

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.

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 processing 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, Part 658} 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 (§658.410). 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. L&I's Bureau of Workforce Partnership and Operations, or BWPO, has been tasked with the administrative, financial, and operational responsibilities associated with the ES Complaint System.

This policy describes and/or makes provision for:

1. Policy and operational guidance
2. Complaint logs
3. Federal reporting forms
4. Required public notices and posters

For additional information, contact the BWPO Customer Service Unit RA-LIBWPO-PROGCOORD@pa.gov.

Scope

This policy applies to all direct recipients of WIOA Title III (Wagner-Peyser Act) allocated funds, affecting the commonwealth's public workforce development system State Workforce Agency, or SWA, and its personnel, including L&I leadership, management and staff; Local Workforce Development Areas, or LWDA, Chief Elected Officials, or CEOs; Local Workforce Development Boards, or LWDBs, 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

- Local Workforce Delivery System – Financial Management
- Local Workforce Delivery System - Memorandum of Understanding
- Local Workforce Delivery System – PA CareerLink® Certification and Continuous Improvement
- Local Workforce Delivery System – PA CareerLink® System Operator

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 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 employment service (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).

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 elected executive officer of a unit of general local government in a local workforce development area, or LWDA; or in a case in which a local area includes more than 1 (one) unit of general local government, the individuals designated under the agreement described at WIOA section 107(c)(1)(B). In the case of the Commonwealth, the governor is the CEO.

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 U.S. DOL's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service, or ES, and Employment-Related Law Complaint System (Complaint System) is established and maintained by the SWA and is operated by ES staff and/or managers to 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 ES staff and/or managers also accept, refer, and, under certain circumstances, track complaints involving employment-related laws.

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 within 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 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 mean 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 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 their permanent residence within the same day.

MSFW means a migrant farmworker or a seasonal farmworker.

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.

Seasonal farmworker 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 PA Department of Labor & Industry is the SWA.

State hearing official means a state official authorized to hold hearings under state law. Pursuant to 20 CFR Part 658 (subpart E), a state hearing official will be designated to preside at state administrative hearings convened to resolve appeals of decisions involving ES complaints, discontinuance of ES services and other subjects involving ES regulations this policy articulates.

State Monitor Advocate (SMA) - a state workforce agency official responsible for monitoring many of the SWA’s Wagner-Peyser Act Employment Service programs and activities and ensuring SWA compliance with ES regulations. The SMA’s key roles and responsibilities are found at 20 CFR 653.108.

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. 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.

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

Employment Service and Employment-Related Law Complaint System, or ES Complaint System Policy and Procedures

General Policy Provisions:

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, potential employer practices that violate a law or regulations, program partner or service provider dissatisfaction or a concern about the general operations of a PA CareerLink® service location. Each LWDB has ensured a method exists so that a customer’s complaint is accepted, considered,

referred to the appropriate program partner or service provider and resolved as efficiently as possible. For further information on how a particular PA CareerLink® accepts, refers, and acts to resolve complaints individuals should contact either the LWDB or Operator associated with the PA CareerLink® site.

Regarding this policy, and strictly speaking, an Employment Service, or 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.

ES complaints may be accepted in all one-stop center locations, by the SWA's assigned entity (i.e., BWPO) that operates and manages the ES Complaint System, or elsewhere by outreach staff (§658.410(f)).

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.

Complaint System Representative: Complaints filed through the local ES office must be processed by a trained Complaint System Representative, or CSR (§658.410(g)). Complaints received by a SWA must be assigned to a trained Complaint System Representative designated by L&I's BWPO (§658.410(h)). 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 (§658.410(i)). CSRs may do other duties as espoused within the BWPO ES Complaint System operational guidance such as referring non-ES complaints that are associated with other local area programs and/or services.

ES Office Manager: 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, or other BWPO representative, may identify a designee, referred to as a "Complaint System Representative", or CSR. 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 to the complainant. The ES Office Manager is also identified in the Commonwealth's one-stop system as the "PA CareerLink® Program Supervisor".

State-level ES Complaint System Representative: The state-level ES Complaint System Representative, or stat-level CSR, is assigned overall responsibility for the operation of the ES Complaint System. The state-level ES 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 ES Complaint System Representatives who are tasked with processing complaints. BWPO will ensure the local office Complaint System Representatives and ES Office Managers are trained and supported to achieve an efficient and effective ES Complaint System. BWPO will ensure the ES Complaint System is properly supplied with required resources and materials.
3. The state-level ES Complaint System Representative ensures that ES-related complaints that are either directly received from complainants or SWA personnel as well as ES-related complaints referred from the local area or another state are properly logged, reviewed, and processed accordingly.
4. The state-level ES Complaint System Representative is tasked with accepting, referring, processing, and resolving ES complaint either referred from L&I personnel or received directly from a complainant.
5. The state-level ES Complaint System Representative is tasked with maintaining the centralized complaint log and preparing reports associated with the ES Complaint system.
6. The state-level ES Complaint System Representative will coordinate ES-related activities with L&I personnel representing the SMA office and the Office of Equal Opportunity.
7. The state-level ES Complaint System Representative will assist in the coordination of ES-related complaint appeals rising to the state level with state hearing officials.
8. The state-level ES Complaint System Representative will review “discontinuance of ES services” cases and determine appropriate actions to process the case.

State Monitor Advocate: The ES Complaint System supports the mission and responsibilities of the State Monitor Advocate’s, or SMA, office. ES-related complaints, as well as apparent violations, will be reported to the SMA office per ES regulations and the BWPO ES Complaint System operational guidance. In terms of the ES Complaint System, the SMA is responsible for referring to the state-level ES Complaint System Representative complaints the SMA office or outreach staff have received and/or noted from field checks as well as complaints received by the SMA office. The SMA is tasked with monitoring the ES complaint system, its processes and centralized complaint log.

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.

Employment Services Complaint Types: 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 (i.e., 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.

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 covered under WIOA Title III (Wagner-Peyser Act). The Complaint System Representative will work with the complainant and associated respondent 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 is referred to the ES Office Manager to review and process.
 - **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 Act regulations. This type of complaint is referred to the ES Office Manager to review and process.
2. **Employment-related Law Complaints:** 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. These complaints are not resolved by BWPO staff as they must be referred to the appropriate enforcement agency.
3. **Apparent Violations (20 CFR 658.419):** A specific form of ES Complaint arises should a SWA official or staff, 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 so that it is documented into the Complaint System log.
 - 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.
 - 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.
 - Apparent violations of nondiscrimination laws must be processed according to the procedures described in § 658.411(c).
 - 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.

Non-ES-related Complaints: Non-ES-related complaints can be delineated into sub-groups. 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. Depending upon the nature of the complaint, the complaint(s) may be referred per the LWDB's and/or Operator policy, or in absence of said policy, 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.

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 BWPO's ES Complaint System operational guide for updates*). 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.

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.
- 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.
- 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.

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.

Required 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 (*see BWPO's ES Complaint System operational guidance or this policy's Attachments or Resources*).

- 1) *Employment Service and Employment-Related Law Complaint System Posters:* 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 SMA in the designated field. 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) *Website:* L&I must publish both the English and Spanish posters on the official Department of Labor & Industry Commonwealth of Pennsylvania website. The website posters must contain the contact information for the Director of BWPO and the SMA within 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:
 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
- 4) *ES Complaint System Handout Acknowledgement:* Customers are to acknowledge receipt of the ES complaint system handout.

Receiving ES Complaints: Complaints may originate from multiple sources. The source may occur within the PA CareerLink® an employer's location, during ES-related field checks and other outreach activities. Complainants may write, e-mail, or report a complaint during a field check to the onsite state official. All 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:
 - 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.

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))

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 and apparent violations identified by ES staff, and specifying for each complaint or apparent violation:

- 1) The name of the complainant (for complaints);
- 2) The name of the respondent (employer or State agency);
- 3) The date the complaint is filed, or the apparent violation was identified;
- 4) Whether the complaint is made by or on behalf of a migrant and seasonal farmworker (MSFW) or whether the apparent violation affects an MSFW;
- 5) Whether the complaint or apparent violation concerns an employment-related law or the ES regulations; and
- 6) The action taken (including any documents the SWA sent or received and the date the SWA took such action(s)), and whether the complaint or apparent violation has been resolved, including informally.

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.

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

- 1) Decide the type of complaint (ES regulations; Employment-related law or an Apparent Violation);
- 2) Decide if complainant is an MSFW; and
- 3) Decide who should process the complaint since an ES 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 the PA CareerLink® ES program 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.

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 immediately to the appropriate enforcement agency;
 - 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.

Designating 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. The Complaint System Representative and the state-level CSR 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.

Documentation received by the ES Office or state-level CSR of the suspected apparent 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 office must attempt informal resolution provided at § 658.411. When there is no remedy after the fifth working day, the ES office must refer the suspected apparent violation to the state-level CSR who will determine the appropriate party to initiate discontinuation of services to the business.

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.

Processing 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 or apparent violations 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 is referred to the state-level CSR who 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 CSR 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.

Follow-up on unresolved ES-related complaints: When a migrant or seasonal farmworker 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))

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 process 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 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.

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 or apparent

violation must be recorded on the Complaint 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 Complaint 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"

Note: Copies of all complaints or apparent violations must be forwarded to the state-level Complaint System Representative.

REQUEST FOR HEARINGS/APEALS: 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 the 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 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.

Discontinuation of ES Services (§§658.500 - 658.504): 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. 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.

- A. *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.
 - 8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to the seven (7) causes listed above.

The ES program must discontinue services immediately when L&I determines that the procedures or represented information identified would cause substantial harm to a significant number of workers. However, 20 CFR 658.501(b) indicates SWA officials may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in paragraphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at 20 CFR 658.503 and 658.504 must be followed.

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

- B. *Notification for discontinuation of services to Business/Employers:* If a Complaint System Representative becomes aware of any of the eight (8) reasons as listed above (i.e., *Basis for*

Discontinuation of Services), 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.

C. *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 employer 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
- 3) The employer 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 must notify the employer requesting reinstatement within 20 working days whether his/her 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.

Local Workforce Development Boards: Local area boards will ensure their local area complaint policy and procedures align with this policy and associated guidance.

- Local area 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 area boards will ensure all local area staff are knowledgeable of the content of this policy and the local area board's complaint policy.

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

Monitoring: ES complaints or apparent violations 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.

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 Staffing Flexibility, Final Rule; 20 CFR Parts 651, 652, 653, 654 and 658; November 24, 2023
- Training and Employment Notice, or TEN No. 08-23; Required Employment Service and Employment-Related Law Complaint System Posters; October 10, 2023
- 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
- TEN No. 01-17; Updated ETA 8429 – Complaint/Apparent Violation Form; July 10, 2017
- Training and Employment Guidance Letter, or TEGL, 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
- TEGL No. 20-17; Communication Plan for Designation of Significant Migrant and Seasonal Farm Worker (MSFW) States, Significant MSFW One-Stop Centers, and Significant Multilingual MSFW One-Stop Centers; June 22, 2018

Contact Entity Technical assistance requests and/or inquiries related to this policy should be forwarded to the attention of BWPO via the following resource account: RA-LIBWPO-PROGCOORD@pa.gov.

Policy History

L&I received U.S. DOL’s PA Monitoring and Oversight Assessment Report, dated June 13, 2023. U.S. DOL determined L&I’s existing ES Complaint System policy and guidance insufficient. The report provided a detailed expectation of what the commonwealth’s ES Complaint System policy and guidance must accomplish to satisfy U.S. DOL’s findings. Specific findings require Pennsylvania to revise the policy and guidance to improve information regarding targeted subjects (i.e., state hearing officials and discontinuance of ES services to employers) and to provide evidence of staff training to implement the policy and guidance accordingly. The L&I ES Complaint System policy and guidance were revised to account for the U.S. DOL PA Monitor Report contents and updated staff training was provided to implement the policy and guidance accordingly; evidence of these actions was submitted to U.S. DOL. Publication of this policy and associated guidance resolves U.S. DOL’s finding concerning the commonwealth’s ES Complaint System policy and guidance.

Summary of Changes

| Revision Date | Author/Meeting Attendees | Description |
|---------------|---|---|
| 01/10/2020 | BWDA’s Policy & Planning Coordination Services unit (PPCS unit) | Researched and created an initial policy draft for internal discussion. |

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|------------|--|---|
| 07/14/2020 | PPCS unit | 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 | PPCS unit | 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 | BWDA's Oversight & PPCS units | BWDA Policy unit discussed policy draft with the Oversight unit |
| 9/23/2020 | OEO & PPCS unit | L&I OEO meeting to capture commonwealth's WIOA Section 188 requirements and procedures. |
| 10/13/2020 | SMA & PPCS unit | L&I State Monitor Advocate meeting to capture ES requirements regarding MSFW population and federal reporting. |
| 11/3/2020 | PPCS unit | Provided policy draft to BWDA Policy unit supervisor. |
| 11/17/2020 | 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, may need to align with BWDA's Financial Policy and associated guidance. |
| 11/19/2020 | BWPO & PPCS unit | Collaboration with Bureau of Workforce Partnership and Operations (BWPO) begins. |
| 12/3/2020 | PPCS unit | Submitted revised draft to BWDA and BWPO management for review |
| 2/17/2021 | PPCS unit | Submitted revised draft with ETA recommendations to BWDA and BWPO for review |
| 6/30/2021 | PPCS unit | Final SWA management & leadership review and edits added to policy. |
| 7/21/2021 | PPCS unit | SMA comments accepted and final edits added to policy. |
| 8/2/2021 | PPCS unit | L&I communicated to stakeholders public posting and submission of public comments information. |
| 8/16/2021 | PPCS unit | Completed policy prepared for publication. |
| 8/15/2023 | L&I workforce leadership, managers and supervisors | U.S. DOL 2023 Monitor Findings Report included findings involving the ES Complaint System policy. The findings were reviewed and initial plan to revise the policy was agreed upon. |
| 9/6/2023 | PPCS unit | PPCS unit assembled a development and review team (DART) to review the policy and begin the policy revision process and complete required actions to permit proper operation of the complaint system. |
| 12/1/2023 | BWPO/PPCS unit | New ES Final Rules released on 11/24/2024; decision made to revise policy based upon new rules. |

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|-----------|---|---|
| 1/8/2024 | L&I leadership (Bill Trusky), PA WDB director (James Martini), BWDA manager Tara Smolock, PCCS unit | Presented new ES final rules to L&I leadership with a focus of SMA role with the ES Complaint System; it was agreed that SMA will abide by the new rules. |
| 1/16/2024 | BWPO/PCCS unit | The DART completed draft policy, guidance and required posters revisions. Start of policy review conducted by key L&I workforce supervisors, managers and leadership. |
| 1/25/2024 | L&I leadership/U.S.DOL-ETA | Requested from ETA time to allow for a posting of policy package for public comment; request approved. |
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| | PCCS unit | Policy package is provided to key stakeholders including LWDBs for review. |
| | PCCS unit | Stakeholder comments and suggestions are considered and acted upon |
| | PCCS unit | Policy package is posted for public comment; announcement emailed to stakeholders. |
| | PCCS unit | Policy package removed from public posting; public comments considered and acted upon. |
| | PCCS unit | SWA final review of policy package commences. |
| | PCCS unit | Policy package is published. |
| | BWDA leadership | Policy package and other ETA required evidence indicating successful resolution of ETA findings submitted to U.S. DOL. |

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.