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# EMPLOYMENT SERVICES COMPLAINT MANUAL

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American**Job**Center®

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# Employment Services Complaint System Manual

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## COMPLAINTS AND DISCONTINUATION OF SERVICES

In accordance with 20 CFR 658.410, the New York State Department of Labor, Division of Employment and Workforce Solutions (DEWS) 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 NYS Workforce Boards, Career Centers and Division of Immigrant Policies and Affairs (DIPA); it outlines 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

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

DEWS has overall responsibility for the operation of the ES Complaint System. DEWS 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 ES Manager may identify a designee, referred to as a "Complaint Specialist," to handle and investigate complaints in the Career Center. The ES 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 York State Department of Labor (NYS DOL), and is responsible for:

- Maintaining and monitoring the complaint process and a central complaint log;
- Determining the outcome of Migrant or Seasonal Farm Worker (MSFW) complaints;

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- 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.

### AGENCY RELATED COMPLAINTS

An agency related complaint is when a complainant alleges that State Workforce Agency (SWA), Career Center staff, and DIPA, 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 Career Center 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:

- A. Explain the ES Complaint System
- B. Determine the type of complaint
- C. Direct the complainant to complete the Customer Complaint Information form, ES 834 and provide assistance if necessary
- D. Ensure the Customer Complaint Information form is signed by the complainant or his/her representative
- E. Offer other Employment Services

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- F. Log the complaint on the Complaint System Log (ES834.1)

## **MAIL**

The ES 834 is not required if the mailed, written complaint:

- A. Has the complainant's or the complainant's authorized Representative's signature; and
- B. gives 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-MSFWs. Complaints involving MSFWs 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:

- A. Decide the type of complaint (ES and/or Employment-related law)
- B. Decide if complainant is an MSFW; and

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- C. Decide who should handle the complaint since a complaint can be filed against a Career Center, 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 businesses local Career Center.
  - Complaints against a Career Center are handled by the Complaint Specialist in the local Career Center in question.
  - Complaints against the agency are handled by the SMA

## 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:

- A. For non-MSFWs complaints
- a. Refer immediately to the appropriate enforcement agency
  - b. Inform complainant or his/her representative where the complaint has been referred to in writing
  - c. Log the complaint on the Complaint System Log
- B. For MSFWs complaints
- a. Refer complaint to SMA
  - b. Offer to refer MSFW to other employment services should the MSFW be interested
  - c. Inform complainant or his/her representative where complaint has been referred to in writing
  - d. Log the complaint on the Complaint System Log

## HANDLING COMPLAINTS

- Assist the complainant with completing the ES 834, 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 (for MSFW complaints only)
- 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.)

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## TIMEFRAMES

### Response

- A. Non-MSFWs have 20 days to respond
- B. MSFW have 40 days to respond

### Resolution

- A. Non-MSFW have 15 business days
- B. MSFW have 5 business days

## COMPLAINT SYSTEM LOG

In addition to investigating the complaints; documenting all correspondence, conversations and activities; the complaint specialist must also log all complaints in the Complaint System Log (ES 834.1)

The Complaint System Log (ES 834.1) is a spreadsheet 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 5th 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 System Log. Immediately after the complaint is logged it must be referred to the Local EO officer. Enter “referred to EO officer” in the ‘Action’ section of the log.

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

**Note:** The Complaint System Log can be submitted to the SMA via email at, [ES@labor.ny.gov](mailto:ES@labor.ny.gov)

## 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

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- 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 MSFWs (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 DEWS procedures for resolving these types of complaints. Customer service complaints are not logged and are not forwarded to the SMA.

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

When a person files a complaint in the local NYS Career Center concerning an out-of-state ES agency or an out-of-state business, the complaint specialist must ensure that the ES 834 is completed in its entirety. The Complaint Specialist will send the following documents to the SMA:

- ES 834-Customer Complaint Information form
- 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.

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## 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:

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

ES may discontinue services immediately when the DEWS Bureau Chief, or designee 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. The DEWS Bureau Chief, or designee 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, the DEWS Bureau Chief, or designee must notify the ETA Regional Administrator of

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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. Upon approval by the DEWS Bureau Chief or designee, the SMA will then write and send, to the business, a Discontinuation of Services letter that will specify:

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

The DEWS Bureau Chief, or designee may reinstate services to a business after discontinuation of services when:

- A. 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
- B. 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
- C. 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.

DEWS 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 DEWS must notify the business of their hearing date and time within 20 working days.

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## APPARENT VIOLATIONS

AVs are intended for MSFWs 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 Complaint System Log (ES 834.1). 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 LWDB Equal Opportunity (EO) Officer. The Complaint Specialist will provide the complainant the ES 834-Customer Complaint Information form and, when requested, will assist the complainant with completing the form. The Complaint Specialist must log the complaint in the Complaint System Log, ES 834.1 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 Complaint System Log as well as be documented according to the Discrimination Complaint procedures.

## COMPLAINT FILE MAINTENANCE

A separate folder for each ES complaint and each Employment Related Law complaint must be maintained. Original copies of all correspondence sent to the complainant must be filed in each folder.

Documentation may include, but is not limited to; ES 834-Customer Complaint Information form- or written complaint if not taken on the ES 834, phone calls, email logs and notes, requests for additional information, ES Complaint referrals, and any additional correspondence.

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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 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 New York State 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.

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## **ATTACHMENTS:**

- A. [Customer Complaint Information Form-ES 834](#)
- B. [Complaint System Log-ES 834.1](#)
- C. [ES Complaint Referral Form- ES 834.2](#)