

NEBRASKA DEPARTMENT OF LABOR

## Employment Service & Employment Related Law Complaint System



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### What kind of information about violations do customers share?

- Discrimination
- Employment
- Wrongful Termination
- Wage Payment
- Language Access
- Abuse



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### 20 CFR 658.410: Establishment of Local and State Complaint System

- Each State Workforce Agency (SWA) must establish and maintain a Complaint System.
- All complaints received must be assigned to the State agency official designated by the State Administrator.
- The state agency must ensure information pertaining to the use of the complaint system is publicized.



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### Continuation...

- Each One-Stop center must ensure there is appropriate staff available during regular office hours to take complaints.
- Complaints filed through local ES office must be handled by trained Complaint System representative.
- The representative handling the complaint must offer to assist the complaint through the provision of appropriate services.




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**Complaint Poster**

UNITED STATES DEPARTMENT OF LABOR  
Employment & Training Administration

**ONE-STOP CAREER CENTER – CENTRO VOCACIONAL**

**IF YOU HAVE A COMPLAINT ABOUT:**

- A One-Stop Career Center
- A job you were referred to by a One-Stop Career Center

Contact your local One-Stop Career Center manager or write to:

**SI USTED TIENE UNA QUEJA ACERCA DE:**

- Un Centro Vocacional
- Un trabajo al que fue referido por un Centro Vocacional

Comuníquese con la gerencia de su Centro Vocacional más cercano o escriba a:

Onaé Correa  
State Monitor Advocate / Consejero de Monitoría Estatal  
Nebraska Department of Labor / Departamento de Trabajo  
508 S. 14th Street  
Lincoln, NE 68509  
602.734.6843  
Email: [onaecorrea@nebraska.gov](mailto:onaecorrea@nebraska.gov)  
Web: <http://dola.nebraska.gov>  
Job Service Complaint System – 29 CFR Part 1608

If you have a complaint about other employment-related issues, your local One-Stop Career Center will provide you with information on agencies that may be able to assist you.

Si usted tiene una queja acerca de otros asuntos laborales, su Centro Vocacional local le proporcionará información sobre las agencias que pueden ofrecerle ayuda.

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WHD

**Complaint Poster**

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### Who Can Make a Complaint Through the System?

**20 CFR 651:** Complainant means the **individual, employer, organization, association, or other entity** filing a complaint.




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**Basic Questions are:**

- Is this an MSFW related complaint?
- What is required from the MSFW to file a complaint?
- How do I report an incident that appears to be a violation?
- How do we identify the type of violation being reported? And who would the MSFW be referred to?

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**What is Employment Related Law?**

Those laws that relate to the employment relationship, such as those enforced by the department of WHD, OSHA, EOC or by other federal, state or local agencies.

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**The Employment Service and Employment-Related Law Complaint System**

**Types of Complaints:**

- Employment Service Related Complaint (ES-Related)
  - Complaints that are:
    1. Against an employer about a specific job to where the applicant was referred through the ES, and
    2. Involve failure to comply with ES regulations under 20 CFR 651, 652, 653, and 654.
      - An agency related complaint, is where a complainant alleges that NEworks or an NDOL partner, through actions of omission, violated Wagner Peayer Regulations.
      - An employer related complaint, where complainant alleges the employer violated the terms and conditions of the job order, or the employer violated an employment related law.
- Non-Employment Service Related Complaint (Non ES-Related)
  - A complaint filed by an individual who was **NOT** referred on the Nebraska job order within the last 12 months and alleges an employer or an agency violated contract or regulations.

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### The Employment Service and Employment-Related Law Complaint System

What it does **NOT** cover:

Complaints Alleging Violations of

- Unemployment Claims
- Workforce Investment Opportunity Act (WIOA) Title I Program
  - Adult, Dislocated Worker, Youth
- Complaints by Veterans Alleging Violations of Mandatory Listing Requirements Under 38 USC 4212

**This Means:** Complaints regarding these topics should not appear on the ES and Employment-Related Law Complaint System Log.




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### All MSFW Complaints Must Be Taken On An ETA Approved Complaint/Apparent Violation Form



U.S. Department Labor  
Employment and Training Administration

OMB Approval No. 1205-0039  
Expiration Date: Dec. 31, 2018

For Official Use Only  
Complaint/Apparent Violation Form<sup>1</sup>

Complaint No. _____		Date Received _____
<b>Part I. Complainant's Information<sup>2</sup></b>		<b>Respondent's Information<sup>3</sup></b>
1. Name of Complainant (Last, First, Middle Initial)		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 ( ) - ( ) - ( ) - ( )
8. Description of Complaint or Apparent Violation (if additional space is needed, use separate sheets) of paper and attach to this form)		




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### Complaint vs. Apparent Violation

**Complaint:**

Submission of a written and signed allegation that employment related law or employment service regulations have been violated.

**Apparent Violation:**

Occurs when the SWA, ES office employee, or outreach worker observes, or has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or employment service regulations.




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### The Complainant File in the Local Office

Any action taken by the complaint system representative must be documented, including referral of MSFW complaints with the following information:

1. Notation on the type of complaint
2. A copy of the original complaint form
3. A copy of any ES-related reports
4. Any relevant correspondence
5. A list of actions taken
6. A record of any pertinent telephone calls and all correspondence relating to the case




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### MSFW Central Complaint log is maintained by the SMA

List of all complaints taken by the ES Office

- > Complainant name
- > Respondent name
- > Date the complaint was filed
- > Whether the complaint concerns employment related law or ES regulations.
- > Actions taken (referrals)
- > When the complaint was resolved
- > Resolution




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### Informal Resolution

What it means:

- > Local Office attempts to resolve the issue informally, except in cases where informal resolution at the local level would be detrimental to complainant(s).
- > The employer is provided 5 business days to fix issue(s).

Can **ONLY** be attempted if:

- > The employer has filed a job order with the ES office within the last 12 months.
  - > Referral was made through ES




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### Formal Resolution

If the employer has **NOT** filed a job order with the ES office during the past 12 months, the suspected violation of an employment related law must be referred to the appropriate enforcement agency in writing.

\* Note: Formal Resolution is necessary once it is determined informal resolution is not possible.



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### Check List

1. Identify if complainant is an MSFW.
2. Identify if you're receiving an apparent violation or complaint.
3. Identify if complaint is ES-Related or Non-ES Related Complaint.
4. Can we reach an informal resolution before referring it to SMA or corresponding agency?



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### Violation Example



Tomas was hired by Aaron's produce for 3 months. He has been working 50-60 hours a week, but was paid for 40 hours each week.

During an outreach visit, Tomas files a complaint with the Outreach Specialist.

The Outreach Specialist gives the Complaint Form to the Office Manager. The Office Manager then contacts employer and informs him of wage violation. When the Office Manager follows-up with employer, the issue has not been resolved.

#### What can we identify from this scenario?

- > Is this an MSFW related complaint? **YES**
- > Is this a Complaint or Apparent Violation? **COMPLAINT**
- > ES-Related or Non-ES Related Complaint? **ES-RELATED**
- > Informal Resolution or Formal Resolution? **INFORMAL RESOLUTION**
- > What happens now? **Complaint becomes Formal Resolution and must be referred to SMA.**



The SMA calls the complainant and explains the complaint will be sent to WHD. The complaint is logged and sent to WHD.

The SMA follows up with WHD in 30 days. WHD determines that the worker and other employees are owed a total of \$8,400.

Discontinuation of services is initiated.



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## Violation Example



Tomas was hired by Aaron's Produce for 3 months. He has been working 50-60 hours a week, but was paid for 40 hours each week.

During an Outreach visit an Outreach Specialist overhears Tomas and a group of workers speaking about their past due wages. The Outreach Specialist approaches the group and encourages them to submit a complaint. However, once approached the workers grow silent and dismiss the idea without giving further details of their conversation.

The Outreach Specialist returns to the office and informs the Office Manager of the suspected violation. After further research, the ES office becomes aware that there was not a job order set in place for this employer. What must the Outreach Specialist do?

**NEworks**

**What can we identify from this scenario?**

- > Is this an MSFW related complaint? **Yes, suspected violation is occurring to MSFWs.**
- > Is this a Complaint or Apparent Violation? **APPARENT VIOLATION**
- > ES-Related or Non-ES Related Complaint? **NON-ES RELATED**
- > Informal Resolution or Formal Resolution? **FORMAL RESOLUTION**
- > What happens now? **The apparent violation must be referred to appropriate enforcement agency in writing.**

Once the complaint is referred to the corresponding agency they will reach employer.

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## When are Complaints Resolved?

A Complaint is considered resolved when:

1. The complainant indicates satisfaction with the outcome via written correspondence;
2. The complainant chooses not to elevate the complaint to the next level of review;
3. The complainant or their authorized representative fails to respond to a request for information within the 40 working days for MSFW, of a written request by the ES office or Sate Agency;
4. The complainant exhausts all available options to review; or
5. A final determination has been made by the enforcement agency to which the complainant was referred.

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## Example Violation Sorting

When conducting a housing inspection, staff find that housing that will be used for MSFW occupants does not meet OSHA, ETA and local code housing regulations.

**Does a violation exist? If so, how do we categorize it?**

**Answer:** If MSFW's currently reside in the housing, the condition should be documented as an apparent violation.

If no MSFW's currently reside in the housing, no violation currently exists because there are no injured parties.

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### Example Violation Sorting

While reading the newspaper, the SMA reads about an injury to MSFWs at the local farm due to alleged employer negligence. The article reports that an MSFW and a foreign guest employed through the H-2A visa were injured at the farm. The SMA knows that the employer does not have a current Foreign labor job order associated with H-2A.

*Does a violation exist? If so, how do we categorize it?*

**Answer:** Apparent Violations for worker safety and violation of H-2A regulations exist.



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### Example Violation Sorting

While conducting a field-check, the SMA speaks to a foreign guest worker employed through H-2A visa. The guest worker discloses violations of work contract. He is very unhappy and wants to make a complaint.

*Does a violation exist? If so, how do we categorize it?*

**Answer:** Yes, violation exists. The individual may file a complaint through ES and Employment-Related Complaint System.



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### Example Violation Sorting

While conducting outreach, MSFW's make allegations to SWA staff of several violations of employment-related law. Staff properly inform MSFW's of their right to file a complaint through the complaint system, but workers do not wish to file complaints.

*Does a violation exist? If so, how do we categorize it?*

**Answer:** Yes, violations exist. SWA staff is obligated to document and treat the issues as apparent violations.



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## Example Violation Sorting

At the local office, an MSFW wants to make a written complaint about the inaccessibility of the Unemployment Insurance system.

*Does a violation exist? If so, how do we categorize it?*

**Answer:** No violation exists as it does not fall under the complaint system. Unemployment Insurance complaints are handled separately by that system's complaint procedures.



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## Questions?

### Thank you!



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