

ATTACHMENT A2

PROCESSING A COMPLAINT AT LOCAL LEVEL

Complaints may be submitted in accordance with this policy by an individual or group of individuals, an employer or group of employers, a staff member, or an interested third party acting on behalf of an individual or group of individuals, an employer or group of employers.

The complaint process begins when a complainant informs any MassHire Career Center (MCC) staff of the intent to file a complaint. The Complainant may inform MCC staff in-person, by mail, email, or virtually.

A complaint is filed by mail or email.

If the complaint is received in a reasonable form (letter or email) which is signed by the complainant (electronic signature is acceptable), or their representative, and it includes sufficient information to initiate an investigation, the complaint **must be treated as if it were completed in-person**. The letter or email must be sent immediately to the CO/EOO, or back-up (as appropriate) and they must contact the complainant within **24-48 hours** to acknowledge receipt and to begin processing the complaint as described below.

A complaint is filed in-person or virtually.

The intent is that the Complainant, regardless of filing method, is immediately connected to the Complaint Officer (CO)/Equal Opportunity Officer (EOO), or back-up (as appropriate) and the CO/EOO, or back-up will immediately begin the process as described below.

However, there may be times when the CO/EOO or designated back-up are unavailable, in their absence another trained MCC staff member must begin the process described below.

- The CO/EOO, back-up or trained MCC staff must determine the complainant's multi-lingual and/or American Sign Language (ASL) needs, if applicable. If assistance is required, the complainant must be informed that multilingual/ASL services are available. If a staff member is unavailable to assist with these services, the staff member should follow the process as outlined below in the **Processing the Complaint** section.
- Next, gather contact information from the complainant including name, address, telephone, and email address if available.
- Provide the complainant with the Complaint/Apparent Violation Form (**Attachment C – ETA Form 8429 and C1 ETA Form 8429 Instructions**) and let them know the information on that document is what will be captured to file complaint.
- Provide the complainant a copy of **“How to File a Complaint” English and Spanish (Attachments F and F1)**. If the CO/EOO or designated back-up is unavailable, the trained staff person must inform the complainant that a CO/EOO or designated back-up (as appropriate) will be assigned to their case and that they will be contacted **within the next 24-48 hours** by the CO/EOO.

Please Note: MCC staff must develop a tracking process that includes the date the initial complaint was received, and the date the complaint was referred to the CO/EOO or designated backup to ensure the complainant is contacted within the timeframe identified above.

Processing the complaint.

The steps to be followed by COs/EOs and back-ups when processing complaints are outlined below:

STEP 1: *Provide complainant a description of Customers Rights to Complain.* The CO/EOO, or designated back-up must review with the complainant their right to complain and how the Unified Complaint Process will proceed. The Complainant where possible, should be provided **“How to File a Complaint” English and Spanish (Attachments F & F1).**

At a minimum the Complainant should be informed:

- They will receive assistance in writing and filing the complaint.
- They will be allowed to have translators, interpreters and/or a representative of their choice throughout the resolution process.
- The complaint must be in a reasonable form which includes: a letter, email, or the preferred method, the Official Complaint Form.
- The complaint must be signed and dated (emails and electronic signatures are acceptable).
- **The complaint file date will be assigned once CO, EOO and back-up logs the completed complaint.**
- After the complaint is reviewed, additional information may be needed to expeditiously investigate the complaint.
- Based on the program, activity, or service under which the complaint occurred, different resolution timeframes will be applied.
- The CO/EOO or designated back-up will determine if the complaint falls within their jurisdiction.
- If the complaint falls within MCC jurisdiction the complainant will be offered a local informal/formal resolution process or they may request a hearing.

Please note that the complainant should be encouraged to begin with the informal/formal resolution process as the determination will likely be quicker. The complainant should be assured they will not lose their right to an appeal if dissatisfied with the resolution.

- Contact with the CO/EOO or designated back-up throughout the process is essential to ensure a resolution that is mutual to all parties.

STEP 2: *Preparing the Complaint:* The CO/EOO or designated back-up must make every effort to obtain all the information perceived to be necessary to investigate and process the complaint whether filed in person or filed via letter or email.

The CO/EOO or designated back-up must assist in the completion of the Official Complaint Form (if letter or email not provided) and gather all pertinent information as stated below:

- The complaint must include a physical address, email, and telephone number(s) through which the complainant might be contacted throughout the investigation of the complaint.
- The complaint must identify the party or parties (respondent) to which the complaint is filed against.
- The complainant must provide a clear statement of the alleged violation.
- The CO/EOO or designated back-up must review the statement with the complainant and date and sign the complaint. As stated above emails and electronic signatures are acceptable.
- The CO/EOO or designated back-up must provide a letter (via hard copy or email) confirming the receipt of the complaint (received by mail or in-person) to the complainant. A copy of the complaint should be attached.
- The completed complaint should be immediately logged onto the Complaint Log following instructions provided in **(Attachments E & E1 Complaint Log and Instructions)** **Please note: This will establish the complaint file date.**
- The CO/EOO or designated back-up should reemphasize the need to maintain contact with the CO/EOO or designated back-up throughout the complaint resolution process. CO/EOO or designated back-up should request that the complainant contact them before moving from the local area. **Please note that Migrant Seasonal Farmworker (MSFW) customers can be a transient population, so this information is vital.**

STEP 3: *Establishing Jurisdiction.* The CO/EOO or designated back-up must review the complaint and must itemize out the issues contained therein complaint to determine jurisdiction. Complaints may have multiple jurisdiction responsibilities across MWBs, MCCs, EOLWD, State, Federal or other Third-Party agencies. The CO/EOO or designated back-up must immediately direct any complaints outside of their local jurisdiction to the MDCS Complaint Officer. Guidance on jurisdiction can be found in **Attachment A1: Jurisdiction and Attachment A5: Jurisdiction Quick Guide.** If the CO/EOO or designated back-up needs assistance related to jurisdiction they should contact the MDCS Complaint Officer.

STEP 4: Attempt Informal Resolution of Complaint (within 5 business days). The CO/EOO or designated back-up should encourage the complainant to seek informal resolution of their complaints, grievance, or concerns. This applies **only** to complaints that **are not discrimination-based**.

- If the complainant agrees, the CO/EOO or designated back-up attempts informal resolution **within five (5) business days**.

Please note that if the complainant is a MSFW, a formal determination will be made within these 5 business days.

- Informal resolution may include facilitation of conciliation meeting(s) to promote communication between all parties involved and facilitate a mutual understanding of what may be different points of view.
- Once an Informal Resolution process is complete, the CO/EOO or designated back-up will prepare a brief “Resolution Notice” for non-MSFW or a “Determination” for a MSFW complainant identifying the issue(s), actions, and remedies to be taken to ensure resolution and settlement of the matter(s).
- The “Resolution Notice/Determination Notice” will be reviewed by all parties to the complaint and signed (including CO/EOO or designated back-up) and dated to assure the agreed settlement is mutual to all parties. All parties will receive a copy of the agreement.
- If agreement is signed and dated, resolution is achieved, and the case is determined closed.
- The CO/EOO or designated back-up will document the entire process on the local complaint log according to the instructions provided in **Attachment E1: Complaint Log Instructions**.

Please Note: the complainant may request that the informal resolution process be terminated at any time, in which case the Formal Resolution protocol will be followed. The (CO/EOO or designated back-up) may, at its discretion, also initiate the Formal Resolution process at any time.

Step 5: Formal Resolution Process. If the informal resolution process does not lead to a mutually agreed upon resolution (determination if MSFW) or a complainant rejects the informal resolution process, then the complaint will move to the formal resolution process.

CO/EOO and back-up must be mindful of the various complaint and resolution timeframes associated with each of the programs/services/activities to ensure compliance with this policy.

Title III - Wagner-Peyser (W-P) Re-employment Services:

An individual or group of individuals, an employer or group of employers, a staff member, or an interested third party acting on behalf of an individual or group of individuals, an employer or group of employers may **file a W-P complaint within 2 years** of alleged violation or **within 1 year** after the case was deemed closed. Unless discrimination is alleged, in which case the complaint must be filed **within 180 calendar days** of the date of the incident.

When a W-P related complaint is filed with a MassHire Workforce Board (MWB), MassHire Career Center (MCC) and the local CO/EOO or designated back-up has determined the MWB/MCC holds jurisdiction:

- The local CO/EOO or designated back-up must move the complaint to the formal resolution process if the informal resolution process was terminated by complainant or CO/EOO or designated back-up or if the informal resolution process did not result in a resolution within **5 business days**.
- The CO/EOO or designated back-up must complete the investigation and issue a written determination within **15 business days** (this includes the informal period) from the date the complaint was filed.

Please Note: if the complainant is a **MSFW**, a final determination of the complaint must be completed within the same period as informal resolution - **5 business days**.

- The CO/EOO or designated back-up may conduct a fact-finding investigation including the request for additional information from complainant or respondent during the investigation period. If such a request for additional information has been made, a final written determination must be issued within **20 business days** (from date filed) for non-MSFW complainants and **40 business days** (from date filed) for MSFW complainants.

Please Note:

1. When requesting additional information from a complainant or respondent, an appropriate deadline to produce documents must be given to ensure resolution timeframes (**20 or 40 business days**) are met.
 2. Complainants must be advised that failure to respond within the timeframe for additional requested documentation may result in dismissal or closure of the complaint.
- If the complainant does not meet the deadline to provide additional documentation requested, then a formal written determination must be issued (e.g. dismiss or close).

Please Note: In some cases, with more than one complaint, lack of additional documentation requested could affect one or more issues within the complaint.

- The CO/EOO or designated back-up must send hard or electronic copies of the written determination to the complainant(s) and respondent(s). The written formal determination must include notice to all parties of their “Right to Appeal” to MDCS. Guidance is provided on Attachment B.
- If a local MCC determination issued to the complainant does not resolve the complaint to the satisfaction of the complainant, the complainant may request an appeal and/or a formal appeal hearing to the MDCS CO **within 20 business days** of receipt of the determination.
- The entire formal process must be documented and logged onto the local Complaint Log.

Apparent Violations and Employment-Related Law:

MassHire Career Center office employees, or outreach workers that observe, or has reason to believe, or is in receipt of a complaint regarding a suspected violation of employment-related laws or W-P regulations by an employer, except as provided under the field checks or complaints section of the regulations must act as outlined below:

- The CO/EOO or designated back-up should assist the complainant filling out the Official Complaint Form and/or Apparent Violation Form (hard-copy or electronic) or put into writing the complaint describing the alleged violation.
- The CO/EOO or designated back-up should inform complainant that employment-related law violations may have multiple jurisdictions.
- The CO/EOO or designated back-up must determine if the complainant is a Migrant Seasonal Farmworker (MSFW).

Non-MSFW

- ✓ If Complainant is not a MSFW, the complainant should be informed that the complaint will be forwarded to the MDCS Complaint Officer for referral to appropriate enforcement agency. The Complainant should be provided:
 - The MDCS CO contact information.
 - A copy of the referral must be sent to the complainant from MDCS either by hard copy or electronic mail.
 - Local CO/EOO or designated back-up must log the referral into the Complaint Log.
- ✓ The CO/EOO or designated back-up should send all information to MDCS CO at DCSUnifiedComplaint@mass.gov for referral to appropriate enforcement agency. No further follow-up required by local MCC.

MSFW

- ✓ If the Employer identified within the complaint has filed a job order within the past **12-month period**, then the CO/EOO or designated back-up must initiate the informal resolution process.
- ✓ As this is MSFW, the CO/EOO or designated back-up will issue a determination within **5 business days** following policy guidance as defined above.
- ✓ If formal process does not result in resolution, the complaint, including all pertinent information gathered during informal resolution process to MDCS CO at DCSUnifiedComplaint@mass.gov for immediate referral to appropriate enforcement agency.
- ✓ If the Employer identified within the complaint **has not** filed a job order within the past **12-month period**, then the CO/EOO or designated back-up must send all information to MDCS CO at DCSUnifiedComplaint@mass.gov for referral to appropriate enforcement agency. No further follow-up required by local MCC.

Exceptions:

- ✓ If the MSFW Apparent Violation or Employment Related Law complaint was directly filed with MDCS CO and/or the State Monitor Advocate they may determine to take jurisdiction and complainant and local MCC will be informed. No further action required by local MCC.
- ✓ If it is determined that informal resolution at local or State level would be determinantal to the MSFW complainant, the MDCS CO will immediately refer the complaint to appropriate enforcement agency and all parties will be notified. No further action is required by the local MCC.

Reminders: When a W-P complaint is filed against any parties below:

- ✓ An Employer in another State
- ✓ A State Workforce Agency (SWA) in another State
- ✓ Another MassHire Workforce Board or Career Center (in whole or in part)
- ✓ Other Third-Party
 - The local CO/EOO or designated back-up receiving the complaint must send, after ensuring that the Complaint/Referral Form is completed, a copy of the Complaint/Referral Form and copies of any relevant documents to MDCS CO at DCSUnifiedComplaint@mass.gov for processing and,

- A copy of the referral must be sent to the complainant.
- Copies must be sent via hard copy or electronic mail.
- CO/EOO or designated back-up must log the referral into the Complaint Log.

WIOA (Training and Service Complaints):

An individual or group of individuals, an employer or group of employers, a staff member, or an interested third party acting on behalf of an individual or group of individuals, an employer or group of employers may **file a WIOA complaint within 1 year** of alleged violation unless discrimination is alleged, in which case the complaint must be filed **within 180 calendar days** of the date of the incident.

- The local CO/EOO or designated back-up must move forward to the formal complaint process if the informal process was terminated by complainant or CO/EOO or designated back-up or if informal process did not result in a resolution within **5 business days**.
- The local CO/EOO or designated back-up must complete the investigation and issue a written determination within **30 business days** (this includes the informal period) from the date the complaint was filed.
- The local CO/EOO or designated back-up may conduct a hearing, a fact-finding investigation or request additional information from the complainant(s) or respondent(s) during the investigation period. If such a request has been made, a final written determination must be issued within **60 business days** (from date filed).

Please Note:

1. When requesting additional information from a complainant or respondent, an appropriate deadline to produce documents must be given to ensure resolution timeframes (**20 or 40 business days**) are met.
 2. Complainants must be advised that failure to respond within the timeframe for additional requested documentation may result in dismissal or closure of the complaint.
- If the complainant does not meet the deadline to provide additional documentation requested, then a formal written determination must be issued (e.g. dismiss or close).

Please Note: In some cases, with more than one complaint, lack of additional documentation requested could affect one or more issues within the complaint.

- The local CO/EOO or designated back-up must send hard or electronic copies of the written determination to the complainant(s) and respondent(s). The written

determination must include, to all parties, the “Right to Appeal” to MDCS. Guidance provided on **Attachment B3 – Sample Notice of Determination**.

- The entire formal process must be documented and logged into the Complaint Log.
- If a local MCC determination issued to the complainant does not resolve the complaint to the satisfaction of the complainant, the complainant may request an appeal and/or a formal appeal hearing to the MDCS CO **within 20 business days** of receipt of the determination.
- If no appeal is filed, the case is determined closed and should be indicated as such on the complaint log.

Equal Employment Opportunity and/or Discrimination Complaints:

A Complaint that alleges a violation of rights under the Equal Employment Opportunity Commission (EEOC) regulations or enforced by the U.S. Department of Labor's Civil Rights Center (CRC) must be filed within **180 calendar days** of the date of the incident.

The MCC EEO must review any complaints received that allege violations of civil rights laws and regulations such as those under title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed to the EOLWD Equal Opportunity Officer and MDCS CO for forwarding to the appropriate enforcement agency.

Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law.

- All complaints received by trained MCC staff alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, must be logged and immediately referred to the MCC Equal Opportunity Officer (EOO) or back-up.
- The MCC staff must notify the complainant of the referral in writing.
- If MCC EO or backup is unavailable the MCC staff should inform complainant that an EO or backup will be assigned to their case and that they will be contacted within the next **24-48 hours** by that staff member.

Please Note: MCC staff must develop a tracking process that includes the date the initial complaint was received, and the date the complaint was referred to the EEO or backup to ensure the complainant is contacted within the timeframe above.

- The EEO or back-up should, in all possible instances, meet in-person or virtually with the complainant in an area of the MCC that ensures confidentiality.

- The EEO or back-up may choose to gather the complainant's information on USDOL-CRC Complaint Information Form (CIF) and Privacy Act Consent Forms (Attachment D). Information gathered should include:
 - ✓ Complainant's name, address and means of contact.
 - ✓ Basis of the Complaint
 - ✓ Detailed description of the allegation(s)
 - ✓ Determine the date of the most recent alleged event of discrimination.
 - ✓ Identify proper respondent(s).
- The complaint must be signed and dated by the complainant.
- The signed and dated Consent Form should indicate whether the complainant allows the EEO or back-up to disclose the complainant's identity, if necessary to investigate the complaint.
- The EEO or back-up, should inform the complainant that the complaint can be handled locally or referred (through EOLWD EEO) to the USDOL-CRC in Washington, DC.
 - The EEO or back-up should stress that the resolution would likely be reached quicker if handled locally.
 - The option to file with USDOL would still be available should the complainant not agree with local resolution.
 - A complainant's choice to file at local or national level should be indicated on the signed Consent Form.
- The EEO or back-up must inform the complainant that within **24 hours** they will determine if they or another agency has jurisdiction over the complaint. And, that the complainant will receive written notification of receipt of complaint or lack of jurisdiction & referral.

Please Note: Letters should always be sent "return- receipt requested". If providing a letter in person, secure a signed receipt.

- If the EEO or back-up determines the local MCC does not have jurisdiction, a written "lack of jurisdiction" notification as identified above, must be sent to complainant and MDCS CO at DCSUnifiedComplaint@mass.gov. The written notification must inform the complainant that the case has been forwarded to the MDCS CO for referral or to an appropriate enforcement agency and that the complainant has **30 calendar days** from receipt of the letter to file a complaint with CRC. The notice must also include the reason for lack of jurisdiction based on one or more of the following reasons:

- The basis for the complaint is not covered by prohibitions set forth in 29CFR Part 38.
- The complaint **was not filed within 180 calendar days** of the date that the discriminatory act(s) allegedly occurred.
- The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIOA Title I financial assistance as defined in 29CFR Part 38.4.

Please Note: If notice is mailed as a hard copy to complainant, the notice should be mailed “return receipt requested.”

If MCC EEO or back-up determines it has jurisdiction, an acknowledgement letter must be prepared which contains the following:

- Notice of complaint receipt.
 - Assignment of Complaint Number.
 - Restatement of the issues raised in the complaint.
 - Notice of which issues have been accepted.
 - Explanation, if necessary, of issues that will not be accepted.
 - A notice that the complainant has a right to representation by any individual they choose throughout the complaint process with specification that if an attorney is chosen to represent the complainant, all legal fees are the sole responsibility of the complainant.
 - A notice that a preliminary period of fact-finding or investigation will occur and may take approximately **10 calendar days** to complete.
- The EEO or back-up must complete the investigation and issue a written determination within **90 calendar days** of the date the complaint was filed.
 - The EEO or back-up may request additional information from complainant or respondent during the investigation period. If such a request has been made a final written determination must still be issued within the original **90 calendar days** from the date the complaint was filed.

Please Note: If the MCC EEO fails to issue a written determination within 90 business days the complainant may file a new complaint with CRC within 30 days of the expiration of the 90-day period or **120 calendar days** from the date the complaint was filed.

- The CO/EOO or designated back-up must send hard or electronic copies of the written determination to the complainant(s) and respondent(s). The written determination must include all parties "Right to Appeal". Guidance provided on Attachment A3.
- The entire formal process must be documented and logged into the Complaint Log.
- If a local MCC determination issued to the complainant does not resolve the complaint to the satisfaction of the complainant, the complainant may request an appeal and/or a formal appeal hearing to the EOLWD EOO **within 20 calendar days** of receipt of the determination or **30 calendar days** to USDOL Civil Rights Center (CRC).
- If no appeal is filed, the case is determined closed and should be indicated as such on the complaint log.

MassHire Career Center Staff Personnel Complaints:

- Local non-state staff Personnel Complaints (other than discrimination complaints) must be handled through the appropriate employer of record Human Resource Office.
- Local non-state staff complaints alleging discrimination must be immediately elevated to the local MCC Equal Opportunity Officer.
- Local State Staff Personnel Complaints (other than discrimination complaints) must be elevated to the EOLWD Human Resources Office.
- Local state staff complaints alleging discrimination must be immediately elevated to the EOLWD Director of Diversity and Equal Opportunity.