

# PENNSYLVANIA GUIDELINES FOR PA CAREERLINK® EMPLOYMENT SERVICES CUSTOMER COMPLAINTS

Guide for Complaint System Representatives

## Employment Services Customer Complaint Procedures

<b>INTRODUCTION.....</b>	<b>2</b>
<i>ACRONYMS .....</i>	<i>2</i>
<b>DESIGNATION OF STATE AND LOCAL EMPLOYMENT SERVICES COMPLAINT SYSTEM REPRESENTATIVES .....</b>	<b>2</b>
<b>TYPES OF COMPLAINTS .....</b>	<b>2</b>
<b>PUBLICIZING EMPLOYMENT SERVICES COMPLAINT PROCEDURES.....</b>	<b>3</b>
<b>RECEIVING ES COMPLAINTS.....</b>	<b>4</b>
<b>HANDLING OF A COMPLAINT.....</b>	<b>5</b>
<b>COMPLAINT RESOLUTION.....</b>	<b>7</b>
<b>DOCUMENTING COMPLAINTS AND FILE MAINTENANCE/RECORD KEEPING.....</b>	<b>7</b>
<b>MONITORING.....</b>	<b>8</b>
<b>NON-EMPLOYMENT SERVICES COMPLAINTS.....</b>	<b>8</b>

## Employment Services Customer Complaint Procedures

### INTRODUCTION

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

### ACRONYMS

Acronym	Meaning
BWPO	Bureau of Workforce Partnership and Operations
EO	Equal Opportunity
ES	Employment Services
ETA	Employment and Training Administration
L&I	PA Department of Labor and Industry
LWDA	Local Workforce Development Area
MSFW	Migrant and Seasonal Farmworker
OEO	Office of Equal Opportunity
SMA	State Monitor Advocate
SWA	State Workforce Agency
USDOL	United States Department of Labor
WIOA	Workforce Innovation and Opportunity Act

### DESIGNATION OF STATE AND LOCAL EMPLOYMENT SERVICES COMPLAINT SYSTEM REPRESENTATIVES

At the state level, the Bureau of Workforce Partnership and Operations (BWPO) Director will designate a statewide ES Complaint System Representative.

At the local area level, either the ES Office Manager, BWPO Supervisor, or Site Administrator 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 an ES Complaint System Representative, to handle and investigate complaints at the PA CareerLink® site. The ES Office Manager must ensure an ES Complaint System Representative is available during normal business hours to take complaints and explain how the ES complaint system works.

Each PA CareerLink® site has designated a Complaint System Representative and backup in consultation with the LWDA and the local state entity. The backup Complaint System Representative can be the Local Workforce Development Supervisor.

### TYPES OF COMPLAINTS

The ES Complaint System allows for the collection, referral and resolution of different complaint types that allege violations of provisions found within Workforce Innovation and Opportunity Act (WIOA) Title III (Wagner-Peyser Act), including apparent violations. There are two general types of ES complaints: ES related and employment-related law. In other words, 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

## Employment Services Customer Complaint Procedures

complaints involving employment-related laws.

- *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 agency (ES). The ES Complaint System Representative will work with individuals and businesses to gain complaint resolution. Informal resolution is the preferred method.
- *Employer related complaints:* A complaint against a business regarding a specific job to which the applicant was referred through the ES Complaint System.
- *Agency related complaints:* An agency related complaint is when a complainant alleges that the State Workforce Agency (SWA) (i.e., PA Department of Labor & Industry (L&I)) or PA CareerLink® staff, through actions or omissions, violated or failed to comply with Wagner-Peyser regulations.
- *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 US Department of Labor's Wage and Hour Division, OSHA, or other Federal, State, or local agencies. Examples of this type of complaint include, but are not limited to, wages, housing, and transportation.
- *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.

## PUBLICIZING EMPLOYMENT SERVICES COMPLAINT PROCEDURES

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.

- *Employment Service and Employment-Related Law Complaint System Poster:* All PA CareerLink® sites and locations where employment services are provided must prominently post the United States Department of Labor (USDOL) 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 (SMA) 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.
- *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:
  - Who may file a complaint?
    - PA CareerLink® customers and other stakeholders including community-based organizations, employers, and labor unions
    - PA CareerLink® associated programs' applicants and participants

## Employment Services Customer Complaint Procedures

- Examples of complaint types or potential apparent violations
  - Essential complaint filing guidance
  - Time limits
  - Contact information for state-level ES Complaint System Representative and SMA office
- *ES Complaint System Handout Acknowledgement*: Customers are to acknowledge receipt of the ES complaint system handout.

### RECEIVING ES COMPLAINTS

PA CareerLink® sites are the initial point of contact in the complaint process. Complainants may call, write, or e-mail to report a complaint. However, official complaints must be submitted in writing with the complainant's signature. These submissions can be in the form of:

- **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 Employment and Training Administration (ETA) 8429 – Complaint/Apparent Violation Form and provide assistance if necessary;
  4. Ensure the Complaint form is signed by the complainant or their representative;
  5. Offer other Employment Services; and,
  6. Log the complaint on the Complaint System Log.
- **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.

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

- **EMAIL**: When a complaint is received by e-mail, a hard copy letter or email confirming the complaint was received must be sent by the ES Complaint System Representative to the complainant. If the complainant's email lacks sufficient information to investigate the matter expeditiously, the ES Complaint System Representative must request additional information.
- **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, all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

## Employment Services Customer Complaint Procedures

*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 USDOL'S 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 ES Complaint System Representative will create and maintain a centralized complaint log. The complaint log will list all complaints taken by the local or state-level ES 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.

## HANDLING OF A COMPLAINT

The ES 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 ES 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
2. Resolution
  - a. Non-MSFW have 15 business 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 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 ES Complaint System Representative.
  - a. Complaints against a business are handled by the ES Complaint System Representative in the business' local PA CareerLink® office.
  - b. Complaints against a PA CareerLink® are handled by the ES Complaint System Representative in the local PA CareerLink® in question.
  - c. Complaints against L&I are handled by the state-level ES Complaint System Representative.

## Employment Services Customer Complaint Procedures

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

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 are handled by either L&I's local or state-level ES Complaint System Representative depending on who is responsible for the complaint.

A complainant may file an appeal if no decision is reached within 60 days. Either party may appeal if dissatisfied with the local hearing decision. A decision made at the local level may be appealed if:

- A decision on a grievance or complaint at the local level has not been reached within 60 days of receipt of the grievance or complaint, or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the State; or
- A decision on a state level grievance or complaint has been reached and either party is dissatisfied with the local hearing decision.

Appeals made under state level must be filed within 60 days of the receipt of the decision being appealed. Appeals made under local level must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State.

The State must make a final decision on an appeal from a local or a state level no later than 60 days after receiving the appeal. The complainant has a right to appeal a state decision to the Secretary of Labor. These appeals must be filed within 60 days of the receipt of the decision being appealed or 120 days of the filing of the grievance with the state or filing of the appeal of a local grievance with the state.

- All appeals must be submitted by certified mail, return receipt requested, to the:  
Secretary, U.S. Department of Labor,  
200 Constitution Ave. NW,  
Washington, DC 20210, Attention: ASET.
- A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

All local level appeals will be handled by the Assistant Regional Director for the area in which the appeal is made. All state level appeals will be handled by the Regional Director.

For appeals to USDOL, the Secretary must make a final decision on an appeal from a local or a state level no later than 120 days after receiving the appeal. Appeals made under State level must be filed within 60 days of the receipt of the decision being appealed. Appeals made under local level must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State.

- All appeals must be submitted by certified mail, return receipt requested, to the:  
Secretary, U.S. Department of Labor,  
200 Constitution Ave. NW,  
Washington, DC 20210, Attention: ASET.

## Employment Services Customer Complaint Procedures

- A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

**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 local ES Complaint Specialist to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

### COMPLAINT RESOLUTION

If resolution is not achieved at the local area level within the allotted time frame, the complaint must be forwarded to the state-level ES Complaint System Representative. The state-level ES Complaint System Representative will make a determination, within 20 working days, based on the results of the investigation conducted by the local level ES Complaint System Representative and/or ES Office Manager. Once a determination is made, the state-level ES Complaint System Representative 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:

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

### DOCUMENTING COMPLAINTS AND FILE MAINTENANCE/RECORD KEEPING

In addition to investigating the complaints and documenting all correspondence, conversations, and activities, the ES 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 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 ES 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 Equal Opportunity (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.

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,



## Employment Services Customer Complaint Procedures

- 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. 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 the last report of the Wagner-Peyser program.

### 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 ES Customer 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.

### NON-EMPLOYMENT SERVICES COMPLAINTS

*Migrant and Seasonal Farmworker (MSFW) - Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148:* The SWA is required to compile, reconcile, and submit to the USDOL 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 ES 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 the log is current and ready for submission. A copy of the completed form will be provided to the SMA.

*Recruitment of US Workers:* 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 handled as Apparent Violations.

*Apparent Violations:* Apparent Violations are intended for MSFW only. 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 ES 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.

## Employment Services Customer Complaint Procedures

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

The ES 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.

Non-Employment Services (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 EO Officer or referred to other local area organizations that may be of assistance to the complainant (e.g., consumer advocate or legal aid entities). 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.

ES 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 ES Complaint System Representative or referred to the state-level ES Complaint System Representative. If the complainant is deemed an agricultural-based worker, employer, or entity, the complaint will be referred to the SMA.
- *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 Complaint System Representative or to the State-level ES 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.

Employment Related Law Complaints - When a written and signed complaint is received and identified as an Employment-related law complaint the ES Complaint System Representative must:

1. For non-MSFW complaints:
  - a. Refer immediately to the appropriate enforcement agency;
  - 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. Refer complaint to SMA;
  - b. Offer to refer MSFW to other employment services should the MSFW be interested;

## Employment Services Customer Complaint Procedures

- c. Inform complainant or their representative where complaint has been referred to in writing;
- d. Log the complaint on the Complaint/Apparent Violation Log.

Out-of-State Employment Agencies or Business Complaints - *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 ES Complaint System Representative must ensure that the Complaint/Apparent Violation Form (ETA 8429) is completed in its entirety. The ES Complaint System Representative will send the following documents to the state-level ES Complaint System Representative:

1. Complaint/Apparent Violation Form (ETA 8429), and
2. Any accompanying documentation.

The state-level ES 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, 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.

*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 ES 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 ES Complaint System Representative must log the complaint in the Complaint/Apparent Violation logs and immediately refer the complaint to the local EO officer. The ES 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 ES 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.