



# Montana Department of LABOR & INDUSTRY

1  
2 **Division: Workforce Services Division**  
3 **Category: Job Service Operations**  
4 **Effective Date: 01/08/2018**  
5 **Last Revised: N/A**  
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 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, business, 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 business  
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.

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

### 36 Local One-Stop Office Responsibilities:

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

- 1 • Complaints received in writing or email: when a complaint includes sufficient information to initiate  
2 processing, the document must be treated as if it were a properly completed complaint form (ETA Form  
3 8429) filed in person by the complainant. If the complainant has not provided sufficient information,  
4 additional information shall be requested from the complainant.
- 5 • If the complainant is submitting a Wage and Hour complaint the ETA Form 8429, Part I, Boxes 1  
6 through 7, 9 and 10 must be completed. Box 8 of the ETA Form 8429 may be satisfied by attaching a  
7 copy of the Wage and Hour complaint form. The ETA Form 8429 and, if appropriate, the Wage and Hour  
8 complaint form must be sent to [DLIWSDComplaintSystem@mt.gov](mailto:DLIWSDComplaintSystem@mt.gov).
- 9 • All complaints must be sent upon receipt to [DLIWSDComplaintSystem@mt.gov](mailto:DLIWSDComplaintSystem@mt.gov). When the complaint is  
10 received in this email box, the Equal Opportunity Officer (EO Officer) will determine the type of complaint  
11 and refer it to the appropriate agency for handling as explained below.
- 12 • Any complaints against WSD staff or the One-Stop Center may attempt informal resolution by the Local  
13 One-Stop complaint coordinator. The complaint must also be sent to [DLIWSDComplaintSystem@mt.gov](mailto:DLIWSDComplaintSystem@mt.gov).
- 14 • ETA Form 8429, Part II, Box 10 through 12 asks if the complaint is resolved. The person receiving the  
15 complaint does not complete this section unless the complaint is resolved at the local One-Stop. The EO  
16 Officer will complete these sections after follow-up with the complainant and tracking of the complaint.

## 17 EO Officer Responsibilities:

### 18 Handling of ES Complaints:

#### 19 *Agency (One-Stop Center) Related Complaints:*

- 20 ○ The EO Officer shall, at a minimum:
  - 21 ▪ Conduct fact-finding.
  - 22 ▪ Attempt to resolve the agency related complaint within 5 working days of receiving the  
23 complaint.
  - 24 ▪ Document all actions taken.
  - 25 ▪ If unable to resolve the complaint within 5 working days, EO Officer shall elevate the  
26 complaint to the appropriate agency. The referral shall include the original complaint  
27 and all documentation.
  - 28 ▪ All ES One-Stop Related complaints shall be logged.

#### 29 *Employer Related Complaints:*

- 30 ○ The following describes minimum requirements to be followed for employer related complaints  
31 where the complainant was referred by a One-Stop on a One-Stop job order in the past 24  
32 months. Different requirements must be followed depending on whether or not the complaint is  
33 employment law related.
  - 34 ▪ Alleged Violation of Employment Law
    - 35 • The EO Officer shall make a referral to the appropriate agency along with a copy  
36 of the complaint form and all other related documentation.
    - 37 • The EO Officer shall notify the complainant in writing of the referral.
    - 38 • The EO Officer shall conduct quarterly follow-ups with the agency to which the  
39 complaint was referred to and keep the complainant informed.
    - 40 • If the business is found to have violated terms and conditions of a job order or is  
41 found to have violated employment law, WSD shall initiate discontinuation of  
42 services procedures consistent with [20 CFR 658 Subpart F](#).
    - 43 • All ES Employer Related, employment law complaints shall be logged.
  - 44 ▪ Complaint Not Employment Law Related
    - 45 • Conduct fact-finding.
    - 46 • The EO Officer shall attempt to resolve the complaint within 5 working days of  
47 receiving the complaint.
    - 48 • The EO Officer shall document all actions taken.

- 1 • If the EO Officer is unable to resolve the complaint within 5 working days, the
- 2 complaint contact shall elevate the complaint to the appropriate agency. The
- 3 referral shall include the original complaint and all documentation.
- 4 • All ES Employer Related, non-employment law complaints shall be logged.

#### 5 Handling of Non-ES Complaints:

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

#### 10 Handling Apparent Violations of Employment Law or Regulations:

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

#### 13 Handling H2A and H2B Related Complaints:

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

#### 22 Handling MSFW Complaints:

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

#### 30 Handling WIOA Grievances and Complaints:

- 31 • Pursuant to 20 CFR 683.600 through 683.610, the State Workforce Innovation Board (SWIB) has
- 32 established this policy for resolving grievances and complaints alleging a violation of WIOA Title I,
- 33 regulations, grants, or other agreements under WIOA. Any client or other interested party adversely
- 34 affected by a decision or action by the SWIB including decisions by One-Stop partners and service
- 35 providers, has the right to file a grievance or complaint with the SWIB.
- 36 • The official filing date of the grievance or complaint is the date the written grievance or complaint is
- 37 received by the SWIB, its service providers, One-Stop partners or sub-recipients. The filing of the
- 38 grievance or complaint will be considered a request for hearing; the SWIB shall issue a written decision
- 39 within 60 days for the filing of the grievance or complaint.
- 40 • The grievance or complaint must be provided in writing or email. For resolution purposes, the SWIB
- 41 requires that the following information be obtained or provide for all WIOA complaints:
- 42 ○ Full name, telephone number and mailing address of the complainant;
- 43 ○ Full name, telephone number and mailing address of the respondent;
- 44 ○ A clear and concise statement of the facts and dates describing the alleged violation;
- 45 ○ The provisions of the WIOA, the WIOA regulations, grant or other agreements under WIOA,
- 46 believed to have been violated;

- 1           ○ Grievances or complaints against individuals, including staff or clients, shall indicate how those
- 2           individuals did not comply with the law, regulations, or contract; and
- 3           ○ The remedy sought by the complainant.
- 4       ● The absence of any of the requested information shall not be a basis for dismissing the grievance or
- 5       complaint.
- 6       ● A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of
- 7       the hearing. The 30-day time period in which a grievance or complaint may be filed is not extended for
- 8       grievances or complaints that are refiled with amendments. Grievances or complaints may be
- 9       withdrawn at any time prior to the issuance of the SWIB decision. The SWIB shall send a copy of the
- 10       grievance or complaint to the respondent.

11       *WIOA Informal Resolution:*

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

35       *Conduct of WIOA Hearing:*

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

42       *WIOA Hearing Decision:*

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

- 1           o A statement of the facts;
- 2           o The WIOA Committee's decision and the reasons for the decision;
- 3           o A statement of corrective action or remedies for violation, if any, to be taken; and
- 4           o Notice of the right of either party to request a review of the decision.

5    *Appeal:*

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

9    *Remedies:*

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

17   *Federal-Level Appeal Process:*

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

34   *Requests for Additional Information:*

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

42   *Confidentiality:*

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

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

### 3 Record Keeping:

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

### 15 Complaint Logs:

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

### 26 Discontinuation of Services to Businesses:

- 27 • The EO Officer shall initiate discontinuation of services procedures, consistent with [20 CFR 658 Subpart](#)  
28 [E](#), when it has been determined, in response to an ES complaint, that a business has violated an  
29 employment-related law enforced by a federal or state agency and notice of a final determination  
30 against the business has been provided by the EO Officer to that agency.
- 31 • The EO Officer shall notify the One-Stop Center(s), affiliates and all local partners providing non-One-  
32 Stop business services whenever services are discontinued.

### 33 Complaint Posters

- 34 • All One-Stop Centers and affiliates that offer Wagner-Peyser funded services shall display an ETA  
35 approved complaint poster.
- 36 • Initial and continuing notice of the grievance and complaint procedures and instruction on how to file a  
37 WIOA complaint must be:
  - 38 ○ Posted in a public location and be made available to any interested parties and members of the  
39 public, and
  - 40 ○ Made available to each client. A copy of the written description of the grievance and complaint  
41 procedure shall include:
    - 42 ▪ Notification that the client has the right to file a grievance or complaint at any time  
43 within 30 days of the alleged violation;
    - 44 ▪ Instructions and timeline for filing a grievance or complaint; and
    - 45 ▪ Notification that the client has the right to receive technical assistance. Such  
46 information shall be modified, as needed, whenever the procedures and changed.

1 **Administrative Requirements:**

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

4 **Monitoring and Evaluation:**

- 5 • The EO Officer will evaluate compliance with this policy and the coordination of informal resolution at  
6 the local level quarterly. The EO Officer will correspond with the One-Stop Center complaint coordinator  
7 on the operation the respective complaint system being operated.

8 **References:**

- 9 • [ETA Form 8429](#)  
10 • [29 CFR 97.42 Retention and access requirements for records](#)  
11 • [20 CFR 658 Subpart F - Discontinuation of Services to Employers by the Wagner-Peyser Act](#)  
12 [Employment Service](#)  
13 • [20 CFR 658.400 Subpart E - Employment Services and Employment-Related Law Complaint System](#)  
14 • [20 CFR 653.503 - Field Checks](#)