



Montana Department of LABOR & INDUSTRY

1
2 **Division: Workforce Services Division**
3 **Category: Job Service Operations**
4 **Effective Date: TBD**
5 **Last Revised: N/A**
6 **Policy No.: TBD**

7 **Complaint System Policy**

8 **Background:** The complaint system is a federally mandated process for reporting complaints and
9 ensuring all One-Stop customers have an opportunity to formally complain and seek redress. The complaint
10 form approved by the U.S. Department of Labor (ETA 8429) must be completed for all complaints brought to the
11 attention of the One-Stop Center and affiliates.

12 Established during the 1970's, the One-Stop complaint system is a place for workers, employers, concerned
13 citizens and organizations to give voice to their concerns about denial of employment-related rights or unjust
14 employee treatment. Except for discrimination issues, complaints shall be resolved at the local level when
15 possible. Referral to appropriate state or federal agencies is often appropriate.

16 Work related complaints include everything from wage and hour issues, unemployment insurance issues,
17 health or safety violations, working conditions, sanitation, discrimination, or other civil rights violations.
18 Complaints may also be related to the services provided to customer at the One-Stop.

19 The Workforce Innovation and Opportunity Act (WIOA) mandates that each state and local area receiving an
20 allotment under Title I establish and maintain a procedure for grievances or complaints alleging violation of the
21 requirements of Title I. Such procedure shall include an opportunity for a hearing and be completed within 60
22 days after the filing of the WIOA grievance or complaint.

23 **Scope:** This policy applies to the Equal Opportunity Officer, Reporting and Data Specialist, complaint
24 coordinator and all One-Stop Centers and affiliates operating the complaint system.

25 **Policy:**

26 **Definitions:**

- 27 • **Apparent Violation** - a violation of Wagner-Peyser regulations or employment related laws by an
28 employer, where an employee or WSD/JSOB representative observes, has reason to believe, or is in
29 receipt of information regarding a suspected violation.
- 30 • **Complainant** – an individual, organization, employer, association, or other entity filing a complaint.
- 31 • **Complaint (Wagner-Peyser)** – the submission of an allegation that Wagner-Peyser (One Stop) funded
32 programs or partners violated Wagner-Peyser regulations, and/or an allegation that an employer
33 violated federal, state or local employment related laws.
- 34 • **Complaint Coordinator** – local staff assigned to process complaints according to procedural
35 requirements contained in this policy.
- 36 • **Employment Services (ES) Related Complaint** – an ES complaint may be a One Stop related complaint
37 or an employer related complaint.

- An agency related complaint is a complainant alleging that the One Stop or a Partner Agency through actions or omissions violated Wagner-Peyser regulations.
- An employer related complaint is where a complainant, referred by the One Stop on One Stop posted job order in the past 24 months, either:
 - Alleges the employer violated the terms and conditions of the job order; or
 - Alleges the employer violated an employment related law such as wages, working conditions, child labor laws, sanitation, or housing standards, etc.
- **Enforcement Agency** – a body sanctioned by local, state or federal government to enforce laws. Examples may include MT Department of Labor Wage and Hour Unit, Federal Department of Labor Wage and Hour Division, Montana Department of Labor Human Rights Bureau, etc.
- **Grievance or Complaint (WIOA)** – a written expression by a party alleging a violation of WIOA, regulations promulgated under WIOA, recipient grants, sub-agreements, or other specific agreements under WIOA. All complaints, amendments, and withdrawals shall be in writing or email.
- **H2A Program** – the federal program that allows agricultural employers who anticipate a labor shortage to apply for permission to hire foreign workers temporarily.
- **H2B Program** - the federal program that allows non-agricultural employers who anticipate a labor shortage to apply for permission to hire foreign workers temporarily.
- **Migrant Seasonal Farmworker (MSFW)** – a migrant farmworker, a seasonal farmworker or a migrant food-processing worker.
- **Non Employment Service (Non ES) Related Complaint** – a complaint filed by an individual that was not referred on a One Stop job order within the last 24 months that alleges an employer or an agency violated federal or state employment related laws.
- **One-Stop Related Complaint** – a complaint that is one of two categories:
 - A complaint involving the employer, terms or conditions of a job order that is or was posted with the Montana One-Stop system; or
 - A complaint alleging failure to provide required services, discriminatory treatment or disparaging treatment by One-Stop staff.
- **Resolution** – a complaint is considered resolved when:
 - The complainant indicates satisfaction with resolution.
 - The complainant chooses not to elevate a complaint to the next level.
 - The complainant fails to respond to a written request for information within the time frames.
 - The complainant exhausts the final level of review.
 - The agency with jurisdiction makes a final determination on a referred complaint.
- **Respondent** – the individual or entity that is alleged to have committed the violation described in the complaint.

Local One Stop Office Responsibilities:

- Each local office shall designate at least one individual to function as the complaint coordinator. This person(s) shall be available to receive ES and non-ES complaints, in person, at all One-Stop Centers and affiliates where Wagner-Peyser funded staff are located.
- Complaints received in person: If an individual elects to file a complaint, the following minimum steps shall be followed:
 - Offer to assist the complainant in completing a complaint form [ETA Form 8429](#). If the complainant represents several other complainants, all complainants must be named. Only one signature is required from a complainant listed on the form. An additional sheet may be attached to the form if more space is needed.
 - Obtain all necessary information to resolve or refer the complaint.
 - If a migrant farm worker files a complaint, ask the complainant to contact the MSFW Program Manager before leaving the area in order to obtain change of address information.

- Provide the complainant and any other complainants named on the form with a copy of the completed form.
- Process as an ES related complaint or non-ES related complaint, depending on jurisdiction.
- Complaints received in writing or email: when a complaint, includes sufficient information to initiate processing, the document must be treated as if it were a properly completed complaint form (ETA Form 8429) filed in person by the complainant and processed as an employment service related or as a non-employment related complaint. If the complainant has not provided sufficient information, additional information shall be requested from the complainant.
- Determine if the complaint is an ES Complaint, a non-ES Compliant, an Apparent Violation, an H-2A or H-2B Complaint or an MSFW Complaint. Once determination is made follow the specific handling instructions below.

12 Handling of ES Complaints:

13 *Agency (One-Stop Center) Related Complaints:*

- The complaint coordinator shall, at a minimum:
 - Conduct fact-finding.
 - Attempt to resolve the agency related complaint within 5 working days of receiving the complaint.
 - Document all actions taken.
 - If unable to resolve the complaint within 5 working days, the complaint coordinator shall elevate the complaint to the Equal Opportunity Officer. The referral shall include the original complaint and all documentation.
 - All ES One-Stop Related complaints shall be logged.

23 *Employer Related Complaints:*

- The following describes minimum requirements to be followed for employer related complaints where the complainant was referred by a One-Stop on a One-Stop job order in the past 12 months. Different requirements must be followed depending on whether or not the complaint is employment law related.
 - Alleged Violation of Employment Law
 - The complaint coordinator shall make a referral to the appropriate agency along with a copy of the complaint form and all other related documentation. A copy of the referral must be sent at the same time to the Equal Opportunity Officer.
 - The complaint coordinator shall notify the complainant in writing of the referral.
 - The Equal Opportunity Officer shall conduct quarterly follow-ups with the agency to which the complaint was referred to and keep the complainant informed.
 - If the employer is found to have violated terms and conditions of a job order or is found to have violated employment law, WSD shall initiate discontinuation of services procedures consistent with [20 CFR 658 Subpart F](#).
 - All ES Employer Related, employment law complaints shall be logged.
 - Complaint Not Employment Law Related
 - Conduct fact-finding.
 - The complaint coordinator shall attempt to resolve the complaint within 5 working days of receiving the complaint.
 - The complaint coordinator shall document all actions taken.
 - If the complaint coordinator is unable to resolve the complaint within 5 working days, the complaint contact shall elevate the complaint to the Equal Opportunity Officer. The referral shall include the original complaint and all documentation.
 - All ES Employer Related, non-employment law complaints shall be logged.

1 **Handling of Non-ES Complaints:**

- 2 • For all non-ES complaints alleging an employment law violation made against an employer, the
3 complaint coordinator shall assist the individual by referring to the appropriate enforcement agency and
4 copying the referral to the Equal Opportunity Officer.
5 • All non-ES complaints referred to an enforcement agency shall be logged.
6 • No follow-up is required on referrals made to an enforcement agency on non-ES related complaints.

7 **Handling Apparent Violations:**

- 8 • All potential apparent violations must be reported to a local complaint coordinator.
9 • If there is sufficient information to suggest that a violation of Wagner-Peyser regulations or employment
10 law occurred, the relevant complaint handling for ES or Non-ES complaints shall be followed.

11 **Handling H2A and H2B Related Complaints:**

- 12 • All H2A and H2B related complaints and apparent violations, whether received from workers referred
13 through the One-Stop or otherwise, are considered ES related complaints.
14 • If a complainant alleges that the One-Stop or its personnel, through actions or omissions, violated H2A
15 and/or H2B regulations, the complaint shall be processed as an ES related complaint against the
16 agency (One-Stop Center).
17 • If a complainant files a complaint against an H2A or H2B employer, alleging the employer did not
18 comply with recruitment requirements or contractual terms, the complaint shall be processed as an ES
19 related complaint against the employer.

20 **Handling MSFW Complaints:**

- 21 • All MSFW complaints and apparent violations shall be handled according to the type of allegation and
22 situation set forth above except for the following exceptions noted:
23 ○ MSFW complaints and apparent violations made against the One-Stop, for ES related
24 complaints shall be resolved within 5 working days.
25 ○ Monthly follow-up, rather than quarterly follow-up, must be conducted by the Equal Opportunity
26 Officer on all MSFW ES related complaints referred to an enforcement agency.

27 **Handling WIOA Grievances and Complaints:**

- 28 • Pursuant to 20 CFR 683.600 through 683.610, the State Workforce Innovation Board (SWIB) has
29 established this policy for resolving grievances and complaints alleging a violation of WIOA Title I,
30 regulations, grants, or other agreements under WIOA. Any participant or other interested party adversely
31 affected by a decision or action by the SWIB including decisions by One-Stop partners and service
32 providers, has the right to file a grievance or complaint with the SWIB.
33 • The official filing date of the grievance or complaint is the date the written grievance or complaint is
34 received by the SWIB, its service providers, One-Stop partners or sub-recipients. The filing of the
35 grievance or complaint will be considered a request for hearing; the SWIB shall issue a written decision
36 within 60 days for the filing of the grievance or complaint.
37 • The grievance or complaint must be in writing or email. For resolution purposes, the SWIB requires that
38 the following information be obtained or provide for all WIOA complaints:
39 ○ Full name, telephone number and mailing address of the complainant;
40 ○ Full name, telephone number and mailing address of the respondent;
41 ○ A clear and concise statement of the facts and dates describing the alleged violation;
42 ○ The provisions of the WIOA, the WIOA regulations, grant or other agreements under WIOA,
43 believed to have been violated;
44 ○ Grievances or complaints against individuals, including staff or participants, shall indicate how
45 those individuals did not comply with the law, regulations, or contract; and
46 ○ The remedy sought by the complainant.

- 1 • The absence of any of the requested information shall not be a basis for dismissing the grievance or
2 complaint.
- 3 • A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of
4 the hearing. The 30-day time period in which a grievance or complaint may be filed is not extended for
5 grievances or complaints that are refiled with amendments. Grievances or complaints may be
6 withdrawn at any time prior to the issuance of the SWIB decision. The SWIB shall send a copy of the
7 grievance or complaint to the respondent.

8 *WIOA Informal Resolution:*

- 9 • The SWIB shall notify the complainant and the respondent of the opportunity for an informal resolution.
10 Respondents must make good faith efforts to resolve all grievances or complaints prior to the
11 scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith
12 efforts shall not constitute a basis for dismissing the grievance or complaint, nor shall this be
13 considered part of the facts to be judged in the resolution process. Where a complaint alleges a
14 violation of the WIOA Title I, grant or any agreements under WIOA, the SWIB must assure that every
15 grievance or complaint not resolved informally or not withdrawn is give a hearing, regardless of the
16 grievance or complaint's apparent merit or lack of merit.
- 17 • When the complaint has been resolved through the informal resolution process, the SWIB shall attempt
18 to contact the complainant and have him or her provide a written withdrawal of the complaint within 10
19 days of the receipt of the notice of resolution or impasse where a complainant decides not to proceed to
20 a hearing. The SWIB shall maintain copies of correspondence.
- 21 • Notice of Hearing: Hearings on any grievance or complaint shall be conducted within 30 days of filing of
22 a grievance or complaint. The complainant and the respondent must be notified in writing of the hearing
23 10 days prior to the date of the hearing. The 10-day notice may be shortened with the written consent of
24 both parties. The hearing notice shall be in writing and contain the following information:
 - 25 ○ The date of the notice, name of the complainant, and the name of the party against whom the
26 grievance or complaint is filed.
 - 27 ○ The date, time, and place of the hearing before the SWIB WIOA Committee.
 - 28 ○ A statement of the alleged violations. These statements must accurately reflect the content of
29 the grievance or complaint as submitted by the complainant. However, clarifying notes may be
30 added to assure that the grievance or complaint is addressed accurately.
 - 31 ○ The name, address, and telephone number of the contact person issuing the notice.

32 *Conduct of WIOA Hearing:*

- 33 • The SWIB WIOA Committee shall conduct the hearing. The hearing will be conducted in an informal
34 manner with strict rules of evidence not being applicable and according to the procedures established
35 by the SWIB. Both parties will have the right to present written and/or oral testimony and agreements;
36 the right to call and question witnesses in support of their position; the right to examine records and
37 documents relevant to the issues; and the right to be represented. The hearing will be recorded
38 electronically.

39 *WIOA Hearing Decision:*

- 40 • Not later than 60 days after the filing of the grievance or complain, the WIOA Committee shall mail a
41 written decision to both parties by first class mail. The WIOA Committee's decision shall contain the
42 following information:
 - 43 ○ The names of the parties involved;
 - 44 ○ A statement of the alleged violation(s) and issues related to the alleged violation;
 - 45 ○ A statement of the facts;
 - 46 ○ The WIOA Committee's decision and the reasons for the decision;

- 1 ○ A statement of corrective action or remedies for violation, if any, to be taken; and
- 2 ○ Notice of the right of either party to request a review of the decision.

3 *Appeal:*

- 4 • If a complainant does not receive a decision at the SWIB level within 60 of the filing of the grievance or
- 5 complaint, or receives an adverse decision, the complainant then has the right to file an appeal with the
- 6 Governor’s Office.

7 *Remedies:*

- 8 • Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to:
 - 9 ○ Suspension or termination of payments under WIOA Title I;
 - 10 ○ Prohibition of placement of a participant with an employer that has violated any requirement
 - 11 under WIOA Title I;
 - 12 ○ Reinstatement, where applicable, of an employee, payment of lost wages and benefits, and
 - 13 reestablishment of other relevant terms, conditions, and privileges of employment; and
 - 14 ○ Where appropriate, other equitable relief.

15 *Federal-Level Appeal Process:*

- 16 • Under 20 CFR 683.610(a)(1), if the SWIB has not issued a decision within the required 60-day time
- 17 limit, the complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the
- 18 Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or
- 19 the filing of the appeal of a grievance or complaint with the State.
 - 20 ○ In cases where a decision has been reached and the State issued an adverse decision, the
 - 21 complainant can file an appeal to the Secretary of Labor within 60 days of the receipt of the
 - 22 decision being appealed. The request for appeal must be submitted by certified mail, return
 - 23 receipt to:
 - 24 Secretary
 - 25 U.S. Department of Labor
 - 26 200 Constitution Avenue, NW
 - 27 Washington, D.C. 20210
 - 28 Attention: ASET
 - 29 ○ A copy of the appeal must be simultaneously provide to the Region 4 ETA Regional
 - 30 Administrator, U.S. Department of Labor – Employment and Training Service 525 South Griffin
 - 31 Street Dallas, TX 75202.

32 *Requests for Additional Information:*

- 33 • If a complaint coordinator is unable to speak to a complainant for the purposes of obtaining additional
- 34 information needed to resolve a complaint, a written request for additional information shall be sent via
- 35 certified mail or through some other form of communication where receipt can be verified. All non-
- 36 MSFW complainants are allowed 20 working days from the date of receipt to respond to a written
- 37 request for additional information; MSFW complainants are allowed 40 working days from the date of
- 38 receipt to respond for additional information. If a complainant does not respond, the complaint shall be
- 39 considered closed.

40 *Confidentiality:*

- 41 • The identity of a complainant(s) or any person who furnishes information related to, or who as assisted
- 42 in an investigation of a complaint shall be kept confidential to the maximum extent possible consistent
- 43 with the applicable law and fair determination of the complaint. The identity of a complainant may only
- 44 be released upon written consent of the individual(s) furnishing information regarding a complaint or
- 45 apparent violation.

1 **Record Keeping:**

- 2
- All records and correspondence related to complaints shall be maintained separately from any other records by the complaint coordinator. All records regarding ES and Non-ES complaints and actions taken must be maintained for a period of not less than 3 years plus current year from the final date of resolution of the complaint in alignment with [29 CFR 97.42](#).
- 6
- At a minimum, complaint files shall include:
 - 7 ○ An original of completed complaint form(s);
 - 8 ○ Originals of all correspondence received/transmitted;
 - 9 ○ Copies of e-mail correspondence if any;
 - 10 ○ Copies of written or typed notes;
 - 11 ○ Miscellaneous items relevant to the allegations such as copies of check stubs, work
 - 12 agreements, etc.

13 **Complaint Logs:**

- 14
- All One-Stop Centers and affiliates shall maintain a system for logging complaints. At a minimum, the log must contain:
 - 16 ○ The name of the complainant;
 - 17 ○ The name of the respondent (employer or state agency as appropriate);
 - 18 ○ The date the complaint is filed;
 - 19 ○ Whether the complaint is by or on behalf of an MSFW;
 - 20 ○ Whether the complaint is ES-related;
 - 21 ○ If the complaint is ES-related, whether it is employer-related or agency-related;
 - 22 ○ If the complaint (ES-related or non-ES-related) alleges an employment law violation against an
 - 23 employer, the enforcement agency to which the referral was made; and
 - 24 ○ The action taken and whether the complaint has been resolved.

25 **Elevating Complaints to the Equal Opportunity Officer:**

- 26
- Complaints shall be elevated to the Equal Opportunity Officer if:
 - 27 ○ No decision or resolution has been reached within 5 working days of the filing of an ES
 - 28 complaint against the One-Stop;
 - 29 ○ No decision or resolution has been reached within 5 working days of the filing of an ES
 - 30 complaint against an employer that is not employment law related;
 - 31 ○ An ES complaint is made against more than one One-Stop Center or affiliate, with an alleged
 - 32 agency-wide violation; or
 - 33 ○ A complaint is made against a respondent from another state.

34 **Discontinuation of Services to Employers:**

- 35
- The Equal Opportunity Officer shall initiate discontinuation of services procedures, consistent with [20](#)
 - 36 [CFR 658 Subpart F](#), when it has been determined, in response to an ES complaint, that an employer
 - 37 has violated an employment-related law enforced by a federal or state agency and notice of a final
 - 38 determination against the employer has been provided by the Equal Opportunity Officer to that agency.
 - 39
 - The Equal Opportunity Officer shall notify the One-Stop Center(s), affiliates and all local partners
 - 40 providing non-One-Stop business services whenever services are discontinued.

41 **Complaint Posters**

- 42
- All One-Stop Centers and affiliates that offer Wagner-Peyser funded services shall display an ETA
 - 43 approved complaint poster.
 - 44
 - Initial and continuing notice of the grievance and complaint procedures and instruction on how to file a
 - 45 WIOA complaint must be:
 - 46 ○ Posted in a public location and be made available to any interested parties and members of the
 - 47 public, and

- 1 ○ Made available to each participant. A copy of the written description of the grievance and
- 2 complaint procedure shall include:
- 3 ▪ Notification that the participant has the right to file a grievance or complaint at any time
- 4 within 30 days of the alleged violation;
- 5 ▪ Instructions and timeline for filing a grievance or complaint; and
- 6 ▪ Notification that the participant has the right to receive technical assistance. Such
- 7 information shall be modified, as needed, whenever the procedures and changed.

8 Administrative Requirements:

- 9 • On a quarterly basis, the complaint coordinator in each One-Stop Center or affiliate will submit an
- 10 electronic copy of the Complaint Log to the Equal Opportunity Officer, the Report and Data Collection
- 11 Specialist, and the MSFW Program Manager the 10th day following the end of the quarter.
- 12 • The Equal Opportunity Officer will ensure complaints filed over the course of the quarter have been
- 13 received by the agency referred to and conduct follow-up on the complaints.

14 Monitoring and Evaluation:

- 15 • The Equal Opportunity Officer will evaluate the completeness of the Complaint Logs, the compliance
- 16 with this policy and the coordination of informal resolution at the local level upon receipt of the
- 17 Complaint Logs quarterly. The Equal Opportunity Officer will correspond with the One-Stop Center or
- 18 affiliate complaint coordinator on the operation the respective complaint system being operated.

19 References:

- 20 • [ETA Form 8429](#)
- 21 • [29 CFR 97.42 Retention and access requirements for records](#)
- 22 • [20 CFR 658 Subpart F - Discontinuation of Services to Employers by the Wagner-Peyser Act](#)
- 23 [Employment Service](#)
- 24 • [20 CFR 658.400 Subpart E - Employment Services and Employment-Related Law Complaint System](#)
- 25 • [20 CFR 653.503 - Field Checks](#)