

## WORKFORCE SYSTEM POLICY

### Employment Service and Employment-Related Law Complaint System

**Effective Date:** Upon publication

**Policy Owner:** PA Department of Labor & Industry Bureau of Workforce Partnership and Operations

**Policy Contact:** BWPO Complaint System Representative [RA-LIBWPO-PROGCOORD@pa.gov](mailto:RA-LIBWPO-PROGCOORD@pa.gov).

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#### **Purpose of the Policy**

The commonwealth's workforce development delivery system known also as the PA CareerLink® system is a public benefit serving diverse stakeholders such as job seekers, employers, program participants and other customers. It is accepted in a complex public workforce delivery system that a wide spectrum of complaints can occur. This policy authorizes the establishment, staffing, operation and maintenance of the commonwealth's Employment Service and Employment-Related Law Complaint System or ES Complaint System focused upon the acceptance, resolution and/or referral of Wagner-Peyser Act-based complaints.

#### **Policy Statement**

This policy was developed to outline federal guidelines for handling ES-related and employment-related law complaints. This policy provides the commonwealth with essential information needed to establish and maintain the ES Complaint System including definitions, policy statements and regulatory-based guidance. Provisions found within the Workforce Innovation and Opportunity Act, or WIOA, Title III (i.e., Wagner-Peyser Act), its promulgating regulations {i.e., 20 Code of Federal Regulations, or CFR, 658.410} and guidance from U.S. Department of Labor, or U.S. DOL require each State Workforce Agency, or SWA, to establish and maintain an ES Complaint System. The Pennsylvania Department of Labor and Industry, or L&I, is the designated SWA and the grant recipient of Wagner-Peyser Act funds. Accordingly, L&I is required to establish and maintain a uniform system for accepting, investigating, resolving, and referring complaints and apparent violations through the Wagner-Peyser Act's Employment Services, or ES program.

This policy describes and/or makes provision for:

1. Policy and general guidance
2. Complaint logs
3. Federal reporting forms
4. Customer complaint handout and acknowledgement form
5. Public notice poster

For additional information contact L&I's Bureau of Workforce Partnership and Operations, or BWPO, Customer Service Unit [RA-LIBWPO-PROGCOORD@pa.gov](mailto:RA-LIBWPO-PROGCOORD@pa.gov).

#### **Scope**

This policy affects the commonwealth's public workforce development system and its varied stakeholders including L&I leadership, management and staff; LWDA CEOs; LWDB chairs, membership and respective staff; local area administrative entities and respective staff; PA CareerLink® Operators

and respective staff; PA CareerLink® program partners, eligible service providers and eligible training providers and their respective staff; and customers, applicants, registrants, program participants and employers that come into contact with the PA CareerLink® system.

### **Audience**

This policy should be distributed to L&I leadership, management, and staff; LWDA CEOs; LWDB chairs, members and respective staff; PA Workforce Development Board chair, members and respective staff; PA CareerLink® Operators and respective staff; PA CareerLink® program partners, service providers and eligible training providers and their respective staff; and other associated PA CareerLink® stakeholders.

### **Related PA L&I Policies**

- Workforce System Policy (WSP) No. 03-2015 Financial Management Policy
- WSP No. 121-03 Memorandum of Understanding (MOU) for the One-Stop Delivery System
- WSP No. 121-05 Local Workforce Delivery System – PA CareerLink® Certification and Continuous Improvement

### **Definitions** (primary source is 20 CFR 651.10)

**American Job Center® Network, or AJC**, is the common identifier to be used by each one-stop delivery center as required by 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) is a suspected violation of employment-related laws or ES regulations by an employer. Per Wagner-Peyser regulations [81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

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 as provided at §653.503 of this chapter (field checks) or §658.411 (complaints), the employee must document the suspected violation and refer this information to the ES Office Manager. If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution provided at §658.411.

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.

**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 Wagner-Peyser Act 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 (§651.10). Additionally, for purposes of this policy, complaints may take the form of an expression of dissatisfaction, protest, distress, grief, or pain. The source of the issue may be potential discrimination or civil right violations, a customer being denied occupational training or a potential violation of any Wagner-Peyser Act statute or regulation.

**Complaint System Representative** means the Employment Service staff individual at the local or state level who is responsible for handling complaints.

**Employment Service, or ES, and Employment-Related Law Complaint System (Complaint System)** handles 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 State Workforce Agency 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.

**Employment Service, or ES, Office** means a site that provides Wagner-Peyser Act based services; all ES Offices are co-located in PA CareerLink® offices.

**Employment Service (ES) Office Manager** means the individual in charge of all ES activities in a one-stop center.

**Employment Service, or ES, Staff** means individuals, including but not limited to state employees and staff of a subrecipient, who are funded, in whole or in part, by Wagner-Peyser Act funds to carry out activities authorized under the Wagner-Peyser Act.

**Farm work** means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and 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 handling, 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 means 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. Farm work 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 U.S. DOL guidance.

**L&I** is the Pennsylvania Department of Labor & Industry, that has been designated by the governor to serve as the state administrative entity and as the state workforce agency.

**Migrant farmworker** means a seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

**MSFW** is an acronym that describes the migrant and seasonal farmworker population.

**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.

**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 (including a State agency official).

**Seasonal farmworker** means an individual who is employed, or was employed in the past 12 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. Non-migrant individuals who are full-time students are excluded. 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. 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. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her 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 PA Department of Labor & Industry is the SWA.

**State hearing official** means the BWPO Director, or their designee, designated to preside at State administrative hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter.

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

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

## **Procedures**

**Employment Service and Employment-Related Law Complaint System, or ES Complaint System**  
General Policy Provisions: An ES-based complaint is 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 U.S. Department of Labor's, or U.S. DOL, Wage and Hour Division, or WHD, or Occupational Safety and Health Administration, or OSHA, as well as other Federal, State, or local agencies enforcing employment-related law.

Any individual, employer, organization, association or other entity may file a complaint. This policy supports practices and procedures so that PA CareerLink® customers or other stakeholders that supply potential Wagner-Peyser Act-based complaints are made aware of the ES complaint system and how to express complaints to a trained PA CareerLink® complaint system representative.

Complaints may be accepted in any one-stop center, or by a SWA, or elsewhere by outreach staff (§658.410(f))

All complaints filed through the local ES office must be handled by a trained Complaint System Representative, or CSR. (§658.410(g)) Complainants must be assured that their ES program-based complaint is received by PA CareerLink® ES program partner so that it is properly directed to the CSR. ES program complaints are acknowledged in a timely manner and are properly documented, logged, and resolved as expeditiously as possible within the local area; or if required, are elevated to an appropriate commonwealth and/or federal government agency that can resolve the complaint.

Application: This policy is in effect for all direct recipients of WIOA Title III (Wagner-Peyser Act) funds including the commonwealth, LWDBs, PA CareerLink® program partners, service providers and other direct recipients of WIOA Title III funds.

Establishment and Maintenance: Per 20 CFR 658.410, the SWA is tasked with the establishment and maintenance of the ES Complaint System. Administrative, financial, and operational responsibilities are assumed by BWPO.

Distribution of Responsibilities: L&I has overall responsibility for the operation of the ES Complaint System. L&I has directed its Bureau of Workforce Partnership and Operations, or BWPO, to establish and maintain the ES Complaint System. BWPO is the sub-agency that operates the commonwealth's ES Offices found throughout all PA CareerLink® sites. The state-level Complaint System Representative is assigned overall responsibility for the operation of the Complaint System; this includes responsibility for the informal resolution of complaints. The state-level Complaint System Representative must ensure centralized control procedures are established for the processing of complaints.

- 1) BWPO will provide on-going ES Complaint System guidance and operational management, specific to Wagner-Peyser Act related complaints, applicable at the local, state and federal levels, based upon Wagner-Peyser Act regulations found in Title 20, Parts 651, 652, 653, 654, and 658 and any further guidance from U.S. DOL.
- 2) BWPO will establish and maintain state-level and local office Complaint System Representatives who are tasked with handling complaints. BWPO will ensure the local office Complaint System Representatives and ES Office Managers are trained and supported as deemed needed to achieve an efficient ES Complaint System. BWPO will ensure the ES Complaint System is properly supplied with required resources and materials.

At the local area level, the ES Office Manager is responsible for the day-to-day management of the local ES complaint system. The ES Office Manager may identify a designee, referred to as a "Complaint System Representative", to handle and investigate complaints in the PA CareerLink® site. The ES Office Manager must ensure a Complaint System Representative is available during normal business hours to take complaints and explain how the ES complaint system works. Wagner-Peyser based complaints that are not associated with a migrant or seasonal farmworker, or MSFW, customer must be handled

by an ES Complaint System Representative.

The ES Complaint System, and associated staff, directly support the mission and responsibilities of the State Monitor Advocate's, or SMA, office. All MSFW related complaints, as well as apparent violations, will be promptly referred to the SMA office for resolution. In terms of the ES Complaint System, the State Monitor Advocate, or SMA, is responsible for:

- 1) Monitoring the complaint process and central complaint log;
- 2) Determining the outcome of Migrant or Seasonal Farmworkers', or MSFW, complaints;
- 3) Notifying MSFW complainants of outcomes;
- 4) The SMA must follow-up on all MSFW complaints that have been referred to an enforcement agency. The SMA will inform the complainant of the status of the complaint; and
- 5) Handling any necessary referrals.

State-level Coordination: The state-level Complaint System Representative and SMA must collaborate and coordinate together to maintain an orderly and efficient ES complaint system that allows for the collection, recording, resolution and reporting of complaints and apparent violations. A goal of this collaboration is continuous improvement of the ES Complaint System.

ES Complaint Types: The ES Complaint System allows for the collection, referral and resolution of different complaint types that allege violations of provisions found within WIOA Title III (i.e., Wagner-Peyser Act) including apparent violations. The ES Complaint System handles 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.

1. ES related Complaints: ES related complaints must be reported within 24 months of the alleged offense, otherwise the complaint will be treated as a Non-ES related complaint. ES related complaints involve complaints against a business or the ES agency. The Complaint System Representative will work with individuals and businesses to gain complaint resolution. Informal resolution is the preferred method.
2. Employer related Complaints: A complaint against a business regarding a specific job to which the applicant was referred through the ES Complaint System.
3. Agency related Complaints: An agency related complaint is when a complainant alleges that State Workforce Agency (i.e., L&I) or PA CareerLink® ES staff, through actions or omissions, violated or failed to comply with Wagner-Peyser regulations.
4. 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.
5. Apparent Violations (20 CFR 658.419): If the 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 658.411), the employee must document the suspected

violation and refer this information to the ES Office Manager.

Public Notice: 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 (see **Attachments or Resources**).

- 1) Employment Service and Employment-Related Law Complaint System Poster: All PA CareerLink® sites and locations where employment services are provided must prominently post U.S. DOL 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 State Monitor Advocate 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 is the Law" posters.
- 2) 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:
  1. Who may file a complaint
    - a) PA CareerLink® customers and other stakeholders including community-based organizations, employers, and labor unions
    - b) PA CareerLink® associated programs' applicants and participants
  2. Examples of complaint types or potential apparent violations
  3. Essential complaint filing guidance
  4. Time limits
  5. Contact information for state-level Complaint System Representative and SMA office
- 3) ES Complaint System Handout Acknowledgement: Customers are to acknowledge receipt of the ES complaint system handout.

Receiving ES Complaints: The PA CareerLink® is often the initial point of contact in the complaint process. Complaints are also taken during field checks and outreach activities. Complainants may call, write or e-mail to report a complaint; however, official complaints must be submitted in writing with the complainant's signature.

1. IN PERSON - When a person reports a complaint in person, the Complaint System Representative must:
  - 1) Explain the ES Complaint System;
  - 2) Determine the type of complaint;
  - 3) Direct the complainant to complete the ETA 8429 – Complaint/Apparent Violation Form and provide assistance if necessary;
  - 4) Ensure the Complaint form is signed by the complainant or his/her representative;
  - 5) Offer other Employment Services; and,
  - 6) Log the complaint on the Complaint System Log.
2. MAIL - The ETA 8429 – Complaint/Apparent Violation Form is not required for mailed

complaints. The written complaints must:

- 1) Have the complainant's or the complainant's authorized representative's signature; and
- 2) Give sufficient information to initiate an investigation.

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.

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))

Complaint/Apparent Violation Form: Wagner-Peyser Act based complaints must be recorded on U.S. DOL'S Employment and Training Administration, or ETA, Complaint/Apparent Violation Form (i.e., Form 8429) or an ETA approved state-modified Complaint/Apparent Violation Form 8429.

Centralized Complaint Log: The state-level Complaint System Representative will create and maintain an electronic centralized complaint log accessible to all ES Office Managers and the SMA. The complaint log will list all complaints taken by the ES office or 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 (MSFW);
- 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.

Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148: The SWA is required to compile, reconcile, and submit to the U.S. DOL 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. BWPO's Complaint System Representative will consult with the SMA to ensure the newly completed Form 5148 is accurate. BWPO's Complaint System Representative will verify the complaint system log is current and inform the BWPO Director, or their designee, the log is current and ready for submission. A copy of the completed form will be provided to the SMA.

Non-ES Complaint Referral: During operations, ES Complaint System Representatives may collect non-ES complaints. Non-ES 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 Equal Opportunity Officer or referred to other local area organizations (e.g., consumer advocate or legal aid entities) that may be of assistance to the complainant. Non-ES complaint types each have distinct recording, resolution, and appeal procedures as well as different time frames to act and complete the resolution associated with them. 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 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. 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:

- WIOA Title I: Complaints alleging violations under WIOA Title I programs will be referred to the PA CareerLink® Operator.
- WIOA Title III: Complaints alleging violations under Wagner-Peyser Act programs will be either resolved locally by the Complaint System Representative, referred to the state-level Complaint System Representative. If the complainant is deemed an agricultural-based worker, employer, or entity the complaint will be referred to the State Monitor Advocate.
- Trade Act: Complaints alleging violations under the Trade Act will be referred either to local office staff assigned to the Trade Act program or to the state-level Trade Act program manager.
- Unemployment Insurance: Complaints alleging violations under the Unemployment Insurance program will be referred to L&I's Office of Unemployment Compensation, Customer Service Unit.
- 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.
- Office of Equal Opportunity, or OEO: Complaints regarding WIOA Title I Section 188 or 29 CFR 38 violations shall be referred to OEO promptly.

Follow-up on complainant's unresolved complaints: When a migrant or seasonal farmworker submits a complaint, the SMA must follow-up monthly on the handling 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.

ES and Employment-related Law Process: All ES related complaints are accepted, designated 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 for non-MSFW. Complaints involving MSFW complainants must be resolved within 5 working days of receipt of the filed complaint.

**Designating 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 complainant is an MSFW; and
- 3) Decide who should handle 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 handled by the Complaint System Representative in the business' local PA CareerLink® office.
  - b) Complaints against a PA CareerLink® are handled by the Complaint System Representative in the local PA CareerLink® in question.
  - c) Complaints against L&I are handled by the state-level Complaint System Representative.

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

**Designating Employment-related Law Complaints:** When a written and signed 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;
  - b) Inform complainant or his/her 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) Refer complaint to SMA;
  - b) Offer to refer MSFW to other employment services should the MSFW be interested;
  - c) Inform complainant or their representative where complaint has been referred to in writing;
  - d) Log the complaint on the Complaint/Apparent Violation Log.

**Handling Complaints:** The Complaint System Representative must:

- 1) Assist the complainant with completing the Complaint/Apparent Violation Form (ETA 8429) form 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 Complaint System Representative.
- 4) A separate file will be maintained for each complaint. Staff must record any correspondence between ES and the complainant and keep documentation in the file.

**Key Timeframes:**

- 1) Response
  - a) Non-MSFWs have 20 days to respond
  - b) MSFW have 40 days to respond
- 2) Resolution
  - a) Non-MSFW have 15 business days

b) MSFW have 5 business days

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

The ES Complaint System / Apparent Violation Logs are spreadsheets used by all local offices 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 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 Complaint System Representative still must submit a report indicating zero complaints for that quarter.

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.

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

Complaint Resolution: 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 determination 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.

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 SMA. The SMA 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 determination is made, the SMA will generate a determination letter and send a copy to the complainant and the respondent via certified U.S. Postal Service.

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.

Complaints Involving Out-of-State Employment Service Agencies / an AJC and/or Businesses: 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 Form (ETA 8429) is completed in its entirety. The Complaint System Representative will send

the following documents to the state-level Complaint System Representative:

- 1) Complaint/Apparent Violation Form (ETA 8429), and
- 2) 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:

- 1) The out-of-state ES agency;
- 2) The complainant;
- 3) 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 handle the complaint as if it 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. Complaints against more than one state will be handled 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.

**Apparent Violations:** An apparent violation occurs when any ES staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or Wagner-Peyser regulations by a business. Documentation of the suspected violation can be as simple as a memorandum describing the suspected violation.

When the business has placed a job order with ES in the past 12 months, the Complaint System Representative will immediately refer the Apparent Violation to the SMA for investigation and resolution. Upon notification, the business will have five working days to remedy the situation. When there is no remedy after the fifth working day, the SMA will initiate discontinuation of services to the business.

When the business has not placed a job order in the past 12 months, the Complaint System Representative will refer the violation to the SMA.

The Complaint System Representative and the SMA 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.

**Discrimination Complaints:** All ES related complaints that are filed at a PA CareerLink® site alleging unlawful discrimination will be assigned to the local area Equal Opportunity Officer, or EO Officer. The Complaint System Representative will provide the complainant the Complaint/Apparent Violation Form (ETA 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 Compliant System Log as well as be documented according to the Discrimination Complaint procedures.

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

Documentation may include but is not limited to; Complaint/Apparent Violation Form (ETA 8429) or written complaint if not taken on Form ETA 8429, phone calls, email logs and notes, requests for additional information, ES Compliant referrals, and any additional correspondence.

Only factual information will be recorded in the files. 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"

**Hearings:** 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 days of receiving a notification of the result. The hearing will be conducted within 30 days of the request unless all interested parties waive the time limit in writing.

All hearings and appeals are handled by either L&I's state-level Complaint System Representative or the SMA depending on who is responsible for the complaint.

**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 U.S. DOL or another authorized enforcement agency determines that a violation of Wagner-Peyser administrative regulations or employment related laws has occurred, the discontinuation of services must be initiated. It is the responsibility of 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 withdraw job orders containing specifications that do not comply with Employment-related laws;
- 2) Refuse to provide assurances that the jobs offered comply with Employment-related laws;
- 3) 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;
- 4) Through a final determination by an appropriate enforcement agency, are found to have violated any employment-related laws. Notification of this final determination must be provided to ES by the enforcement agency;
- 5) Are found to have violated regulations pursuant to 20 CFR 658.416(d)(4);
- 6) Refuse to accept qualified workers referred through the Labor Exchange system; or

7) Refuse to cooperate in the conduct of field checks pursuant to 20 CFR 653.503.

The ES program may discontinue services immediately when L&I determines that the procedures or represented information identified would cause substantial harm to a significant number of workers. 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 to Business/Employers: If a Complaint System Representative becomes aware of any of the reasons listed, 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 business 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 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: L&I may reinstate services to a business after discontinuation of services when:

- 1) The ES program is ordered to do so by a Federal Administrative Law Judge or an ETA Regional Administrator or a State hearing officer (20 CFR 658.04(c)); or
- 2) The business provides adequate evidence that any policies, procedures, or conditions responsible for the previous discontinuation of service have been corrected and that the same or similar difficulties are not likely to occur in the future; and  
The business provides adequate evidence that he/she has responded satisfactorily to any findings, including to the complainant and the payment of any fines, which were the basis of the discontinuation of service.

L&I will notify the business of the reinstatement determination within 20 working days of receiving the written request from the business.

Local Workforce Development Boards: Local boards will ensure their local area complaint policy and

procedures align with this policy.

- Local boards will ensure that PA CareerLink® customers are notified of the ES complaint system.
- All Wagner-Peyser Act based complaints are to be recorded on U.S. DOL'S Complaint/Apparent Violation Form (i.e., Form 8429).
- Local Boards will ensure all local area staff are knowledgeable of the content of this policy and the local board's complaint policy.

**Record Keeping:** 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 thereof.

**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 Complaint System Handouts, local office staff are aware of the 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.

#### **Attachments or Resources**

Associated attachments and resources are found at: <https://www.dli.pa.gov/Businesses/Workforce-Development/Pages/Pennsylvania's-Workforce-System-Directives.aspx>.

#### **Supporting Information**

- Workforce Innovation and Opportunity Act, or WIOA, Public Law 113-128, enacted July 22, 2014
- Wagner-Peyser Act, as amended (29 United States Code 49 et. Seq.)
- WIOA Final Rules, 20 Code of Federal Regulations, or CFR, Parts 603, 651, 652, et. Al.; August 19, 2016
- Wagner-Peyser Act; Wagner-Peyser Act Staffing Flexibility, Final Rule; amends 20 CFR 651, 652, 653 and 658; January 6, 2020
- Training and Employment Notice, or TEN 15-09; Required Job Service Complaint System Poster; November 18, 2009
- Training and Employment Guidance Letter, or TEG, No. 20-16; Designation of Significant Migrant and Seasonal Farm Worker (MSFW) States, Significant MSFW One-stop Centers, and Significant Multilingual MSFW One-stop Centers; March 1, 2017
- TEN No. 20-19; Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148, and Complaint/Apparent Violation Form, ETA Form 8429; March 26, 2020

**Contact Entity** Technical assistance requests and/or inquiries related to this policy should be forwarded to the attention of BWDA via the following resource account: [LI-RA-BWDA-POLICY@pa.gov](mailto:LI-RA-BWDA-POLICY@pa.gov).

#### **Policy History**

U.S. DOL determined L&I's existing customer complaint policy and guidance insufficient during a January 2020 monitoring visit. A new policy was drafted and placed under L&I review. In the interim, L&I received U.S. DOL's PA Monitor Report dated June 12, 2020. The report provided a detailed expectation of what the commonwealth's policy and guidance must accomplish to satisfy U.S. DOL's findings. Specific findings regarded Pennsylvania not providing U.S. DOL evidence of written policies for the Employment Service and Employment-Related Law Complaint System and Apparent Violations and

not providing U.S. DOL evidence that each one-stop center has a trained Complaint System Representative. The L&I complaint policy was revised to account for the U.S. DOL PA Monitor Report contents.

**Summary of Changes**

<b>Revision Date</b>	<b>Author</b>	<b>Description</b>
01/10/2020	L&I/BWDA/Policy Coordination Services	Researched and created an initial policy draft for internal discussion.
07/14/2020	L&I/BWDA/Policy Coordination Services	Reviewed U.S. DOL’s June 12, 2020 PA Monitor Report and began initial policy draft’s revision. Set initial DART meeting to go over the policy draft and discuss “Procedures” section.
7/20/2020	L&I/BWDA/Policy Coordination Services	DART meeting discussed the complaint types, it was decided to discuss policy with Oversight unit to gain insight into certain operational elements.
8/11/2020	L&I/BWDA/Policy Coordination Services	BWDA Policy unit discussed policy draft with the Oversight unit
9/23/2020	L&I/BWDA/Policy Coordination Services	L&I OEO meeting to capture commonwealth’s WIOA Section 188 requirements and procedures.
10/13/2020	L&I/BWDA/Policy Coordination Services	L&I State Monitor Advocate meeting to capture ES requirements regarding MSFW population and federal reporting.
11/3/2020	L&I/BWDA/Policy Coordination Services	Provided policy draft to BWDA Policy unit supervisor.
11/17/2020	L&I/BWDA/Workforce Development Manager	It is noted this policy will have to be reviewed by the participating partner agency staff since it may ultimately impact their employees in the local PA CareerLink® system and information surrounding complaints of criminal nature need to align with the Financial Policy’s FMG.
11/19/2020	L&I/BWDA/Policy Coordination Services	Collaboration with BWPO begins.
12/3/2020	L&I/BWDA/Policy Coordination Services	Submitted revised draft to BWDA for review
2/17/2021	L&I/BWDA/Policy Coordination Services	Submitted revised draft with ETA recommendations to BWDA for review
6/30/2021	L&I/BWDA/Policy Coordination Services	Final review and edits added to policy.
7/21/2021	L&I/BWDA/Policy Coordination Services	SMA comments accepted and final edits added to policy.
8/2/2021	L&I/BWDA/Policy Coordination Services	L&I communicated to stakeholders public posting and submission of public comments information.
8/16/2021	L&I/BWDA/Policy Coordination Services	Completed policy prepared for publication.



**Public Comment**

Pennsylvania's DRAFT Workforce System Employment Services Complaint System policy and DRAFT Guidelines for PA CareerLink Employment Services Customer Complaints was posted on the Pennsylvania Department of Labor & Industry website for seven days of public review and comment. Public comment period was from August 3, 2021 through August 10, 2021. The comment period for this document was abbreviated because the policy was designed to comply with ETA requirements. Additionally, there was significant collaboration between ETA and L&I to produce the policy. No public comments were received.