

ATTACHMENT A2

COMPLAINTS COVERED BY THIS POLICY AND PROCEDURES

Complaints regarding:

A. Employment-related law:

When a complaint is filed regarding an employment-related law with at the Career Center or at the Department of Career Services (DCS) the office must determine if the complainant is a Migrant Seasonal Farmworker (MSFW).

1. If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency for assistance. Upon completing the referral the local or DCS representative is not required to follow-up with the complainant.
2. If the complainant is a MSFW, the Career Center office or the DCS Complaint Officer (CO) must:
 - a. Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s); and
 - b. Attempt to resolve the issue informally at the local level.

i. Exceptions:

1. In cases where the complaint was submitted to DCS and the State Monitor Advocate (SMA) determines that he/she *must take immediate* action and
 2. In cases where *informal resolution at the local level would be detrimental* to the complainant(s). In such cases where informal resolution at the state or local level would be detrimental to the complainant(s), the CO or SMA (depending on where the complaint was filed) *must* immediately refer the complaint to the appropriate enforcement agency.
- c. If the issue is *not resolved within 5 business days*, the CO *must* refer the complaint to the appropriate enforcement agency or another public agency for further assistance.
 - d. If the Career Center office or the DCS CO determines that the complaint *must* be referred to another State or Federal agency, he/she must refer the complaint to the *State Monitor Advocate (SMA)* who *must* immediately refer the complaint to the appropriate enforcement agency for prompt action.
 - e. If the complaint is elevated to the SMA, the CO must provide the SMA's contact information to the complainant.
 - f. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

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B. Title III - Wagner-Peyser (W-P):

(1) When an W-P related complaint is filed with a Career Center or the DCS office the following procedures apply:

- a. When a W-P related complaint is filed against an employer, the proper office to handle the complaint is the Career Center office serving the area in which the employer is located.
- b. When a complaint is against an employer in another State or against another State Workforce Agency (SWA):
 - i. The local office 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 DCS CO for processing.
 - ii. Copies of the referral letter must be sent to the complainant, and
 - iii. Copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies.
 - iv. All such copies must be sent via hard copy or electronic mail.
- c. If the complaint is against more than one SWA, the complaint must so clearly state and must be elevated immediately to the DCS SMA/CO for processing.
- d. When a W-P related complaint is filed against a Career Center, the proper office to handle the complaint is the Career Center office serving the area in which the alleged violation occurred.
- e. When a W-P related complaint is filed against more than one Career Center and is in regard to an alleged agency-wide violation the DCS SMA/CO must process the complaint.
- f. When a complaint is filed alleging a violation that occurred in the same State but through a different Career Center office, the Career Center office where the complaint is filed must ensure that the Complaint/Referral Form is completed and send the form to the appropriate local Career Center office for processing. A copy of the referral letter must be sent to the complainant via hard copy or e-mail.
- g. If a complaint regarding an alleged violation of the W-P regulations is filed at the Career Center office by either a non-MSFW or MSFW, or their representative(s) (or if all necessary information has been submitted to the office), the appropriate Career Center office CO must investigate and attempt to resolve the complaint immediately upon receipt.
- h. When a non-MSFW or his/her representative files a complaint regarding the W-P regulations with DCS, or when a non-MSFW complaint is referred from the Career Center office the following procedures apply:

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- i. If the complaint is not transferred to an enforcement agency, the CO must investigate and attempt to resolve the complaint immediately upon receipt.
 - ii. If resolution at DCS' level has not been accomplished within 30 working days after the complaint was received by DCS (or after all necessary information has been submitted to DCS), whether the complaint was received directly or from a Career Center office, DCS must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in determination section below.
- i. When a MSFW or his/her representative files a complaint regarding W-P regulations directly with DCS, or when a MSFW complaint is elevated from the Career Center office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.
- i. If resolution at the Department of Career Services (DCS) level has not been accomplished within 20 business days after the complaint was received by DCS (or after all necessary information has been submitted to DCS), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent.

C. Apparent Violations

If DCS, a Career Center office employee, or outreach worker, observes, has reason to believe, or is in receipt of information 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, the employee must document the suspected violation and refer this information to the Career Center Manager.

- If the employer has filed a job order with the Career Center office within the past 12 months, the Career Center office must attempt informal resolution.
- If the employer has not filed a job order with the Career Center office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

NOTE: This "Apparent Violation" section applies only to agricultural workers. The SMA must be copied on any reported or documented apparent violations.

D. WIOA (Training and Service Complaints) - *Local / State Level – 20 CFR 683.600 (a) & (b)*

1. Complaints must be submitted in writing and filed at the local level within one year of the date of the incident; unless discrimination is alleged, in which case the complaint must be filed within 180 days. If needed or requested, the Local Area CO/EOO must assist complainant in writing the complaint (including LEP customers).
2. Upon receipt of a complaint the designated Local Area CO/EOO reviews and determines what type of complaint it is and the path to follow. If a complaint is initially filed with the

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Department of Career Services (DCS) then it must be remanded to the local level. DCS will directly assume responsibility and receive and process complaints relating to workforce development programs when any of the following conditions apply:

- a. Complaint involves a conflict/dispute between the DCS and a local level entity (LWDA recipient or sub recipient);
- b. Complaint involves more than one local level entity; and/or
- c. Local level time limits and/or procedures have not been adhered to.

3. All LWDB complaints must be recorded on the local Complaint Log and must include:

- a. Name, address, and phone number of the complainant;
- b. Grounds or basis for the complaint;
- c. Date the complaint was filed;
- d. Person(s) and/or organization(s) against whom the complaint is filed; and any other pertinent information.

CO/EOOs are designated to assure the promptness and coordination of the procedures identified in this policy. All Workforce Development Board (WDBs) areas *must* ensure that American Job Center (AJCs) designate an individual to process complaint and monitor procedures at each comprehensive, affiliate and/or specialized career center.

CO/EOOs must be available to assist complainants and to provide information concerning the rights and responsibilities which are afforded by federal or state laws and regulations.

CO/EOOs and their back-ups must:

Act independently and without fear of intimidation or retaliation and have direct access to the decision maker (in the course of complaint investigation, resolution and/or referral, the CO/EOO may find it necessary to correct deficiencies which have adversely affected the complainant or other beneficiaries).

Local Level Processing

INFORMAL RESOLUTION

Program related complaints (or grievances) and procedures are addressed under WIOA (§181(c)) and federal regulations at 20 CFR 683.600. These complaints *are not discrimination-based* and are normally filed and processed at the local level.

CO/EOOs (and back-ups) must perform the following within 15 days of receipt of a program related complaint:

1. Log the complaint on the Quarterly Complaint Log as appropriate;
2. Begin to prepare an administrative case file and record of the complaint;
3. Determine the issues identified in the complaint and corresponding jurisdiction for each;
4. Notify appropriate office staff that a complaint has been filed;
5. Investigate to ascertain pertinent facts for those issues for which jurisdiction is determined;

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6. For issues that the agency lacks jurisdiction; the CO/EEO must refer the issues out to the appropriate entities(s);
7. Issue a letter to the complainant acknowledging receipt and outlining the issues identified, jurisdiction or lack thereof and the entities to which referrals were made;
8. Determine if proper procedures have been followed (for example: if an individual is complaining about being unfairly terminated or being denied benefits or services, are there adequate records in MOSES/case file of action(s) taken and were those actions consistent with agency policy?);
9. Attempt informal resolution by scheduling and holding an informal resolution meeting(s). The purpose of the meeting is to bring the parties together to discuss the issues and to examine evidence and make recommendations which may lead to a resolution (informal resolution)**; any **recommendations must be** based on the fact-finding investigation and information obtained during the informal meeting(s); and
10. If informal resolution cannot be achieved at the meeting(s), then notice to the complainant must be given for the opportunity to request a formal hearing.

*** The objectives of the Informal Resolution process or any discovery meeting are:*

- 1 Where possible, simplification of the issues;*
- 2 To help make any necessary amendment(s) to the complaint;*
- 3 Exchange of reports, regulations and any other pertinent documents and to exchange the names of any expert witnesses expected to be called for a formal hearing;*
- 4 Examine the possibility of obtaining statements of fact, documents and other exhibits which will avoid unnecessary testimony;*
- 5 Specify the kinds of documents and/or relief required to resolve the complaint; and*
- 6 Afford the opportunity for discovery by opposing parties (representatives for the parties must have the authority to resolve issues through negotiations and they must be prepared to spend sufficient time and effort in negotiations which may require more than one meeting).*

If resolution is achieved, the CO/EOO will prepare a brief “Resolution Notice”, identifying the issue(s) and the action(s) and /or remedies to be taken to assure settlement of the matter. This notice will be reviewed by the parties to assure they are in agreement.

If the resolution listed on the agreement is acceptable to both the complainant and respondent, they will be asked to sign and date the document as being accepted. The CO/EOO will also sign and date the statement, provide a copy to each party, and place the original in the case file.

If a resolution requires some agreement or action by the Respondent or individuals other than those identified in the Resolution Notice, then those other individuals must be added to the document, and must also sign, date it and receive a copy of the fully executed “Resolution Notice”.

If agreement is signed and dated, resolution is achieved and the case is closed. Complaint Log must be updated to reflect resolution.

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LOCAL FORMAL RESOLUTION

If informal resolution process does not result in a resolution, the parties must immediately be provided with a copy of the “Hearing Notice and Hearing Rights” (Attachment 03-101- 1 H2) after the conclusion of the informal resolution process. If a hearing is requested, a formal hearing date should be scheduled at that time. If the option for a hearing is refused then the decision must be documented accordingly.

IMPORTANT: If the complainant *does not appear* for the informal resolution meeting, a formal hearing date will be set and the “Hearing Notice and Hearing Rights” will be issued by certified mail to the complainant.

NOTE: The hearing date must be scheduled (not necessarily held) within *20 days* of the filing of the complaint.

Where efforts to informally resolve complaints have failed, local procedures must provide for a hearing and decision within sixty (*60*) *days* of the date of filing of the complaint. Such hearing shall be conducted by the designated hearing officer and include written notice of the date, time and place of the hearing; an opportunity to present both written evidence and testimony; a written decision based on all relevant evidence/testimony; and notice of appeal rights. See Attachments 03-101-1 H1 through 03-101-1 H3 for sample documents.

IMPORTANT: Since the hearing must be held and a decision rendered within 60 days of receipt of the complaint, there may be instances when the complaint is resolved or withdrawn prior to issuance of the decision. Resolution by the parties and withdrawals by complainant ***must*** be documented in writing to the complainant and on the Complaint Log.

Upon conclusion of the hearing, the local CO/EOO will prepare a “Determination Letter”, with determinations for each of the issue(s) accepted for review (those that had previously been identified with jurisdiction). The determination letter must include the Right to Appeal to the State Agency (Department of Career Services).

If the decision is not contested (within *20 days* from the determination letter) then the case is closed.

State Level Review of Program Related Complaint

If the local area decision is not acceptable to the complainant and/or respondent, either party has the right to appeal, within 20 days, the determination to the State Agency, Department of Career Services (DCS).

Also, if the LWDB/OSCC hearing decision is not issued timely (by the end of the 60 days from when the complaint was received), then the complainant may request a review by the state within ten (10) days of the date on which a timely decision should have been issued by the local area.

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An appeal or request for review of a local level decision is to be forwarded to the State Complaint Officer at the address shown below:

Department of Career Services
19 Staniford St, 1st Fl.
Boston, MA 02114
Attn. Jose V. Ocasio
Email: DCSUnifiedComplaint@MassMail.State.MA.US

The DCS CO will proceed as follows:

1. Log the complaint on the DCS Quarterly Complaint Log as appropriate;
2. Begin to prepare an administrative case file and record of the complaint;
3. Notify the complainant and appropriate staff that an appeal has been filed;
4. Upon request and to the extent possible, the parties *must* provide all pertinent files, records and other documents to the state CO and/or hearing official;
5. Review pertinent facts for those issues appealed;
6. If any issues in the course of the review were identified incorrectly for jurisdiction; the State CO must refer the issues out to the appropriate entities(s). This may include remand to a local area;
7. Attempt informal resolution by scheduling and holding informal resolution meeting(s);
8. If informal resolution cannot be achieved then a formal hearing must be scheduled.

The Department of Career Services must complete informal resolution or conduct a hearing and issue their determination within sixty (60) days of the date of receipt of the request for review or formal appeal made by the complainant.

Upon receiving a complaint for which the parties have not exhausted local level administrative remedies, the DCS Complaint Officer must, pursuant to 20 CFR 683.600(c)(2) and (d)(3), remand the complaint to the local level for processing and resolution. (As needed any technical assistance will be provided by the DCS State Complaint Officer)

DCS reviews local decision and has the option of affirming, reversing or remanding the local hearing decision; or upon further review conducting a state hearing and / or issuing a decision. Even if a state hearing is scheduled or held, a decision must still be issued within 60 days of the complaint being filed with DCS.

If either party is dissatisfied with the state level hearing officer's decision, he/she will have the right to appeal to the U.S. DOL Regional Office, subject to whatever restrictions DOL might have on accepting and reviewing a particular appeal.

If the decision is not appealed to the DOL level (within 60 days*) then the case is closed. (*per 20 CFR 683.610)

If the complaint is resolved or withdrawn prior to issuance of a decision the case is closed with a signed and dated resolution notice to the complaint. A sample of the Resolution Notice is included as part of Attachment 03-101-1H3.

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E. DISCRIMINATION COMPLAINTS

1. *Complaints alleging 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)*

- i. All complaints received by the Career Center or the SWA alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, *must be logged and immediately referred* to either local Equal Opportunity (EO) officer, the State EO officer, or the EEOC. The CO must notify the complainant of the referral in writing.
- ii. Any complaints received either at the local and State level or at the ETA regional office, 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 or forwarded* to the AJC/State Equal Opportunity Officer or the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW, Washington, DC 20210, for processing.
- iii. Nothing in this subpart precludes a grievant or complainant from *pursuing a remedy authorized under another Federal, State, or local law*.

2. LOCAL EQUAL OPPORTUNITY COMPLAINTS PROCESS AND TIMEFRAMES

- An Equal Opportunity Complaint must be filed within **180 days** of the alleged act(s) of discrimination. The complaint must be filed at either the local level or with the United States Department of Labor (USDOL) Civil Rights Center (CRC) in Washington, D.C.
- If a customer alerts a career center of his/her intent to file a discrimination complaint, steps should be taken to connect the complainant with the designated local EO Officer (his or her name should appear on the Complaint / EO poster or flier). If the local Complaint / EO Officer (CO/EO) is not available immediately, the designated EO back-up shall be contacted.
- In all possible instances, the designated local EO should personally meet with the complainant(s) in an area of the agency's offices that ensures confidentiality. The purpose of this preliminary interview is to:
 - ✓ determine the complainant's name, address and means of contact;
 - ✓ determine the basis of the complaint;
 - ✓ develop a detailed description of the allegation(s);
 - ✓ determine the date of the most recent alleged event of discrimination; and
 - ✓ Identify the proper respondent.
- Career centers may choose to gather the complainant's information on USDOL-CRC Complaint Information Form (CIF) and Privacy Act Consent Forms (see Attachments 03-101-1E or E:1).

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- Once the information is gathered, the document must be signed and dated by the complainant. The signed/dated Consent Form should indicate whether the complainant allows the EO to disclose the complainant's identity, if necessary to investigate his or her complaint.
- The EO should ask the complainant whether he/she would like the complaint handled locally or referred to the USDOL-CRC in Washington, D.C. The complainant's decision should be indicated on the signed Consent form.
- The EO should stress to the complainant that a local resolution would likely be reached more quickly and that the complainant's right to file again with the USDOL would still be available should the resolution at the local office be unsatisfactory.
- If the complainant elects to have his/her complaint resolved at the local level, the EO must request that the customer allow one (1) day for preparation of a written letter to either acknowledge receipt of the complaint or to provide a notice of Lack of Jurisdiction. If this is not possible, the complainant should be asked to wait in the public reception area while the EO examines the complainant's statement and a response is prepared. **Note:** When mailing letters to complainants, always send them "return receipt requested." When providing similar written responses in person, secure a signed receipt.
- The EO must review the information provided and determine if he/she has jurisdiction (see above and Attachment 03-101-1B).
- Once determined, the EO must declare in writing that he/she either has jurisdiction over the complaint or does not have jurisdiction based on one or more of the following reasons:
 - ✓ The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 38.
 - ✓ The complaint was not filed with the prescribed timeframes within 180 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 29 CFR Part 38.4.
- If it is determined that the EO does not have jurisdiction, he/she should provide the complainant with the address and phone number of the appropriate agency with jurisdiction.
- If it is determined that the career center does not have jurisdiction in the particular matter, a notice citing one or more of the above reasons shall immediately be provided in writing. The written notice must include the specific phrase "lack of jurisdiction" in describing why the career center is not the appropriate entity to resolve the complaint. If the notice is mailed to the complainant, send "return receipt requested". The notice should also inform the complainant that he/she has 30 days from the date of receipt to file a complaint to the CRC. The *original* signed complaint should be included with the notice. A *copy* of the complaint should be maintained on file with the career center.
- If the discrimination complaint is within the EO's jurisdiction, an acknowledgement letter must be prepared. The acknowledgement letter should contain the following:

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- ✓ Notice of complaint receipt.
- ✓ Assignment of a distinct complaint number (e.g. xxxx-01-01, first complaint, year).
- ✓ Restatement of the issues raised in the complaint.
- ✓ Notice of which issues have been accepted.
- ✓ Explanation, if necessary of issues that will not be investigated.
- ✓ A notice that the complainant has a right to representation by any individual he/she chooses during the complaint process with the 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 business days to complete. (Preliminary fact-finding describes the issues raised by the complainant and the respondent.)
- ✓ A choice of “Informal Resolution” (IR) as an appropriate option for informal resolution.

ADR includes “mediation” as a way of resolving the issues or differences between the parties to the complaint. The IR objective and process should be briefly explained in the letter. The choice to use IR rests with the complainant and such a choice to use IR should be communicated to the EO by the complainant as quickly as possible.

Upon receiving notice of the complainant’s decision to pursue ADR, the EO must immediately notify the Commonwealth:

Director of Diversity and Equal Opportunity
Executive Office of Labor and Workforce
Development
19 Staniford Street, Fifth Floor
Boston, MA 02114

Office of the Director
Department of Career Services
and Charles F. Hurley Building 19
Staniford Street, First Floor
Boston, MA 02114

ADR should not be considered as an appropriate mechanism for resolution when the complaint:

- ✓ involves the potential for setting a policy precedent; and/or
 - ✓ impacts other members of a protected group.
 - ✓ is of a high profile nature;
 - ✓ involves legal issues.
- If the complainant is dissatisfied with the resolution of the complaint at the State or local level, the complainant may file a new complaint with CRC within 30 days of the date on which the Notice of Final Action was received. Please Note: The Appeal of a Local EO determination is not covered under this Policy and handled solely by the CRC.
 - If the State or Local Area fails to issue the Notice within 90 days of the date on which the complaint was filed, the complainant may file a new complaint with CRC within 30 days of the expiration of the 90-day period (in other words, within 120 days of the date on which the original complaint was filed).
 - The EO complaint process including fact-finding, IR, settlement agreement, and “Notice of Final Action” must be completed within 90 days of the date that the complaint was filed at the local level.

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- The respondent to the complaint must also be notified that a complaint alleging discrimination has been filed and is being processed. The respondent must be provided a summary or copy of the complaint and given written notice that any form of retaliation or intimidation is against the law. The respondent must also be notified if IR has been offered to the complainant as a means of informal resolution.
- Copies of all correspondence related to EO complaints must be sent to both:

Director of Diversity and Equal Opportunity
Executive Office of Labor and Workforce
Development
19 Staniford Street, Fifth Floor
Boston, MA 02114

Office of the Director
Department of Career Services
and Charles F. Hurley Building
19 Staniford Street, First Floor
Boston, MA 02114