imparts.

Information included in the handout must include, but not be limited to:

- a. Who may file a complaint?
  - i. PA CareerLink® customers and other stakeholders including community-based organizations, employers, and labor unions

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- ii. PA CareerLink® associated programs' applicants and participants
  - b. Examples of complaint types or potential apparent violations
  - c. Essential complaint filing guidance
  - d. Time limits
  - e. Contact information for state-level Complaint System Representative and SMA office
4. **ES Complaint System Handout Acknowledgement:** Customers are to acknowledge receipt of the ES complaint system handout.

### TYPES OF ES COMPLAINTS

The ES Complaint System allows for the collection, referral, logging, investigation, and resolution of different ES-related complaint types that allege violations of provisions found within WIOA Title III (Wagner-Peyser Act) including apparent violations. The ES Complaint System processes complaints involving failure to comply with Wagner-Peyser ES regulations and complaints against an employer about the specific job to which the applicant was referred through the ES. The ES Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws. BWPO's ES Complaint System operational guidance provides processing and/or referral instructions for the following types of complaints.

All complaints received by a SWA must be assigned to a trained Complaint System Representative designated by the State Administrator (i.e., BWPO). Complaints must not be assigned to the SMA (§ 658.410(h)).

1. **ES-related Complaints:** ES-related complaints must be reported within 24 months of the alleged offense. After the 24<sup>th</sup> month, complaints will be treated as non-ES related complaints. ES-related complaints involve complaints against a business, or the ES agency covered under WIOA Title III (Wagner-Peyser Act). The Complaint System Representative will work with the complainant and associated respondent(s) to gain complaint resolution. Informal resolution is the preferred method.
  - a. **Employer-related Complaints:** A complaint against a business regarding a specific job to which the applicant was referred through the ES Complaint System is referred to the ES Office Manager to review and process.
  - b. **Agency-related Complaints:** An agency-related complaint is when a complainant alleges that the SWA (i.e., L&I) or PA CareerLink® ES staff, through actions or omissions, violated or failed to comply with Wagner-Peyser Act regulations. This type of complaint is referred to the ES Office Manager to review and process.
2. **Employment-related Law Complaint:** An Employment-related law complaint is a complaint alleging an employment-related law was violated. Employment-related laws are laws that relate to the employment relationship, such as those enforced by USDOL's WHD, OSHA or other Federal, state, or local agencies. Examples of this type of complaint include, but are not limited to, wages, housing, and transportation.
3. **Apparent Violations (20 CFR 658.419):** If a SWA, an ES office employee, or outreach staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except field checks (20 CFR 653.503) or complaints (20 CFR

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658.411), the employee must document the suspected violation and refer this information to the ES Office Manager.

- a. If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution as provided at §658.411.
- b. If the employer has not filed a job order with the ES office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.
- c. Apparent violations of nondiscrimination laws must be processed according to the procedures described in § 658.411(c).

### REFERRAL OF NON-ES RELATED COMPLAINTS

Non-ES related complaints can be delineated into sub-groups. Depending upon the nature of the complaint, the complaint(s) may be referred to appropriate PA CareerLink® program partner(s), the local area EO Officer or referred to other local area organizations (e.g., consumer advocate or legal aid entities) that may be of assistance to the complainant.

During operations, ES Complaint System Representatives may collect non-ES complaints. Non-ES complaint types each have distinct recording, resolution, and appeal procedures as well as different time frames to accept, act, and complete the resolution associated with them. Non-ES complaints can be delineated into sub-groups. Depending upon the nature of the complaint, the complaint(s) may be referred per the Local Workforce Development Board's (LWDB's) and/or Operator policy, or in absence of said policy, to appropriate PA CareerLink® program partner(s), the local area EO Officer or referred to other local area organizations (e.g., consumer advocate or legal aid entities) that may be of assistance to the complainant.

In absence of a LWDB and/or Operator policy that directs how complaints are referred, the ES Complaint System Representatives will promptly refer non-Wagner-Peyser-based complaints to the PA CareerLink® respondent(s) associated with resolving the complaint if the program is so noted in this policy (see bulleted list below). ES Complaint System Representatives may refer collected PA CareerLink® partner programs or service providers complaints not represented on the list to the PA CareerLink® Operator.

To be clear, this policy does not apply to complaints associated with WIOA's Title I Job Corps program; ES Complaint System Representatives will provide customers the local area Job Corps contact information.

Complaint System Representatives may directly refer complaints to the following partner programs:

1. **WIOA Title I:** Complaints alleging violations under WIOA Title I programs will be referred to the PA CareerLink® Operator.
2. **WIOA Title III:** Complaints alleging violations under Wagner-Peyser Act programs will be either resolved locally or referred to the state-level Complaint System Representative.
3. **Trade Adjustment Assistance (TAA) Program:** Complaints alleging violations under the Trade Act of 1974, and its amendments will be referred either to local office staff assigned to the TAA Program or to Central Office Trade Act Services program manager.
4. **Unemployment Insurance:** Complaints alleging violations under the Unemployment Insurance program will be referred to L&I's Office of Unemployment Compensation, Customer Service Unit.



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5. **Veterans:** Complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 will be referred either to the local office veteran representative or to the state-level Complaint System Representative.
6. **Office of Equal Opportunity, or OEO:** Complaints regarding WIOA Title I Section 188 or 29 CFR 38 violations shall be referred to OEO promptly.

### APPARENT VIOLATIONS

An apparent violation occurs when any ES staff observes, has reason to believe, or is in receipt of information regarding an apparent violation the staff member must document the apparent violation and refer it to the ES Office Manager, who must ensure the apparent violation is documented in the Complaint System log.

1. If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution (§ 658.411).
2. If the employer has not filed a job order with the ES office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.
3. Apparent violations of nondiscrimination laws must be processed according to the procedures described in § 658.411(c).
4. Employers must ensure that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition for H-2A and H-2B and that employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers. Instances of qualified U.S. workers not being hired should be processed as Apparent Violations.

The Complaint System Representative and/or the state-level Complaint System Representative must record all apparent violations identified by ES staff on the Apparent Violation Log. The Log must be completed in its entirety for each violation logged. Terms such as “N/A” or “unknown” will not be accepted.

### RECEIVING ES COMPLAINTS

Complainants may call, write, e-mail, or report a complaint during a field check to submit an official complaint. Official complaints must be submitted in writing with the complainant's signature. An ES complaint can be submitted through the following pathways:

1. **IN PERSON** - When a person reports a complaint in person, the Complaint System Representative must:
  - a. Explain the ES Complaint System
  - b. Determine the type of complaint
  - c. Direct the complainant to complete the [ETA Form 8429](#) – Complaint/Apparent Violation Form; provide customer assistance if necessary
  - d. Ensure the Complaint form is signed by the complainant or their representative
  - e. Offer other Employment Services; and,
  - f. Log the complaint on the Complaint System Log.
2. **MAIL** - [ETA Form 8429](#) – Complaint/Apparent Violation Form is not required for mailed complaints. The written complaints must:
  - a. Have the complainant's or the complainant's authorized representative's signature; and
  - b. Give sufficient information to initiate an investigation.

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If the letter lacks sufficient information to investigate the complaint, the ES Complaint System Representative must request additional information. The complainant, if non-MSFW, must be allowed 20 working days to respond. A MSFW complainant must be allowed 40 working days to respond.

**Note:** Letters submitted by an attorney representing the complainant are treated like a properly completed complaint form.

3. **EMAIL** - When a complaint is received by e-mail, the Complaint System Representative (or other authorized SWA representative) must send to the complainant a letter via hard copy or email confirming the complaint was received. If the complainant's email lacks sufficient information to investigate the matter expeditiously, the Complaint System Representative (or other authorized SWA representative) must request additional information.
4. **TELEPHONE** - When a complaint is received by telephone, the complainant must be directed to file the complaint in person using the Complaint Information form or send a letter describing the complaint by mail or email.

**English Language Learner requirements:** When a complainant is an English Language Learner, or ELL, all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

**Confidentiality:** 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 law. (20 CFR 658.413(6))

## DESIGNATING ES COMPLAINTS

When a written and signed complaint is received, the Complaint System Representative must:

1. Decide the type of complaint (ES and/or Employment-related law)
2. Decide if complaint is a MSFW related complaint; and
3. Decide who should process the complaint since a complaint can be filed against a PA CareerLink®, an employer, or the agency (more than one office). The appearance of a conflict of interest (real or perceived) must be avoided; if in doubt, contact the state-level Complaint System Representative.
  - a. Complaints against a business are processed by the Complaint System Representative in the business' local PA CareerLink® office.
  - b. Complaints against a PA CareerLink® are processed by the Complaint System Representative in the local PA CareerLink® in question.
  - c. Complaints against L&I are processed by the state-level Complaint System Representative.

**Employment-related law complaint:** When a written and signed employment-related law complaint is received and identified as an Employment-related law complaint the Complaint System Representative must:

1. For non-MSFW complaints:
  - a. Refer immediately to the appropriate enforcement agency;

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- b. Inform complainant or their representative where the complaint has been referred to in writing; and,
  - c. Log the complaint on the Complaint/Apparent Violation Log.
2. For MSFW complaints:
- a. Process the complaint;
  - b. Offer to refer the MSFW complainant to other employment services should the MSFW be interested;
  - c. Inform complainant or their representative where complaint has been referred to in writing; and,
  - d. Log the complaint on the local office Complaint/Apparent Violation Log.

## PROCESSING ES COMPLAINTS

All ES-related complaints are accepted, assigned to the appropriate office, investigated, and resolved when the alleged incident is reported to ES within 24 months of the occurrence. When possible, the Complaint System Representative will resolve complaints informally within 15 working days, from when the complaint is received, unless it's MSFW-related. Complaints involving MSFW must be resolved within 5 working days of receipt of the filed complaint.

The ES Complaint System Representative must:

1. Assist the complainant with completing the Complaint/Apparent Violation Form [ETA Form 8429](#) and provide the complainant a copy of the form.
2. If necessary, follow up with an email or letter to request additional information.
3. Provide copies of the complaint file to the state-level ES Complaint System Representative.
4. A separate file will be maintained for each complaint. Staff must record any correspondence between the ES Complaint System Representative and the complainant and keep documentation in the file.

Key Timeframes:

1. Response
  - a. Non-MSFWs have 20 working days to respond
  - b. MSFWs have 40 working days to respond
2. Resolution
  - a. Non-MSFWs have 15 working days
  - b. MSFWs have 5 working days

All ES related complaints are accepted, designated to the appropriate office, investigated, and resolved when the alleged incident is reported to the ES Complaint System Representative within 24 months of the occurrence. When possible, the ES Complaint System Representative will resolve complaints informally within 15 working days, from when the complaint is received.

When a written and signed complaint is received, the ES Complaint System Representative must:

1. Decide the type of complaint (ES and/or employment-related law).
2. Decide who should process the complaint since a complaint can be filed against a PA CareerLink®, an employer, or the agency (more than one office). The appearance of a conflict of interest (real or perceived) must be avoided; if in doubt, contact the state-level ES Complaint System Representative.
  - a. Complaints against a business are processed by the ES Complaint System Representative in the business' local PA CareerLink® office.
  - b. Complaints against a PA CareerLink® are processed by the ES Complaint System Representative in

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the local PA CareerLink® in question.

- c. Complaints against L&I are processed by the state-level ES Complaint System Representative.

**Note:** Copies of all complaints should be forwarded to the state-level ES Complaint System Representative.

### ES COMPLAINT RESOLUTION

**Non-MSFW:** If resolution is not achieved at the local area level within the allotted time frame set for the non-MSFW, the complaint must be forwarded to the state-level Complaint System Representative. The state-level Complaint System Representative will make a determination, within 20 working days, based on the results of the investigation conducted by the Complaint System Representative and/or ES Office Manager. Once a written determination (pursuant to § 658.411 (d)(5)) is made, the state-level Complaint System Representative will generate a determination letter and send a copy to the complainant and the respondent via certified U.S. Postal Service.

**MSFW:** If resolution is not achieved at the local area level within the allotted time frame set for the MSFW complainant the complaint must be forwarded to the state-level Complaint System Representative. The state-level Complaint System Representative will make a determination, within 20 working days, based on the results of the investigation conducted by the Complaint System Representative and/or ES Office Manager. The state-level Complaint System Representative must make a written determination (pursuant to § 658.411 (d)(5)) regarding the complaint and must send electronic copies to the complainant and the respondent.

Complaints will be considered resolved when the complainant expresses satisfaction with the investigation and outcome in writing, or:

1. The complainant chooses not to elevate the complaint to the next level of review.
2. The complainant or the complainant's authorized representative fails to respond to a request for information within 20 working days for non-MSFW and 40 working days for MSFW (a request for additional information is given in writing by the Complaint System Representative).
3. The complainant exhausts all available options for review.
4. A final determination has been made by the enforcement agency to which the complainant was referred.

### Resolution of Other Complaints

#### 1. Out-of-State Employment Agencies or Business Complaints

When a person files a complaint in the local PA CareerLink® office concerning an out-of-state ES agency or an out-of-state business, the Complaint System Representative must ensure that the Complaint/Apparent Violation [ETA Form 8429](#) is completed in its entirety. The Complaint System Representative will send the following documents to the state-level Complaint System Representative:

- a. Complaint/Apparent Violation Form (ETA 8429), and
- b. Any accompanying documentation.

The state-level Complaint System Representative will forward the information to the appropriate agencies. The information will be sent to the following:

- a. The out-of-state ES agency
- b. The complainant
- c. The ETA Regional office(s) with jurisdiction over the transferring and receiving State agencies.

The out-of-state ES agency whom the complaint has been filed against will process the complaint as if it

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had been initially filed with that office. The ETA regional office with jurisdiction over the receiving state is responsible for follow-up.

When an ES complaint is against more than one state ES agency, the complainant must clarify which states are involved. ES complaints against more than one state will be processed separately.

When a request for reinstatement is denied by an out-of-state ES agency, the basis for the denial must be specified, and L&I must notify the business of their hearing date and time within 20 working days.

### 2. Discrimination Complaints:

All ES-related complaints that are filed at a PA CareerLink® site alleging unlawful discrimination will be assigned to the local area EO Officer. The Complaint System Representative will provide the complainant the Complaint/Apparent Violation [ETA Form 8429](#) and, when requested, will assist the complainant with completing the form. The Complaint System Representative must log the complaint in the Complaint/Apparent Violation logs and immediately refer the complaint to the local EO Officer. The Complaint System Representative will also provide the complainant with a referral in writing and direct the complainant to the vicinity of the **EO is the Law** poster.

**Note:** If the Complaint System Representative and the EO Officer are the same, the complaint must be recorded on the Complaint System Log as well as be documented according to the Discrimination Complaint procedures.

## FOLLOW-UP ON COMPLAINANT'S UNRESOLVED COMPLAINTS

When a MSFW submits a complaint, BWPO must follow-up monthly on the processing of the complaint and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints § 658.410(m).

## REQUEST FOR HEARINGS/APPEALS

A request for a hearing can be made by either a complainant who is not satisfied with the outcome of their complaint, or by a business who has had, or is in danger of having, ES services discontinued. The request must be made in writing and contain the complainant or business signature within 20 working days of receiving a notification of the result.

Hearings or appeals will be conducted in accordance with the Memorandum of Understanding for Independent Hearing Examiner Services between L&I and the PA Department of State as well as regulatory provisions found at §§ 658.417-18.

The designated Agency Liaison for the SWA shall be the state-level ES Complaint System Representative. The Agency Liaison is responsible for coordinating activities with the appointed hearing examiner. These activities will include providing the appointed hearing examiner the completed **Request for Hearing Examiner** form, times when the relevant parties are available for the hearing, and the appropriate information from the case file at least 30 working days prior to the hearing date.

The designated Agency Liaison will also be responsible for providing all involved parties the state hearing official's

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decision, also known as the *Proposed Report* after the hearing. Involved parties will include the complainant, the respondent, entities serving as amicus capacity (if any), the state agency, the ETA Regional Administrator, and the Solicitor of Labor.

**Attn:** Associate Solicitor for Employment and Training Legal Services  
Department of Labor  
Room N2101  
200 Constitution Ave, NW  
Washington, DC 20210

Pursuant to § 658.418, the involved parties have a right to appeal a state hearing officials' decision within 20 working days of the certified date of the receipt of the decision. They may file an appeal in writing with the ETA Regional Administrator. The notification to the parties must be sent by certified mail or by other legally viable means. The notice must give the address of the ETA Regional Administrator.

**Note:** For clarity, it must be stated that an administrative hearing is not the same as a Court of Law. Technical rules of evidence *do not* apply. It is up to the Hearing Officer to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

## DOCUMENTING COMPLAINTS AND FILE MAINTENANCE/RECORD KEEPING

**Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148:** The SWA is required to compile, reconcile, and submit to the U.S. DOL ETA Regional Office the quarterly Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148. Within 1 month after the end of the calendar quarter, ES office managers must ensure the statewide complaint system log is current. The state-level ES Complaint System Representative will consult with the SMA to ensure the newly completed Form 5148 is accurate. The state-level Complaint System Representative will verify the complaint system log is current and inform the BWPO Director the log is current and ready for submission. A copy of the completed form will be provided to the SMA.

**Complaint/Apparent Violation Form:** Wagner-Peyser Act based complaints must be recorded on USDOL'S ETA Complaint/Apparent Violation [ETA Form 8429](#) or an ETA-approved state-modified Complaint/Apparent Violation Form 8429.

In addition to investigating the complaints and documenting all correspondence, conversations, and activities, the local-level ES Complaint System Representative must also log all complaints on the Local ES Complaint System/Apparent Violation Logs.

**Local Complaint Log:** The local-level Complaint System Representative will create and maintain an electronic spreadsheet to log complaints that are made. Every box on the form must be completed for each complaint. The log will be submitted to the state-level ES Complaint System Representative on the 10th day of the first month following the end of the quarter. In the event no complaints have been made in any quarter, the local-level ES Complaint System Representative still must submit a report indicating zero complaints for that quarter. At a minimum, each listed complaint will specify:

1. The name of the complainant
2. The name of the respondent (employer or state agency)
3. The date the complaint is filed
4. Whether the complaint is by or on behalf of a MSFW
5. Whether the complaint concerns an employment-related law or the ES regulations; and

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6. The action taken, and whether the complaint has been resolved, including informally. The complaint log also must include action taken on apparent violations.

**Centralized Complaint Log:** The state-level Complaint System Representative will create and maintain an electronic centralized complaint log. The complaint log will list all complaints taken by the ES offices and the state-level Complaint System Representative. At a minimum, each listed complaint will specify:

1. The name of the complainant
2. The name of the respondent (employer or state agency)
3. The date the complaint is filed
4. Whether the complaint is by or on behalf of a migrant and seasonal farmworker
5. Whether the complaint concerns an employment-related law or the ES regulations; and
6. The action taken, and whether the complaint has been resolved, including informally. The complaint log also must include action taken on apparent violations.

Discrimination complaints must also be logged on the ES Complaint System/Apparent Violation Logs. Immediately after the complaint is logged, it must be referred to the local area EO Officer. Enter “referred to EO Officer” in the **Action** section of the log.

Within 1 month after the end of the calendar quarter, the state-level Complaint System Representative must transmit an electronic copy of the centralized quarterly Complaint System log of this section to the SMA. These logs must be made available to the Department upon request § 658.410(j).

**Note:** The ES Complaint System/Apparent Violation Logs can be submitted to the state-level Complaint System Representative via email or through the ES Complaint System SharePoint.

A separate folder for each ES complaint and each Employment-Related Law complaint must be maintained locally. Original copies of all correspondence sent to the complainant must be filed in each folder.

Documentation may include but is not limited to:

1. Complaint/Apparent Violation Form (ETA 8429) or a written complaint (if not taken on Form ETA 8429),
2. Phone calls,
3. Email logs and notes,
4. Requests for additional information,
5. ES Complaint referrals, and
6. Any additional correspondence.

Only factual information will be recorded in the files. ES Complaint System Representatives must be diligent in not recording any personal opinions regarding the complaint or the complainant in the file.

Each folder will be identified in the following manner: Last Name, First Name of complainant.

All records associated with an ES complaint, paper or electronic, must be kept three (3) full years from the date of complaint resolution or the date of the last response from any of the parties associated with the complaint or the resolution or attempted resolution of the complaint.



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### DISCONTINUATION OF SERVICES

The ES program values its business customers and strives to assist them in complying with all employment-related laws and ES regulations. However, when USDOL or another authorized enforcement agency determines that a violation of Wagner-Peyser administrative regulations or employment related law has occurred, the discontinuation of services must be initiated pursuant to §§658.500 - 658.504. It is the responsibility of the ES program to make every effort to bring the violating business into compliance and prevent the discontinuation of services. ES staff must thoroughly document all actions taken to assist the business in this process.

**Note:** Discontinuation of services should be considered the last resort. Only when every effort has been exhausted, and thoroughly documented, may the discontinuation of services be initiated.

**Basis for Discontinuation of Services:** The ES program may initiate procedures for discontinuation to businesses who:

1. Submit and refuse to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all employment services will be terminated in 20 working days unless the employer within that time does any of the following:
  - a. Provides adequate evidence that the specifications are not contrary to employment-related laws; or
  - b. Withdraws the specifications and resubmits the job order in compliance with all employment-related laws; or
  - c. If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws; or
  - d. Requests a hearing from the SWA pursuant to § 658.417.
2. Refuse to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved, and the assurances involved. The employer must be notified that all employment services will be terminated within 20 working days unless the employer within that time are found to have either misrepresented the terms and conditions of employment specified in job orders or failed to comply fully with assurances made of job orders;
  - a. Resubmits the order with the appropriate assurances; or
  - b. If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws; or
  - c. Requests a hearing from the SWA pursuant to [§ 658.417](#).
3. Find that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the SWA must specify the basis for that determination. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:
  - a. Provides adequate evidence that terms and conditions of employment were not misrepresented; or
  - b. Provides adequate evidence that there was full compliance with the assurances made on the job orders; or
  - c. Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and,
  - d. Provides adequate assurance that specifications on future orders will accurately represent the



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- terms and conditions of employment and that there will be full compliance with all job order assurances; or,
- e. Requests a hearing from the SWA pursuant to [§ 658.417](#).
4. Have a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time refuse to accept qualified workers referred through the Labor Exchange system; or
    - a. Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or
    - b. Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and
    - c. Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.
  5. Find of a violation of ES regulations under [§ 658.411](#), the SWA must specify the finding. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:
    - a. Provides adequate evidence that the employer did not violate ES regulations; or
    - b. Provides adequate evidence that appropriate restitution has been made or remedial action taken; and
    - c. Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or
    - d. Requests a hearing from the SWA pursuant to [§ 658.417](#).
  6. Fails to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:
    - a. Provides adequate evidence that the workers were accepted; or
    - b. Provides adequate evidence that the workers were not available to accept the job; or
    - c. Provides adequate evidence that the workers were not qualified; and
    - d. Provides adequate assurances that qualified workers referred in the future will be accepted; or
    - e. Requests a hearing from the SWA pursuant to [§ 658.417](#).
  7. Fails to cooperate in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:
    - a. Provides adequate evidence that he/she did cooperate; or
    - b. Cooperates immediately in the conduct of field checks; and
    - c. Provides assurances that he/she will cooperate in future field checks in further activity; or
    - d. Requests a hearing from the SWA pursuant to [§ 658.417](#).
  8. Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to the 7 causes listed above.

If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, they must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

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Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at [§ 658.411](#) and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to [§ 658.411](#).

If the employer does not provide a satisfactory response in accordance with [§ 658.502](#), within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

If the SWA discovers that an employer's clearance order contains a material misrepresentation, the SWA may initiate the Discontinuation of Services.

The ES program may discontinue services immediately if L&I determines that the procedures or represented information identified would cause substantial harm to a significant number of workers. If it comes to the attention of an ES office or a SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H-2A and H-2B visa programs, SWA officials must engage in the procedures for discontinuation of services to employers pursuant to [paragraphs \(a\)\(1\) through \(8\)](#) of this section. And simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to [§ 655.184](#) or [§ 655.73](#) respectively for subsequent temporary labor certification.

If the employer does not provide a satisfactory response in accordance with [§ 658.502](#), within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

When services to a business that are subject to Federal Contractor Job Listing Requirements are discontinued, the ETA regional office must be notified immediately. L&I will notify the ETA Regional Administrator of businesses who are alleged not to be in compliance with the terms of the Federal Temporary Labor Certification regulation. This will result in an investigation and consideration of ineligibility for subsequent temporary certification.

For businesses who are alleged to have not complied with the terms of the temporary labor certification, ETA Regional Administrator must be notified of the alleged non-compliance for investigation and consideration of ineligibility for subsequent temporary labor certification (20 CFR 655.210).

**Notification for Discontinuation of Services to Business/Employers:** The SWA must notify the employer in writing that it intends to discontinue the provision of employment services pursuant to §§652, [653](#), [654](#), and [658](#) of Chapter 20, and the reason therefore.

If a Complaint System Representative becomes aware of any of the reasons as listed in the **Basis of Discontinuance of Services** section of this guidance, they must notify the state-level Complaint System Representative. The state-level Complaint System Representative will write and send, to the business, a Discontinuation of Services letter that will specify:

1. The reason for the discontinuation of services, including specific information on the job order, employee, or event in question.
2. What the business must do to avoid the discontinuation of services.
3. The letter will indicate the business/employer has the right to appeal SWA Discontinuation of Services related actions and/or decisions. The letter will also indicate that the business has 20 working days to respond to the Discontinuation of Services letter.

Businesses may choose to allow the discontinuation of services by simply not responding to the letter. If a

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business chooses to respond to the letter, the business must provide evidence or information specific to the cause of the discontinuation as outlined.

**Note:** A business must request a hearing in all cases except when choosing to allow the discontinuation of services.

**Reinstatement of Services (§ 658.504):** L&I may reinstate services to a business after discontinuation of services when:

1. The state is ordered to do so by a Federal Administrative Law Judge (ALJ) or Regional Administrator; or
2. The employer provides adequate evidence that any policies, procedures, or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; and
3. The employer provides adequate evidence that they have responded adequately to any findings of an enforcement agency, SWA, or ETA, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

The SWA must notify the employer requesting reinstatement within 20 working days whether their request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may request a hearing within 20 working days.

If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at [§ 658.417](#).

The SWA must reinstate services to an employer if ordered to do so by a state hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to a timely request for a hearing.

## MONITORING

ES complaints can be reviewed by state or federal monitors. Current state monitoring tools will be reviewed, and if necessary, enhanced to include among other items, that new PA CareerLink® on-site customers have been given the Customer ES Complaint System Handouts, local office staff are aware of the ES Complaint System and are following state and local policy and procedures, and that the process of recording and reporting written customer complaints is working as intended.