

TECHNICAL ASSISTANCE

Date: 06/12/2023

Contact: policy@dwd.in.gov

Program: Wagner-Peyser Act Employment Service System, Employment Service and Employment Related-Law Complaint System

Subject: DWD Technical Assistance 2022-20
Procedures and Required Forms for WorkOne Centers Pertaining to the Employment Service and Employment-Related Law Complaint System

Purpose

To provide guidance on procedures and required forms for the Employment Service and Employment-Related Law Complaint System under the Wagner-Peyser Act Employment Service System.

This guidance is intended to supplement DWD Policy 2022-19.

References

- WIOA Sec. 188
- 20 CFR 651.10
- 20 CFR 655.5
- 20 CFR 658 Subpart E
- 29 CFR 38
- TEGL 5-20 *Health and Safety Practices for Migrant and Seasonal Farmworkers and Agricultural Employers during the Coronavirus Disease 2019 Pandemic*
- Indiana Code 22-2-18.1-12
- US Department of Labor (DOL) Employment and Training Administration (ETA) Form 8429, *Complaint/Apparent Violation Form*¹
- Indiana Department of Workforce Development (DWD) State Form, 56724 *WAGNER PEYSER (WP) COMPLAINT AND APPARENT VIOLATION LOG*²
- DWD Policy 2022-19 *Migrant and Seasonal Farmworkers Requirements and Service Provisions under the Monitor Advocate System, Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act*

¹ https://www.dol.gov/sites/dolgov/files/ETA/mas/pdfs/ETA_Form_8429.pdf.

² Staff can access this form on the DWD Staff Portal.

Content

Wagner-Peyser Act (WP) regulations require DWD to establish and maintain an Employment Service and Employment-Related Law Complaint System to capture and process employment-related complaints made by individuals, employers, organizations, associations, or other entities.

WorkOne American Job Center (WorkOne) Complaint Procedures

Assisting a Complainant

A complaint is an allegation, or a representation made or referred to the State or a WorkOne of a violation of the WP regulations and/or other federal, state, or local employment related law. WorkOne staff are to complete the following:

1. Provide the ETA Form 8429³ (Form) to the complainant and assist as necessary.
2. Gather contact information and all necessary information to investigate and log the complaint in the Wagner-Peyser Complaint and Apparent Violation Log (Log).⁴
3. Accept the completed Form. Ensure the Form is signed by the complainant or their representative. Provide the complainant a copy of the Form.
4. Explain the importance of maintaining contact on a monthly basis to the complainant. The complainant must notify the WorkOne and the designated local contact if they plan to leave the area.
5. Refer the complainant to the appropriate Complaint System Representative (CSR).
6. Offer the complainant the full range of employment and training services.

Note: Any WorkOne personnel can take a complaint. For alleged discrimination violation against MSFW funded programs or activities including MSFW funded staff or WIOA funded staff, the discrimination complaint should be referred to the local area Equal Opportunity Officer to follow the local discrimination complaint policy and procedures.⁵

Addressing an Apparent Violation

An apparent violation takes place when a WorkOne staff person observes, has reason to believe, or is in receipt of information regarding a suspected employer violation of employment-related laws or ES regulations.

It is best practice that if an individual is hesitant to file a complaint, the WorkOne representative should treat it as an apparent violation and report it while keeping the jobseeker's name anonymous.

WorkOne staff must document the alleged violation on the Form and refer the information to the Complaint System Representative (CSR) for further investigation.

Processing Complaints

Once the Log and the Form have been completed:

³ See **Attachment A** - *Step-by-Step Instructions for Completing the Complaint/Apparent Violation Form (ETA Form 8429)*.

⁴ See **Attachment C** - *Sample Wagner-Peyser Complaint & Apparent Violation Log (State Form 56724)*.

⁵ 29 CFR 38 and WIOA Sec. 188.

- For non-MSFW complaints, the Form is submitted to the WorkOne Complaint System Employment Service (ES) Manager upon completion.
- The ES Manager advises the region that the WorkOne has collected a complaint.
- The ES Manager will resolve or refer the complaint/apparent violation when necessary.
- The ES Manager may attempt to resolve the complaint/apparent violation under the direction of the State Monitor Advocate (SMA).
 - The SMA is the appointed MSFW complaint system representative who will resolve or refer the complaint/apparent violation when necessary. However, the local CSR may attempt to resolve the complaint/apparent violation under the direction of the SMA.
- The Form is submitted to the SMA⁶ upon completing.
- One (1) month after the quarter ending, the region will submit the Log to the SMA⁷ upon request.
- The Log and the Form are to be securely maintained at the WorkOne. This may be done electronically on the DWD Shared drive or through a local internally housed system. DOL, DWD, or the SMA may request to see these logs, and the logs must be produced upon request.

Action

This guidance is to be maintained with ETA Form 8429 and the Wagner-Peyser Complaint and Apparent Violation Log to ensure all WorkOne staff have accessibility to such guidance when addressing complaints or apparent violations pertaining to the Wagner-Peyser Act Employment Service System and Employment Service and Employment Related-Law Complaint System. The contents of this guidance will be subject to routine DWD monitoring.

Attachments

- **Attachment A** - Step-by-Step Instructions for Completing the Complaint/Apparent Violation Form (ETA Form 8429)
- **Attachment B** – Additional Definitions
- **Attachment C** - Sample Wagner-Peyser Complaint & Apparent Violation Log (State Form 56724)

Additional Information

Questions regarding the content of this publication should be directed to policy@dwd.in.gov.

⁶ Submit to msfwoutreach@dwd.in.gov.

⁷ Submit to msfwoutreach@dwd.in.gov.


Attachment A

Step-by-Step Instructions for Completing the Complaint/Apparent Violation Form⁸ (ETA Form 8429)

All complaints filed through the WorkOne must be handled by a trained Complaint System Representative. Each WorkOne must ensure there are trained staff available during regular WorkOne hours to take complaints.

A **complaint** is an allegation, or a representation made or referred to DWD or a WorkOne of a violation of the Wagner-Peyser regulations and/or other federal, state, or local employment related law.

An **apparent violation** takes place when a WorkOne staff person observes, has reason to believe, or receives information regarding a suspected employer violation of employment-related laws or ES regulations.

 U.S. Department Labor Employment and Training Administration		OMB Approval No. 1205-0039 Expiration Date: 07/31/2023
For Official Use Only Complaint/Apparent Violation Form¹		
Complaint/Apparent Violation No.		Date Received
Part I. Contact Information²		Respondent's Information³
1. Name of Complainant/(Last, First, Middle Initial) ⁴		4. Name of Person, Company, or Agency the Complaint is Made Against
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer (if different from Part I #4 above) /One-Stop Office
b. Temporary Address (if Appropriate)		6. Address of Employer/One-Stop Office
3a. Permanent Telephone () -	b. Temporary Telephone () -	7. Telephone Number of Employer/One-Stop Office () -

Part I. Contact Information⁹

1. Name of the Complainant: The name of the person who is filling the complaint.

2(a). Permanent Address: The address where the complainant lives long-term. This can be an address in another State or Country.

2(b). Temporary Address: The address where the complainant lives, short-term. This could include Agricultural Labor Camps or other types of temporary dwellings.

3(a). Permanent Telephone: Enter the number that can be used to communicate with the complainant regarding the resolution of complaints and/or follow-ups.

3(b). Temporary Telephone: Enter the number that can be used when the complainant has no means of a permanent telephone number. This can be of a relative, friend, or work/housing/organization site.

⁸ For information regarding complaints that are covered through the Employment Service and Employment-Related Law Complaint System see 20 CFR 658 Subpart E.

⁹ For Apparent Violations- The name and address of the Complainant is not necessary and may remain anonymous.

Part I. Respondent's Information

Part I. Contact Information ²		Respondent's Information ³
1. Name of Complainant/(Last, First, Middle Initial) ⁴		4. Name of Person, Company, or Agency the Complaint is Made Against
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer (if different from Part I #4 above) /One-Stop Office
b. Temporary Address (if Appropriate)		6. Address of Employer/One-Stop Office
3a. Permanent Telephone () -	b. Temporary Telephone () -	7. Telephone Number of Employer/One-Stop Office () -

A respondent is an individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or State agency (including a state agency official).

- 4. Enter the name of person, company, or agency the complaint is made against.**
- 5. Enter the name of the employer (if different than #4) or the WorkOne.**
- 6. Enter the employer's address or the WorkOne address.**
- 7. Enter the employer's phone number or the WorkOne phone number.**

8a. Description of Complaint or Apparent Violation (If additional space is needed, use separate sheet(s) of paper and attach to this form)

8b. I hereby give authorization to: _____ to act on my behalf regarding this complaint.
Phone #: _____ Address: _____

<p>Certification I CERTIFY that the information furnished is true and accurately stated to the best of my knowledge. I AUTHORIZE the disclosure of this information to other enforcement agencies for the proper investigation of my complaint. I UNDERSTAND that my identity will be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of my complaint.</p>	
9. Signature of Complainant ⁵	10. Date Signed / /

- 8(a). Description of Complaint or Apparent Violation:** Enter a detailed description of the complaint or apparent violation.
- 8(b). Designated Representative Authorization:** If the Complainant has a designated representative, the name and contact information of the designated representative must be provided in 8b. Otherwise, leave blank.
- 9. Signature of Complainant:** The complainant signs in this section.
- 10. Date Signed:** Enter the date that the form was signed.

NOTE: No signature is required if this form is submitted as an Apparent Violation. If the form is submitted as a complaint and a designated representative is acting on behalf of the complainant, the designated representative must sign here.

Part II: For Official Use Only

1. Select the appropriate box.

Migrant farmworker

- Is a seasonal farmworker; and
- Traveled to perform the farm work; and
- Jobseeker was not able to return to their permanent residence within the same day.

1. Migrant or Seasonal Farmworker?

Yes No

Seasonal farmworker

- Jobseeker worked for at least 1 day doing farm work during the last 12 months; and
- The agricultural employment was of a temporary or seasonal basis; and
- Jobseeker did not have to move from their permanent residence to do this farm work.

2. Complaint or Apparent Violation Employment Service Related ("X" Appropriate Box(es))

- Complaint against the Employer
- Apparent violation involving the Employer
- Complaint against the Local Employment Service Office
- Apparent violation involving the Employment Service Office

2a. Job Order No, if available:

2. Select the appropriate box.

An *Employment Service Office* is a WorkOne.

2(a). Provide the job order number.

If the complaint/apparent violation is connected to a DWD labor exchange job order, this number can be found on the job order.

3. Complaint or Apparent Violation Employment-Related Law:

Yes No

3. Select the appropriate box.

Employment-related laws¹⁰ are laws that relate to the employment relationship, such as those enforced by USDOL's Wage and Hour Division, Occupational Safety and Health Administration, or other Federal, State, or local agencies. Examples of this type of complaint or apparent violation include, but are not limited to, wages, work safety conditions, housing, and transportation.

See page 4 for definitions for **complaint** and **apparent violation**.

¹⁰ A Complaint regarding the ES regulations must be handled to resolution by these regulations **only** if it is made within 2 years of the alleged occurrence.

4. Issue(s) involved in Complaint or Apparent Violation (“X” Appropriate Box(es)):

<input type="checkbox"/> Wage Related	<input type="checkbox"/> Housing
<input type="checkbox"/> Child Labor	<input type="checkbox"/> Pesticides
<input type="checkbox"/> Health/Safety	<input type="checkbox"/> Discrimination
<input type="checkbox"/> Transportation	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Sexual harassment/coercion/assault	
<input type="checkbox"/> Other (Specify) _____	

4. Issue(s) involved in Complaint or Apparent Violation (“X” Appropriate Box(es)):

- **Wage Related:** Wage theft, which includes failing to pay workers when rightfully owed, illegal deductions in pay, forcing workers to work with no pay.
- **Child Labor:** Per IC 22-2-18.1-12, children under 12 years of age are not permitted to work at farm labor except on a farm operated by the minor’s parent.
- **Health/Safety:** Any agricultural employer or farm labor contractor not abiding by any Occupational Safety & Health Standards for agriculture workers including:
 - 1) Any concerns about farmworker safety and health during COVID-19 including but not limited to preventing farmworker exposure to COVID-19 in employer-provided vehicles.¹¹
 - 2) Roll-over, Protective Structures.
 - 3) Safety for Agricultural Equipment.
 - 4) General Environmental Controls.
 - 5) Other Occupational Health Standards and/or concerns.
- **Transportation:** Vehicles transporting migrant or seasonal farmworkers that do not comply with federal vehicle safety standards under the Migrant and Seasonal Agricultural Worker Protection Act.
- **Housing:** Housing conditions do not meet state and or federal standards.
- **Pesticides:** Agricultural workers and pesticide handlers exposed to pesticide poisoning.
- **Discrimination:** Unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history).¹²
- **Trafficking:** Human trafficking involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act.
- **Sexual harassment/coercion/assault:** (unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.)
- **Other (Specify):** Complaint/apparent violation not listed above. Please explain.

¹¹ TEGL 5-20.

¹² <https://www.eeoc.gov/prohibited-employment-policiespractices>.

5. Select the appropriate box.

U.S. Worker

- 1) A citizen or national of the U.S.; or
- 2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee, is granted asylum, or is an immigrant otherwise authorized (by the Immigration and Nationality Act or by the Department of Homeland Security) to be employed in the U.S.; or
- 3) An individual who is not an unauthorized alien with respect to the employment in which the worker is engaging.

5. If employer is an H-2A/Criteria Employer, is the complainant a:

("X" Appropriate Box):

- U.S. Worker
- H-2A Worker

H-2A Worker

- 1) Any temporary foreign worker who is lawfully present in the U.S. and authorized by the Department of Homeland Security to perform agricultural labor services of a temporary or seasonal nature.

<p>6a. Referrals To Other Agencies ("X" Appropriate Box(es))</p> <p><input type="checkbox"/> WHD. U.S. DOL. <input type="checkbox"/> OSHA U.S. D.O.L.</p> <p><input type="checkbox"/> EEOC <input type="checkbox"/> Other _____</p>	<p>7. Address of Referral Agency (No., St., City, State, ZIP Code and Telephone No.)</p> <p>_____</p> <p>_____</p>
<p>6b. Next Follow-up Date if complainant is an MSFW</p> <p>____/____/____</p>	<p>() ____ - ____</p>

6(a). Select the appropriate organization.

- **WHD. U.S. DOL:** Wage and Hour Division, United States Department of Labor
- **OSHA U.S. D.O.L.:** Occupational Safety and Health Administration, United States Department of Labor
- **EEOC:** Equal Employment Opportunity Commission
- **Other:** Agency not listed above. Please explain.

If the complainant is a non-MSFW, the WorkOne must immediately refer the complainant to the ES Manager, the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completion, the local or State representative is not required to follow-up with the complainant.

6(b). Next Follow-up Date if the complainant is an MSFW: Enter the date of one-month from the recording of the complaint/apparent violation.

- When an MSFW submits a complaint, the SMA **must follow-up monthly** on the handling of the complaint and **must** inform the complainant of the status of the complaint.
- No follow-up with the complainant is required for non-MSFW complaints.

7. Address of Referral Agency: Enter the address and phone number of the organization identified in 6(a).

8. Actions Taken on Complaint/Apparent Violation (If additional space is needed for multiple actions taken, use a separate paper):

Action Taken By: _____ On: _____
 (First and Last Name) (Date)

Action Taken: _____

9. Complaint resolved at the local level Yes No If "No," explain* _____
10. Apparent violations resolved at the local level Yes No, If "No," explain* _____
11. Provided other American Job Center Services Yes No If "No," explain* _____
- *If additional space is needed for explanations, use a separate paper.

8. Action Taken: Enter all requested information. Describe what actions were taken to attempt to resolve this complaint/apparent violation through the informal resolution process. If unsuccessful, describe next-steps and include referrals made to other enforcement agencies.

9, 10, and 11: Answer the questions and provide additional information, if applicable.

12a. Name and Title of Person Receiving Complaint	12b. Office Address (No., St., City, State, ZIP Code)	
12c. Phone Number ()	12d. Signature	12e. Date / /

12(a)-(e): Provide the information of the person receiving the complaint.

If the MSFW experienced **discrimination** based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history), from the employer, staff are to complete ETA Form 8429 and send the form along with any additional information to the SMA.¹³ The SMA will follow-up with the complainant to complete the Equal Employment Opportunity Commission’s (EEOC) complaint form. The SMA will then submit the completed form to EEOC for processing.

¹³ Submit to msfwoutreach@dwd.in.gov.

Attachment B Additional Definitions¹⁴

Agricultural Labor Camp: At least one (1) building or structure, tent, trailer, or vehicle, including the land, established, operated, or used as living quarters for at least five (5) adult seasonal or temporary workers engaged in agricultural activities, including related food processing.

Employer Related Law: Laws that relate to the employment relationship, such as those enforced by the USDOL Wage and Hour Division, Occupational Health and Safety Administration, or by other Federal, State, or local agencies.

H-2A Worker: Any temporary foreign worker who is lawfully present in the U.S. and authorized by Department of Homeland Security to perform agricultural labor services of a temporary or seasonal nature.

Migrant Farmworker: A seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

Respondent: An individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or State agency (including a state agency official).

Seasonal Farm Worker: An individual who is employed, or was employed in the past 12 months, in farm work (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.

U.S. Worker: (1) a citizen or national of the U.S.; or (2) an alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee, is granted asylum, or is an immigrant otherwise authorized (by the Immigration and Nationality Act or by the Department of Homeland Security) to be employed in the U.S.; or (3) an individual who is not an unauthorized alien with respect to the employment in which the worker is engaging.

¹⁴ As defined at 20 CFR 651.10 and 20 CFR 655.5.

Sample Wagner-Peyser Complaint & Apparent Violation Log (State Form 56724)

**WAGNER PEYSER (WP)
COMPLAINT AND APPARENT VIOLATION LOG**

State Form 56724 (6-19)
DEPARTMENT OF WORKFORCE DEVELOPMENT



American Job Center														Program Year						
Region														Quarter Ending						
						Type of Complaint								Action Taken						
Number	Date (mm/dd/yyyy)	Complainant	Respondent	MSFW	Non-MSFW	Apparent Violation	Against Employer	Employment Service (ES) Regulation	Employment Law	WHD	OSHA	EEOC	Other	Local Level	State Monitor Advocate (SMA) Level	Enforcement Agency Level	Failed to Respond	Resolution	Follow up	
1.																				
2.																				
3.																				
4.																				

Divisions: Wage and Hour Division (WHD) – 1. Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 2. H-2A Temporary Agricultural Visa Program, 4. Agricultural Housing, 5. Wage / pay 6. The Fair labor Standards Act (FLSA), 7. The Davis-Beacon & Related Act, 8. The Family & Medical Leave Act (FMLA).

Occupational Safety and Health Administration (OSHA) – Workplace safety

Equal Employment Opportunity Commission (EEOC) – Discrimination Types against Age, Disability, Equal Pay, Genetic Information, Harassment, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex and Sexual Harassment

Other – Employment Services under the Wagner Peyser Act