

# Employment Service and Employment-Related Law Complaint System

*A 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 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.*

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## **SECTION 1**

# Employment Services (ES) and Employment-Related Law Complaint System

## COMPLAINTS AND DISCONTINUATION OF SERVICES

In accordance with 20 CFR 658.410, the Department of Labor and New Hampshire Employment Security (NHES) is required to establish and maintain a uniform system for accepting, investigating, resolving, and referring complaints and apparent violations through the Employment Services (ES) program. This manual was developed for NHES to outline federal guidelines for handling ES related and Employment-related law complaints. There are two types of complaints handled by the ES Complaint System; ES related, and Employment-related law. This manual provides the guiding policy specific to the ES Complaint System. Complaints against Unemployment Insurance (UI), Workforce Innovation and Opportunity Act (WIOA) Title 1 programs or complaints by veterans are handled in accordance with their respective regulations.

### WHAT IS A COMPLAINT?

A 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 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.

### WHO MAY FILE A COMPLAINT?

Any individual, employer, organization, association or other entity may file a complaint.

### CONFIDENTIALITY

*Regulations at section 658.413(6) specify the following:*

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.

## **DISTRIBUTION OF RESPONSIBILITIES**

NHES has overall responsibility for the operation of the ES Complaint System. NHES will ensure that information pertaining to the use of the ES Complaint System is publicized by prominently displaying the United States Department of Labor's Employment and Training Administration (USDOL ETA) approved ES Complaint System Poster in each local, comprehensive, affiliate, and satellite Career Center. At the local level, the ES Supervisor is responsible for the day-to-day management of the complaint system. The NHWorks Manager may identify a designee, referred to as a "Complaint Specialist," to handle and investigate complaints in the NHWorks. The NHWorks Manager must ensure a Complaint Specialist is available during normal business hours to take complaints and explain how the complaint system works.

The State Monitor Advocate (SMA) is the official state complaint specialist for the New Hampshire Department of Employment Security and is responsible for:

- Maintaining and monitoring the complaint process and a central complaint log;
- Determining the outcome of Migrant or Seasonal Farmworkers (MSFW) complaints;
- Notifying complainants of outcomes; and
- Handling any necessary referrals.

## **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 Complaint Specialist 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 State Workforce Agency (SWA), NHWorks 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 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.

## RECEIVING ES COMPLAINTS

The NHWorks 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.

**IN PERSON** - When a person reports a complaint in person, the Complaint Specialist must:

- Explain the ES Complaint System
- Determine the type of complaint
- Direct the complainant to complete the ETA 8429 – Complaint/Apparent Violation Form and provide assistance if necessary
- Ensure the Customer Complaint Information form is signed by the complainant or his/her representative
- Offer other Employment Services
- Log the complaint on the Complaint System Log (ES834.1)

**MAIL** - The ETA 8429 – Complaint/Apparent Violation Form is not required for mailed complaints. The written complaints must:

- Have the complainant's or the complainant's authorized Representative's signature; and
- Give sufficient information to initiate an investigation.

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

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 letter via hard copy or email confirming the complaint was received must be sent by the complaint specialist to the complainant.

When the complainants email lacks sufficient information to investigate the matter expeditiously, the Complaint Specialist 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 Customer Complaint Information form, or send a letter describing the complaint by mail or email.

## 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 Specialist will resolve complaints informally within 15 working days, from when the complaint is received for non-MSFW. Complaints involving MSFW 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 Specialist must:

- Decide the type of complaint (ES and/or Employment-related law)
- Decide if complainant is an MSFW; and
- Decide who should handle the complaint since a complaint can be filed against a NHWorks, an employer, or the agency (more than one office) and there are different people to lead the investigation of the complaint.
- Complaints against a business are handled by the Complaint Specialist in the business' local NHWorks office.
- Complaints against a NHWorks are handled by the Complaint Specialist in the local NHWorks in question.
- Complaints against the agency are handled by the SMA
- Copies of all complaint should be forwarded to the SMA and the Employment Security Director.

## DESIGNATING EMPLOYMENT-RELATED LAW COMPLAINTS

When a written and signed complaint is received and identified as an Employment-related law complaint the Complaint Specialist must:

- For non-MSFW complaints
  - Refer immediately to the appropriate enforcement agency
  - Inform complainant or his/her representative where the complaint has been referred to in writing
  - Log the complaint on the Complaint/Apparent Violation Log
- For MSFW complaints
  - Refer complaint to SMA
  - Offer to refer MSFW to other employment services should the MSFW be interested
  - Inform complainant or his/her representative where complaint has been referred to in writing
  - Log the complaint on the Complaint/Apparent Violation Log

## HANDLING COMPLAINTS

The Complaint Specialist must:

- Assist the complainant with completing the Complaint/Apparent Violation Form (ETA 8429) form and provide the complainant a copy of the form.
- If necessary, follow up with an email or letter to request additional information.
- Provide copies of the complaint file to the SMA and the Employment Security Director.
- 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 (*see the 'Complaint File Maintenance' section for details*).

## TIMEFRAMES

Response

- Non-MSFWs have 20 days to respond
- MSFW have 40 days to respond

Resolution

- Non-MSFW have 15 business days
- MSFW have 5 business days

## COMPLAINT SYSTEM/APPARENT VIOLATION LOGS

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

The Complaint/Apparent Violation Logs are spreadsheets used by all 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 SMA 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 Specialist still must submit a report indicating zero complaints for that quarter.

**Discrimination complaints must also be logged on the Complaint/Apparent Violation Logs. Immediately after the complaint is logged it must be referred to the local ES Complaint Officer. Enter "referred to ES Complaint Officer" in the 'Action' section of the log.**

Complaint System Logs must be retained for a minimum of three years.

**Note:** The Complaint/Apparent Violation Logs can be submitted to the SMA via email.

## COMPLAINT RESOLUTION

If resolution is not achieved at the local level within the allotted time frames; 15 days for non-MSFW the complaint must be forwarded to the SMA or 5 days for MSFW.

The SMA will make a determination, within 20 working days, based on the results of the investigation conducted by the Complaint Specialist. Once a determination is made, the SMA will send 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 for non-MSFW and 40 working days for MSFW (a request for additional information is given in writing by the Complaint Specialist)
- The complainant exhausts all available options for review; or
- A final determination has been made by the enforcement agency to which the complainant was referred

**Note:** When a customer service complaint is filed that is not ES related or Employment-related law, the Complaint Specialist will follow Employment Service and Employment-Related Law Complaint System procedures for resolving these types of complaints. **Customer service complaints are not logged and are not forwarded to the SMA. Customer service complaints should be forwarded to the Employment Service Director.**

## **COMPLAINTS INVOLVING OUT-OF-STATE EMPLOYMENT SERVICE AGENCIES/CAREER CENTERS AND/OR BUSINESSES**

When a person files a complaint in the local NHWorks office concerning an out-of-state ES agency or an out-of-state business, the complaint specialist must ensure that the Complaint/Apparent Violation Form (ETA 8429) is completed in its entirety. The Complaint Specialist will send the following documents to the SMA:

- Complaint/Apparent Violation Form (ETA 8429)
- Any accompanying documentation

The SMA will forward the information to the appropriate agencies. The information will be sent to the following:

- The out-of-state ES agency;
- The complainant;
- 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.

### **FOLLOW UP**

The SMA must follow-up quarterly on all MSFW complaints that have been referred to an enforcement agency. The SMA will inform the complainant of the status of the complaint.

## DISCONTINUATION OF SERVICES

ES values its business customers and strives to assist them in complying with all employment-related laws and ES regulations. However, when the Department of Labor 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 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

ES may initiate procedures for discontinuation to businesses who:

- Submit, and refuse to alter or withdraw job orders containing specifications that do not comply with Employment related-laws;
- Refuse to provide assurances that the jobs offered comply with Employment- related laws;
- 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;
- 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.
- Are found to have violated regulations pursuant to **20 CFR 658.416(d)(4)**.
- Refuse to accept qualified workers referred through the Labor Exchange system; or
- Refuse to cooperate in the conduct of field checks pursuant to **20 CFR 653.503**.

ES may discontinue services immediately when NHES determines that the procedures 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. NHES 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 BUSINESSES/EMPLOYERS

When the Complaint Specialist becomes aware of any of the reasons listed, they must notify the SMA. The SMA will then write and send, to the business, a Discontinuation of Services letter that will specify:

- The reason for the discontinuation of services, including specific information on the job order, employee, or event in question.
- What the business must do to avoid the discontinuation of services.
- 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

NHES may reinstate services to a business after discontinuation of services when:

- ES 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
- 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.

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

When a request for reinstatement is denied, the basis for the denial must be specified, and NHES must notify the business of their hearing date and time within 20 working days.

## APPARENT VIOLATIONS (AV)

AVs are intended for MSFW only. An apparent violation (AV) 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 Specialist will immediately refer the AV 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 Specialist will refer the violation to the SMA.

The Complaint Specialist 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 with a Career Center alleging unlawful discrimination will be assigned to the Equal Opportunity (EO) Officer. The Complaint Specialist will provide the complainant the Complaint/Apparent Violation Form (ETA 8429) and, when requested, will assist the complainant with completing the form. The Complaint Specialist must log the complaint in the Complaint/Apparent Violation logs and immediately refer the complaint to the local EO officer. The Complaint Specialist will also provide the complainant with a referral in writing as well as the EO is the Law poster.

**Note:** If the Complaint Specialist and the EO Officer is 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 Specialists 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 the Department of Labor Ethics Office. The Complaint Specialist or SMA responsible for the complaint will be responsible for coordinating hearing activity with the Office of Appeals as the office dictates.

## **SECTION 2**

# Employment Service and Employment-Related Law Complaint System

NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY  
**DIRECTIVE**

NUMBER  
415-6 MR

TITLE  
OPERATIONS ACTIVITIES

DATE  
August 22, 2018

SUBJECT  
Employment Service and Employment-Related Law Complaint System

DES 2113

**Summary:** This directive is published to inform staff on proper procedures for the Employment Service and Employment-Related Law Complaint System.

**Superseded:** Directive 415-6 OPERATIONS ACTIVITIES, Job Service Complaint System, dated December 23, 2015, is superseded and will be withdrawn and destroyed.

**Purpose:** To transmit NH Employment Security's policies and procedures for accepting, handling, and processing a complaint with the *Employment Service and Employment-Related Law Complaint System*.

**Procedures:**

**Types of complaints:** The Employment Service and Employment-Related Law Complaint System which involves violations of Employment Service (ES) regulations by the America Job Center (AJC) through actions or omissions or involves violation of terms and conditions of employment by an employer.  
*(The AJC referred the complainant to the job and the complaint is about the specific job to which the person was referred.)*

A non-ES Related Complaint which involves conditions other than *those listed for the Employment Service and Employment-Related Law Complaint System*.  
*(Example: Bob wants to file a complaint against his employer because hazardous chemicals are always left open. The AJC **did not** refer Bob to the job.)*

A non-applicable complaint to the Employment Service and Employment-Related Law Complaint which involves UI, WIOA, JS staff, Federal Contractors, etc. (These complaints are to be handled according to their respective *regulations*.)

**Who may file:** Any individual who believes a violation has been committed of ES regulations and/or other federal, state or other local employment related law.

**When to file:** Within 24 months of the alleged offense, otherwise the complaint will be treated as a non-ES related complaint.

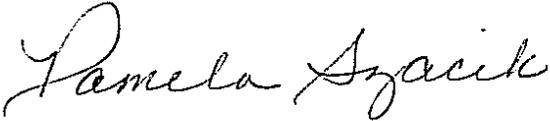
**Where to file:** Complaints may be filed either in person, by mail, e-mail or telephone to the Employment Service Complaint Specialist or the Local One Stop Manager.

**How to file:** Refer to the Employment Service and Employment-Related Law Complaint System manual dated 2018 for instructions.

**Responsibilities:** Supervisors and managers shall disseminate this directive to all persons under their authority and shall conspicuously post copies of the poster in offices. The Employment Service Complaint Specialist shall log in complaints and shall follow-up as required.

Management at every level will be responsible for implementation of this directive. The Employment Service Bureau has the primary responsibility for assuring compliance with this and all NHES policies relating to the ES Complaint System.

Managers and Supervisors shall maintain written documentation that all employees have read this directive. Failure to maintain written documentation that all employees have read this directive shall be considered failure to meet work standard and shall be cause for appropriate discipline.



Pamela Szacik  
Director, Employment Services and Operations

# INSTRUCTIONS FOR COMPLETING THE ONE-STOP CAREER CENTER (OSCC) COMPLAINT / REFERRAL RECORD

**(ETA 8429)**

## Instructions for the Complainant

**Part I: The complainant will complete this part. One-Stop Career Center staff should assist the complainant in preparing this portion of the form if assistance is requested by the complainant.**

*Item 1. Name of Complainant:* Print the last name, first name, and middle initial of the individual(s) filing the complaint. Use additional space to enter the name of more than one complainant if necessary.

*Item 2a. Permanent Address:* Print the complainant's complete mailing and residential address that he/she considers to be a permanent address.

*Item 2b. Temporary Address:* If applicable, print the complainant's complete mailing and residential address that he/she considers temporary, including name of grower or directions to reach if complainant is a Migrant and Seasonal Farm Worker (MSFW).

*Item 3a. Permanent telephone:* Enter the area code and seven-digit number of a permanent telephone number.

*Item 3b. Temporary Telephone:* If applicable, enter the area code and seven-digit number. This is the number the complainant considers temporary; for instance, a telephone at a housing facility provided to a MSFW where he/she could be reached. If a complainant does not have a telephone, request a telephone number of a family member, friend or neighbor where he/she can be reached or given a message.

## Instructions for the Respondent's Information

**(Completed by the Complainant)**

*Item 4. Name of Person Complaint is Being Made Against:* Print the first name(s), middle initial(s), and last name(s) of the person(s), where applicable, allegedly responsible for the complaint.

*Item 5. Name of Employer/ES Office (One Stop Career Center):* Print the full name of the employer if complaint is against an employer. Print name and number of the One-Stop Career Center if complaint is against the Employment Service.

*Item 6. Address of Employer/ES Office (One-Stop Career Center):* Print the street number, street name, city, state, and zip code. If complaint is against an employer, use his/her address. If complaint is against the Employment Service, use the One-Stop Career Center address. If employer, include directions to work site.

*Item 7. Telephone Number of Employer/ES Office (One-Stop Career Center):* Enter the area code and seven-digit number of employer or One-Stop Career Center listed in Item 5.

*Item 8 Description of Complaint:*

<b>IF:</b>	<b>THEN:</b>
The complainant requires assistance in completing this section.	Print the statement for the complainant using the first person ("I...").
The complainant does <u>not</u> require assistance.	Allow the complainant to print the statement.

- A. The complaint description should include:
  1. The specific charge of wrongdoing.
  2. The complainant's proposed corrective action (*or the results expected*).
  3. The exact amount of money due.
  4. The number of hours worked/bins, buckets, boxes picked.
  5. The name of immediate supervisor if different than respondent.
  6. The type of work performed.
  7. The exact dates and time worked.
  8. The respondent's Social Security Number (*if available*).
- B. Do not write on the back of the Complaint/Referral Record.
- C. Use additional sheets of paper if extra space is needed.
- D. Identify these pages with the complainant's name and complaint number. (*Suggestion: Complainant should sign and date the additional pages.*)
- E. Draw a diagonal line from the last word of the statement to the end of the page to insure that other comments are not added to the original statement.

**SPANISH CERTIFICATION STATEMENT: CERTIFICO** que a mi leal saber y entender, los datos que proporciono son ciertos y exactos. **AUTORIZO** la revelación de dichos datos a otras agencias encargadas del cumplimiento de las leyes para fines de la debida investigación de mi queja. **ENTIENDO** que se mantendrá confidencial mi identidad al mayor grado posible, de acuerdo con las leyes aplicables y una justa resolución de mi queja.

*Item 9. Signature of Complainant:* Review the complaint with the complainant and request his/her signature. The complainant or the complainant's representative must sign this block.

- A. In the case of several complainants, the complaint must be signed by at least one of the complainants.
- B. The complainant's signature should be on each additional sheet, if additional sheets are needed.
- C. If complainant refuses to sign the complaint form, a statement by the One-Stop Career Center Complaint Specialist should be written to this effect. The complainant should be further advised in writing that since he/she refuses to sign the complaint, no further action can be taken on the complaint.
- D.

<i>IF the Complainant:</i>	<i>AND:</i>	<i>THEN:</i>
Reads English		Have them read the certification statement on the ETA 8429.
Reads Spanish (only)		Have them read the certification statement above <i>Item 9</i> in Spanish.
Cannot read English	Understands English	Read the certification statement to them in English.
Cannot read Spanish	Understands Spanish	Read the certification statement above <i>Item 9</i> to them in Spanish.

Item 10. Social Security Number (SSN): Enter the complainant's nine digit Social Security Number.

**The Privacy Act concerning SSNs requires the following:** "Any Federal, State, or local government agency which requests an individual to disclose his/her Social Security Number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

Item No. 10 (above) of Part I on the revised Form ETA 8429 requests the complainant's Social Security Number (SSN). It is utmost importance that the complainant authorizes the One-Stop Career Center Complaint Specialist to use his/her SSN on the Form ETA 8429.

**The complainant's SSN may not be accessed from other One-Stop Career Center records. The individual must give his/her consent to use the Social Security Number on Form ETA 8429. To show proof of consent, request complainant's initials next to the SSN.**

This agency collects Social Security Numbers for record keeping and federal and state reporting, which includes follow-up and retention data.

Item 11. Date Signed: Enter the month/day/year that the complainant signed the ETA 8429.

### Instructions for One-Stop Career Center Staff

#### Special Instructions for One-Stop Career Center Staff:

- Every applicable item must be completed legibly.
- Make three copies.
- File the original in the complaint folder.
- Give one copy to the complainant.
- Send one copy to the enforcement agency, when necessary. Use a referral memo to transmit the complaint.
- Send one copy to the Monitor Advocate official if the complaint is elevated.
- Complaints must be logged and recorded in accordance with established procedures.

Additional copies may be prepared as deemed necessary by the local office.

**Part II: For One-Stop Career Center (OSCC) Use Only. This section is to be used by One-Stop Career Center associates who are responsible for analyzing the complaint and recording all actions taken.**

Item 1. Migrant and Seasonal Farmworker: Enter a check mark (✓) indicating whether or not the complainant meets the definition of a migrant or seasonal farmworker (MSFW).

Item 2. Type of Complaint.

A. If the complaint is Employment Service related.

1. Enter an "X" in the box marked ES related.

i. Enter an "X" in one or more of the appropriate 4 boxes below the ES related box.

ii. If a job order is involved, enter the complete job order number in the space indicated. Leave blank if no job order is involved.

B. If the complaint is non-Employment Service related, enter an "X" in the box marked non-ES related.

Item 3. If non-ES related, does complaint concern laws enforced by OSHA or ESA? If applicable, enter an "X" in the appropriate box indicating whether the complaint concerns laws enforced by OSHA or ESA.

**EXAMPLES OF LAWS ENFORCED BY:**

- A. Employment Standards Administration (ESA)
  - 1. Minimum wage
  - 2. Child Care
  - 3. Overtime
  - 4. Farm Labor Contractors
  - 5. Wage Garnishment
  - 6. Safety and health in temporary labor camps

- B. Occupational Safety and Health Administration (OSHA)
  - 1. Safety and health on a work site
  - 2. Safety and health in temporary labor camps

**Item 4.** Kind of Complaint: Enter an "X" in one or more of the 10 boxes to properly identify the kind(s) of complaint.

- A. Use the "Disability Discrimination" box to record complaints alleging discrimination on the basis of disability. These complaints shall be filed at the local office using ETA Form 8429 and shall be processed according to the State's processing procedures established for disability complaints pursuant to 29 CFR Part 37.
- B. Check "Discrimination" for complaints filed under Title VI of the Civil Rights Act, the Age Discrimination Act, Title IX of the Education Amendments, and Section 188 of the Workforce Investment Act. See Item 6 below for a description of discriminatory basis covered, and for filing procedures.

**Item 5.** H-2A/Criteria Employer: Enter an "X" to identify whether the complainant(s) is a U. S./Domestic Worker or H-2A worker. In addition, mark an "X" next to the subject that best represents the basis of the complaint.

**Item 6.** Discrimination complaints (other than disability) against Federally assisted Employment Programs, including the Wagner-Peyser services provided by the One-Stop Career Centers, should be submitted to the USDOL Directorate of Civil Rights, 200 Constitution Avenue, NW, Room N-4123, Washington, D.C., 20210

**Item 7a.** Referrals to Other Agencies: Enter an "X" in the appropriate box with the name of the agency to which the complaint was referred. If the same complaint is referred to ESA, OSHA, and/or other enforcement agencies (EEO, State Health Departments, etc.), mark separate copies appropriately.

**Item 7b.** Follow-up: Where follow-up is required, enter whether monthly or quarterly procedures are mandated. Enter an "X" in the block marked monthly if the complainant is a MSFW.

**Item 7c.** Follow-up Date: Enter the date of the next scheduled follow-up.

**Item 8.** Address of Referral Agency: Print complete name, address and telephone number of referral agency (enforcement agency) to which the complaint was referred, including a contact person if possible.

**Item 9.** Comments: Enter a brief summary of the initial action taken and whether the complaint was or was not resolved. This includes One-Stop Career Center services offered to the complainant.

**Item 10a.** Name and Title of Person Receiving Complaint: Enter the name of the One-Stop Career Center representative accepting the complaint and his or her title.

**Item 11.** Office Address: Enter the complete address of the complaint-taker's office (the office/One-Stop Career Center in which the complaint was filed).

**Item 12a-b.** Signature and Dates: This section is to be signed and dated by the One-Stop Career Center representative or designated Complaint Specialist accepting the complaint.



**One Stop Career Center (OSCC) Complaint/Referral Record**

For OSCC Use Only

Complaint No.		Date Received	
<b>Part I. Complainant's Information</b>		<b>Respondent's Information</b>	
1. Name of Complainant (Last, First, Middle Initial)		4. Name of Person Complaint Made Against	
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer/OSCC Office	
b. Temporary Address (if Appropriate)		6. Address of Employer/OSCC Office	
3a. Permanent Telephone ( ) -	b. Temporary Telephone ( ) -	7. Telephone Number of Employer/OSCC Office ( ) -	
8. Description of Complaint (If additional space is needed, use separate sheet(s) of paper and attach to this form)			

**Certification** I CERTIFY that the information furnished is true and accurately stated to the best of my knowledge. I AUTHORIZE the disclosure of this information to other enforcement agencies for the proper investigation of my complaint. I UNDERSTAND that my identity will be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of my complaint.

9. Signature of Complainant	10. Date Signed / /	
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**Part II. For OSCC Use Only**

<p>1. Migrant or Seasonal Farmworker?  <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <hr/> <p>2. Type of Complaint ("X" Appropriate Box(es))</p> <p><input type="checkbox"/> Job Service Related Job Order No. ____</p> <p>    <input type="checkbox"/> Against Job Service</p> <p>    <input type="checkbox"/> Against Employer</p> <p>    <input type="checkbox"/> Alleged Violation of WIA Regulations</p> <p>    <input type="checkbox"/> Alleged Violation of Employment Law(s)</p> <p><input type="checkbox"/> Non-Job Service Related</p>	<p>3. If non-Job Service-related, does Complaint concern laws enforced by Wage and Hour Division (formerly called the Employment Standards Administration) U.S. D.O.L.          WHD or OSHA? <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <hr/> <p>4. Kind of complaint ("X" Appropriate Box(es))</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> Wage Related</td> <td><input type="checkbox"/> Housing</td> </tr> <tr> <td><input type="checkbox"/> Child Labor</td> <td><input type="checkbox"/> Pesticides</td> </tr> <tr> <td><input type="checkbox"/> Working Conditions</td> <td><input type="checkbox"/> Health/Safety</td> </tr> <tr> <td><input type="checkbox"/> Migrant and Seasonal Agricultural Worker Protection Act (MSPA)</td> <td><input type="checkbox"/> Disability Discrimination</td> </tr> <tr> <td><input type="checkbox"/> Other (Specify) _____</td> <td><input type="checkbox"/> Discrimination*</td> </tr> </table>	<input type="checkbox"/> Wage Related	<input type="checkbox"/> Housing	<input type="checkbox"/> Child Labor	<input type="checkbox"/> Pesticides	<input type="checkbox"/> Working Conditions	<input type="checkbox"/> Health/Safety	<input type="checkbox"/> Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	<input type="checkbox"/> Disability Discrimination	<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Discrimination*	<p>5. H-2a/Criteria Employer</p> <p><input type="checkbox"/> U.S./Domestic Worker</p> <p><input type="checkbox"/> H-2a Worker</p> <p><input type="checkbox"/> Wages</p> <p><input type="checkbox"/> Transportation</p> <p><input type="checkbox"/> Meals</p> <p><input type="checkbox"/> Housing</p> <p><input type="checkbox"/> Other _____</p>
<input type="checkbox"/> Wage Related	<input type="checkbox"/> Housing											
<input type="checkbox"/> Child Labor	<input type="checkbox"/> Pesticides											
<input type="checkbox"/> Working Conditions	<input type="checkbox"/> Health/Safety											
<input type="checkbox"/> Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	<input type="checkbox"/> Disability Discrimination											
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Discrimination*											

6. \*For DISCRIMINATION COMPLAINTS ONLY. Persons wishing to file complaints of discrimination may file either with the State Workforce Agency, or with the Directorate of Civil Rights (DCR), U. S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, D.C. 20210.

<p>7a. Referrals To Other Agencies ("X" one)</p> <p><input type="checkbox"/> WHD. U.S. DOL.    <input type="checkbox"/> OSHA U.S. D.O.L.</p> <p><input type="checkbox"/> Other _____</p>	<p>8. Address of Referral Agency (No., St., City, State, ZIP Code and Telephone No.)</p> <p>_____</p> <p>_____</p> <p>( ) ____ - ____</p>	
<p>b. Follow-Up ("X" one)</p> <p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>	<p>c. Follow-up Date</p> <p>  /  /</p>	

9. Comments (If additional space is needed, use separate sheet of paper) Provide OSCC Services?     Yes     No If "No", explain.

**Complaint resolved?**     Yes     No If "No", explain.

<p>10a. Name and Title of Person Receiving Complaint</p>	<p>11. Office Address (No., St., City, State, ZIP Code)</p>				
<p>b. Phone No.</p> <p>( ) -</p>	<table style="width:100%;"> <tr> <td style="width:50%;">12a. Signature</td> <td style="width:50%;">b. Date</td> </tr> <tr> <td> </td> <td> / /</td> </tr> </table>	12a. Signature	b. Date		/ /
12a. Signature	b. Date				
	/ /				

**Public Burden Statement**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Obligation to reply is required to obtain or retain benefits (44 USC 5301). Public reporting burden for this collection is estimated to average 8 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

## **INSTRUCTIONS FOR COMPLETING THE ES COMPLAINT-SYSTEM LOG**

The quarterly log represents the aggregate history of complaints filed during the reporting period. Each individual complaint documented on an ETA Form 8429 must be recorded on the log sheet (including those resolved locally), as well as each Non-Employment Service-Related Complaint from non-MSFWs. The log sheet has mandatory data fields that must be completed. All text entries must be printed in a legible manner.

**Use the following instructions to complete the log.**

**One-Stop Career Center:** Enter the name of the local career center.

**Quarter Ending:** Enter the last date of the quarter (For example, March 30, 2018)

**#:** Write in the sequential number of the complaint being recorded, per instructions listed in the File System section.

**Complainant:** Write the name of the person making the complaint.

**Respondent:** Write the name of the person/company/career center for which the complaint is being made against.

**Date Filed:** Write the date the complaint was filed by the complainant.

**MSFW:** Check this box if the complainant meets the definition of an MSFW.

**Non-Employment Service Related:** Check this box if the complaint is non-Employment Service-related.

**WP Related:** Check any of the five subtitles that apply to the complaint.

**Referred:** Enter the date the complaint is referred to the enforcement agency(ies) in the appropriate column(s). If agency is not listed, use "Other" and enter the agency name in the "Action Taken" section.

**Date Pending:** Enter the date under the appropriate column as each phase of the complaint is handled.

**Date Resolved:** Enter the date under the appropriate column when the complaint is resolved.

**Appeal to USDOL RA:** If the complaint decision is appealed to the USDOL RA by the complainant, enter the date the appeal was forwarded to the USDOL RA.

**Action Taken:** Enter the action take for each phase of the complaint. Upon resolution, enter the action that resolved the complaint.



# INSTRUCTIONS FOR LOG OF APPARENT VIOLATIONS MSFW

## **Item 1. No.:**

This should be the number of the violation as it sequentially appears on the log.

## **Item 2. Employer, Contractor, or Individual:**

This is the name of the employer, contractor, or individual who is suspected of violating the employment related law.

## **Item 3. Date Referred:**

This is the date the apparent violation is referred to an enforcement agency by the manager or designated staff and not the date referred to the manager by staff.

## **Item 4. Source:**

Requires a check mark in the appropriate box as to the source of the suspected violation. Field checks will not normally be indicated as these are structured monitoring procedures involved with the agricultural clearance system.

## **Item 5. Type of Violation:**

Requires the type of violation to be indicated with only one type of violation per line (i.e., one violation of one law). Staff should remember in the case of an H-2A type MSFW apparent violation alleging employment conditions, that these type of violations: shall be forwarded to the nearest USDOL Wage and Hour office since they are responsible for enforcing all contractual terms and conditions described in the H-2A job orders. It is important to remember that the State Monitor Advocate be advised of any H-2A type MSFW apparent violations, and situations relative to H-2A/Criteria employers not accepting or rejecting U. S. workers referred to them by Job Service staff. The ETA Regional Administrator should be called immediately in the event U.S. workers are withheld prior to the arrival at the job site of H-2A workers.

## **Item 6. Referred:**

Requires that one agency per line be indicated as with Item 5. This policy is to eliminate inaccurate reporting of violations. Note: Violations can only be informally resolved prior to referral to an enforcement agency. Once a referral is made, informal resolution cannot be accomplished.

## **Item 7. Enforcement Agency Decision:**

Should be completed when an agency advises the manager of the findings.



## **SECTION 3**

20 CFR 658.410 -

Establishment of local and  
State complaint systems

# 20FR 658.410 - Establishment of local and State complaint systems.

[CFR](#) › [Title 20](#) › [Chapter V](#) › [Part 658](#) › [Subpart E](#) › [Section 658.410](#)

§ 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System. At the ES office level the manager must be responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The manager of the ES office and the SWA Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES office or the SWA, and specifying for each complaint:

(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.

(d) State agencies must ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an Employment and Training Administration (ETA)-approved Complaint System poster in each one-stop center.

(e) Each one-stop center must ensure there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any one-stop center, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local ES office must be handled by a trained Complaint System representative.

(h) All complaints received by a SWA must be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints must be the State Monitor Advocate (SMA).

(i) State agencies must ensure any action taken by the Complaint System representative, including referral on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the ES office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate SWA or ES office representative handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different ES office.

(m) Follow-up on unresolved complaints. When a complaint is submitted or referred to a SWA, the Complaint System representative (where the complainant is an MSFW, the Complaint System representative will be the SMA), must follow-up monthly regarding MSFW complaints, and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

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

(o) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.