



Montana Department of LABOR & INDUSTRY

1
2 **Division: Workforce Services Division**
3 **Category: Job Service Operations**
4 **Original Effective Date: 01/08/2018**
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6 **Policy No.: 14-17**

7 **Complaint System Policy**

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

12 Established during the 1970's, the Job Service Montana complaint system is a place for workers, employers,
13 concerned citizens and organizations to give voice to their concerns. Referral to state or federal agencies is
14 often appropriate.

15 **Scope:** This policy applies to the Equal Opportunity Officer (EO), Reporting and Data Specialist, Complaint
16 Coordinators, and all Job Service Montana offices and affiliates operating the complaint system.

17 **Policy:**

18 **Local Job Service Montana Office and Service Provider Responsibilities:**

- 19 • Each Job Service Montana office will designate either a Manager or Supervisor to serve as the
20 Complaint Coordinator. Each service provider will designate at least one individual to function as the
21 Complaint Coordinator. Each Complaint Coordinator will train at least one person to function as their
22 backup. The Job Service Montana and service provider Complaint Coordinator, or their backup, will be
23 available to receive complaints in person.
- 24 • If Job Service Montana or service provider staff observes, has reason to believe, or receives information
25 about a suspected violation of employment-related laws or ES regulations by an employer, they must
26 inform the Complaint Coordinator who will complete and submit ETA Form 8429.
- 27 • **Complaints received in person:** If an individual elects to file a complaint, the following steps should be
28 completed by the Complaint Coordinator or their backup:
 - 29 ○ Offer to assist the complainant in completing the complaint form ETA Form 8429. If the
30 complainant represents several other complainants, all complainants must be named. Only one
31 signature is required from a complainant listed on the form. An additional sheet may be
32 attached to the form if more space is needed.
 - 33 ○ Obtain all necessary information to resolve or refer the complaint.
 - 34 ○ Ask the complainant to provide adequate and current contact information.
 - 35 ○ Provide the complainant and any other complainants named on the form with a copy of the
36 completed form.
- 37 • **Complaints received in writing or email:** When a complaint includes sufficient information to initiate
38 processing, the document must be treated as if it were a properly completed complaint form (ETA Form

- 39 8429) filed in person by the complainant. If the complainant has not provided sufficient information,
40 additional information will be requested from the complainant.
- 41 • If the complainant is submitting a Wage and Hour complaint, the ETA Form 8429, Part I, Boxes 1
42 through 7, 9 and 10 must be completed. Box 8 of the ETA Form 8429 may be satisfied by attaching a
43 copy of the Wage and Hour complaint form. The ETA Form 8429 and the [Wage and Hour Complaint](#)
44 [Form](#) must be sent to DLIWSDComplaintSystem@mt.gov.
 - 45 • All complaints must be sent upon receipt to DLIWSDComplaintSystem@mt.gov. When the complaint is
46 received in this email box, the Equal Opportunity Officer (EO Officer) will determine the type of complaint
47 and refer it to the appropriate agency for handling as explained below.
 - 48 • The Job Service Montana or service provider Complaint Coordinator may attempt informal resolution of
49 any complaints against Montana Department of Labor and Industry's (MDLI) Workforce Services
50 Division (WSD) staff or a Job Service Montana office. The complaint must also be sent to
51 DLIWSDComplaintSystem@mt.gov without delay.
 - 52 • ETA Form 8429, Part II, Box 10 through 12 asks if the complaint is resolved. The person receiving the
53 complaint does not complete this section unless the complaint is resolved at the local Job Service
54 Montana office. The EO Officer will complete these sections after follow-up with the complainant and
55 tracking of the complaint.

56 Equal Opportunity Officer (EO) Responsibilities:

57 Handling of Employment Services (ES) Complaints:

58 Agency- (Job Service Montana) Related Complaints:

- 59 ○ The EO Officer will, at a minimum:
 - 60 ▪ Conduct fact-finding.
 - 61 ▪ Attempt to resolve the agency related complaint within 5 working days of receiving the
62 complaint.
 - 63 ▪ Document all actions taken.
 - 64 ▪ If unable to resolve the complaint within 5 working days, EO Officer will elevate the
65 complaint to the appropriate agency. The referral shall include the original complaint
66 and all documentation.
 - 67 ▪ All ES complaints related to Job Service Montana will be logged.

68 Employer-Related Complaints:

- 69 ○ The following describes minimum requirements to be followed for employer-related complaints
70 where the complainant was referred by a Job Service Montana office on a Job Service Montana
71 job order in the past 24 months. Different requirements must be followed depending on
72 whether or not the complaint is employment law-related.
 - 73 ▪ Alleged Violation of Employment Law
 - 74 • The EO Officer will make a referral to the appropriate agency along with a copy of
75 the complaint form and all other related documentation.
 - 76 • The EO Officer will notify the complainant in writing of the referral.
 - 77 • The EO Officer will conduct quarterly follow-ups with the agency to which the
78 complaint was referred to and keep the complainant informed.
 - 79 • If the business is found to have violated terms and conditions of a job order or is
80 found to have violated employment law, WSD will initiate discontinuation of
81 services procedures consistent with [20 CFR 658 Subpart F](#).
 - 82 • All ES Employer-Related, employment law complaints will be logged.
 - 83 ▪ Complaint Not Employment Law-Related
 - 84 • Conduct fact-finding.
 - 85 • The EO Officer will attempt to resolve the complaint within 5 working days of
86 receiving the complaint.

- 87 • The EO Officer will document all actions taken.
- 88 • If the EO Officer is unable to resolve the complaint within 5 working days, the
- 89 complaint contact will elevate the complaint to the appropriate agency. The
- 90 referral will include the original complaint and all documentation.
- 91 • All ES Employer-Related, non-employment law complaints will be logged.

92 Handling of Non-ES Complaints:

- 93 • For all non-ES complaints alleging an employment law violation made against a business, the EO Officer
- 94 will assist the individual by referring to the appropriate enforcement agency.
- 95 • All non-ES complaints referred to an enforcement agency will be logged.
- 96 • No follow-up is required on referrals made to an enforcement agency on non-ES related complaints.

97 Handling Apparent Violations of Employment Law or Regulations:

- 98 • If there is sufficient information to suggest that a violation of Wagner-Peyser regulations or employment
- 99 law occurred, the relevant complaint handling for ES or Non-ES complaints will be followed.

100 Handling H2A and H2B Related Complaints:

- 101 • All H2A and H2B related complaints and apparent violations, whether received from workers referred
- 102 through the Job Service Montana or otherwise, are considered ES-related complaints.
- 103 • If a complainant alleges that Job Service Montana or its personnel, through actions or omissions,
- 104 violated H2A and/or H2B regulations, the complaint will be processed as an ES-related complaint
- 105 against the agency (Job Service Montana).
- 106 • If a complainant files a complaint against an H2A or H2B employer, alleging the business did not comply
- 107 with recruitment requirements or contractual terms, the complaint will be processed as an ES-related
- 108 complaint against the business.

109 Handling MSFW Complaints:

- 110 • All MSFW complaints and apparent violations will be handled by the State Monitor Advocate according
- 111 to the type of allegation and situation set forth above except for the following exceptions noted:
- 112 ○ MSFW complaints and apparent violations made against the Job Service Montana for ES-related
- 113 complaints will be resolved within 5 working days.
- 114 ○ Monthly follow-up, rather than quarterly follow-up, must be conducted by the MSFW Program
- 115 Manager or the EO Officer on all MSFW ES-related complaints referred to an enforcement
- 116 agency.

117 Handling WIOA Grievances and Complaints:

- 118 • Pursuant to 20 CFR 683.600 through 683.610, the State Workforce Innovation Board (SWIB) has
- 119 established this policy for resolving grievances and complaints alleging a violation of WIOA Title I,
- 120 regulations, grants, or other agreements under WIOA. Any client or other interested party adversely
- 121 affected by a decision or action by the SWIB including decisions by Job Service Montana partners and
- 122 service providers, has the right to file a grievance or complaint with the SWIB.
- 123 • The official filing date of the grievance or complaint is the date the written grievance or complaint is
- 124 received by the SWIB, its service providers, Job Service Montana partners or sub-recipients. The filing of
- 125 the grievance or complaint will be considered a request for hearing; the SWIB will issue a written
- 126 decision within 60 days for the filing of the grievance or complaint.
- 127 • The grievance or complaint must be provided in writing or email. For resolution purposes, the SWIB
- 128 requires that the following information be obtained or provide for all WIOA complaints:
- 129 ○ Full name, telephone number and mailing address of the complainant;
- 130 ○ Full name, telephone number and mailing address of the respondent;
- 131 ○ A clear and concise statement of the facts and dates describing the alleged violation;
- 132 ○ The provisions of the WIOA, the WIOA regulations, grant or other agreements under WIOA,
- 133 believed to have been violated;

- 134 ○ Grievances or complaints against individuals, including staff or clients, will indicate how those
- 135 individuals did not comply with the law, regulations, or contract; and
- 136 ○ The remedy sought by the complainant.
- 137 ● The absence of any of the requested information will not be a basis for dismissing the grievance or
- 138 complaint.
- 139 ● A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of
- 140 the hearing. The 30-day time period in which a grievance or complaint may be filed is not extended for
- 141 grievances or complaints that are refiled with amendments. Grievances or complaints may be
- 142 withdrawn at any time prior to the issuance of the SWIB decision. The SWIB will send a copy of the
- 143 grievance or complaint to the respondent.

144 *WIOA Informal Resolution:*

- 145 ● The SWIB will notify the complainant and the respondent of the opportunity for an informal resolution.
- 146 Respondents must make good faith efforts to resolve all grievances or complaints prior to the
- 147 scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith
- 148 efforts will not constitute a basis for dismissing the grievance or complaint, nor will this be considered
- 149 part of the facts to be judged in the resolution process. Where a complaint alleges a violation of the
- 150 WIOA Title I, grant or any agreements under WIOA, the SWIB must assure that every grievance or
- 151 complaint not resolved informally or not withdrawn is given a hearing, regardless of the grievance or
- 152 complaint's apparent merit or lack of merit.
- 153 ● When the complaint has been resolved through the informal resolution process, the SWIB will attempt
- 154 to contact the complainant and have him or her provide a written withdrawal of the complaint within 10
- 155 days of the receipt of the notice of resolution or impasse where a complainant decides not to proceed to
- 156 a hearing. The SWIB will maintain copies of correspondence.
- 157 ● Notice of Hearing: Hearings on any grievance or complaint will be conducted within 30 days of filing of a
- 158 grievance or complaint. The complainant and the respondent must be notified in writing of the hearing
- 159 10 days prior to the date of the hearing. The 10-day notice may be shortened with the written consent of
- 160 both parties. The hearing notice will be in writing and contain the following information:
 - 161 ○ The date of the notice, name of the complainant, and the name of the party against whom the
 - 162 grievance or complaint is filed.
 - 163 ○ The date, time, and place of the hearing before the SWIB WIOA Committee.
 - 164 ○ A statement of the alleged violations. These statements must accurately reflect the content of
 - 165 the grievance or complaint as submitted by the complainant. However, clarifying notes may be
 - 166 added to assure that the grievance or complaint is addressed accurately.
 - 167 ○ The name, address, and telephone number of the contact person issuing the notice.

168 *Conduct of WIOA Hearing:*

- 169 ● The SWIB WIOA Committee will conduct the hearing. The hearing will be conducted in an informal
- 170 manner with strict rules of evidence not being applicable and according to the procedures established
- 171 by the SWIB. Both parties will have the right to present written and/or oral testimony and agreements;
- 172 the right to call and question witnesses in support of their position; the right to examine records and
- 173 documents relevant to the issues; and the right to be represented. The hearing will be recorded
- 174 electronically.

175 *WIOA Hearing Decision:*

- 176 ● Not later than 60 days after the filing of the grievance or complain, the WIOA Committee shall mail a
- 177 written decision to both parties by first class mail. The WIOA Committee's decision will contain the
- 178 following information:
 - 179 ○ The names of the parties involved;
 - 180 ○ A statement of the alleged violation(s) and issues related to the alleged violation;

- 181 ○ A statement of the facts;
- 182 ○ The WIOA Committee's decision and the reasons for the decision;
- 183 ○ A statement of corrective action or remedies for violation, if any, to be taken; and
- 184 ○ Notice of the right of either party to request a review of the decision.

185 *Appeal:*

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

189 *Remedies:*

- 190 • Remedies that may be imposed for a violation of any requirement under WIOA Title I will be limited to:
- 191 ○ Suspension or termination of payments under WIOA Title I;
- 192 ○ Prohibition of placement of a client with an business that has violated any requirement under
- 193 WIOA Title I;
- 194 ○ Reinstatement, where applicable, of an employee, payment of lost wages and benefits, and
- 195 reestablishment of other relevant terms, conditions, and privileges of employment; and
- 196 ○ Where appropriate, other equitable relief.

197 *Federal-Level Appeal Process:*

- 198 • Under 20 CFR 683.610(a)(1), if the SWIB has not issued a decision within the required 60-day time
- 199 limit, the complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the
- 200 Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or
- 201 the filing of the appeal of a grievance or complaint with the State.
- 202 ○ In cases where a decision has been reached and the State issued an adverse decision, the
- 203 complainant can file an appeal to the Secretary of Labor within 60 days of the receipt of the
- 204 decision being appealed. The request for appeal must be submitted by certified mail, return
- 205 receipt to:
 - 206 Secretary
 - 207 U.S. Department of Labor
 - 208 200 Constitution Avenue, NW
 - 209 Washington, D.C. 20210
 - 210 Attention: ASET
- 211 ○ A copy of the appeal must be simultaneously provide to the Region 4 ETA Regional
- 212 Administrator, U.S. Department of Labor – Employment and Training Service 525 South Griffin
- 213 Street Dallas, TX 75202.

214 *Requests for Additional Information:*

- 215 • If the EO Officer is unable to speak to a complainant for the purposes of obtaining additional
- 216 information needed to resolve a complaint, a written request for additional information will be sent via
- 217 certified mail or through some other form of communication where receipt can be verified. All non-
- 218 MSFW complainants are allowed 20 working days from the date of receipt to respond to a written
- 219 request for additional information; MSFW complainants are allowed 40 working days from the date of
- 220 receipt to respond for additional information. If a complainant does not respond, the complaint will be
- 221 considered closed.

222 *Confidentiality:*

- 223 • The identity of a complainant(s) or any person who furnishes information related to, or who has assisted
- 224 in an investigation of a complaint will be kept confidential to the maximum extent possible consistent
- 225 with the applicable law and fair determination of the complaint. The identity of a complainant may only

226 be released upon written consent of the individual(s) furnishing information regarding a complaint or
227 apparent violation.

228 Record Keeping:

- 229 • All records and correspondence related to complaints will be maintained separately from any other
230 records by the EO Officer. All records regarding ES and Non-ES complaints and actions taken must be
231 maintained for a period of not less than 3 years plus current year from the final date of resolution of the
232 complaint in alignment with [29 CFR 97.42](#).
- 233 • At a minimum, complaint files will include:
 - 234 ○ An original of completed complaint form(s);
 - 235 ○ Originals of all correspondence received/transmitted;
 - 236 ○ Copies of e-mail correspondence if any;
 - 237 ○ Copies of written or typed notes;
 - 238 ○ Miscellaneous items relevant to the allegations such as copies of check stubs, work
239 agreements, etc.

240 Complaint Logs:

- 241 • The EO Officer will maintain a system for logging complaints. At a minimum, the log must contain:
 - 242 ○ The name of the complainant;
 - 243 ○ The name of the respondent (business or state agency as appropriate);
 - 244 ○ The date the complaint is filed;
 - 245 ○ Whether the complaint is by or on behalf of an MSFW;
 - 246 ○ Whether the complaint is ES-related;
 - 247 ○ If the complaint is ES-related, whether it is employer-related or agency-related;
 - 248 ○ If the complaint (ES-related or non ES-related) alleges an employment law violation against a
249 business, the enforcement agency to which the referral was made; and
 - 250 ○ The action taken and whether the complaint has been resolved.

251 Complaint Posters

- 252 • All Job Service Montana offices and affiliates that offer Wagner-Peyser funded services will display an
253 ETA-approved complaint poster.
- 254 • Initial and continuing notice of the grievance and complaint procedures and instruction on how to file a
255 WIOA complaint must be:
 - 256 ○ Posted in a public location and be made available to any interested parties and members of the
257 public, and
 - 258 ○ Made available to each client. A copy of the written description of the grievance and complaint
259 procedure will include:
 - 260 ▪ Notification that the client has the right to file a grievance or complaint at any time
261 within 30 days of the alleged violation;
 - 262 ▪ Instructions and timeline for filing a grievance or complaint; and
 - 263 ▪ Notification that the client has the right to receive technical assistance. Such
264 information will be modified, as needed, whenever the procedures and changed.

265 Administrative Requirements:

- 266 • The EO Officer will ensure complaints filed over the course of the quarter have been received by the
267 agency referred to and conduct follow-up on the complaints.

268 Monitoring and Evaluation:

- 269 • The EO Officer will evaluate compliance with this policy and the coordination of informal resolution at
270 the local level quarterly. The EO Officer will correspond with the local Job Service Montana or service
271 provider Complaint Coordinator or their designated backup.

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274 References:

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- [29 CFR 97.42 Retention and Access Requirements for Records](#)

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- [20 CFR 658 Subpart F - Discontinuation of Services to Employers by the Wagner-Peyser Act
Employment Service](#)

277

278

- [20 CFR 658.400 Subpart E - Employment Services and Employment-Related Law Complaint System](#)

279

- [20 CFR 653.503 - Field Checks](#)

280

- [20 CFR 683.600 – 683.610 – Grievance Procedures, Complaints, and State Appeals Process](#)