



# Employment Service and Employment-Related

## Law Complaint System

## Process Guide

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### OVERVIEW

The Employment Services (ES) Complaint System is a formal mechanism for processing complaints from customers who believe their employment-related rights have been violated, denied, or that they have been unjustly treated in an employment-related situation. The ES Complaint System was established to serve all customers, including the public, job seekers, employers, veterans, and MSFWs.

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### STAFF INVOLVED IN THE COMPLAINTS PROCESS

- **Agribusiness Department:** Collects the monthly Complaint Log and Complaints under a timeline
- **Regional Managers:** Responsible for documenting and logging complaints and ensuring all DEW staff in the SC Works center know about the Complaint Process
- **Staff in the SC Works Center:**
  - All staff should understand the process
  - Regional Manager appoints 2 staff that can process complaints in the managers absence
- **Complaints Coordinator:** The Agribusiness Department has a designated staff to maintain the Central Complaint log that includes collect complaints from the Regional Managers, Agribusiness staff, and from the community and partners.
- **State Monitor Advocate:** Provides guidance and monitoring for the ES Division

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### ORGANIZATIONAL CHART LOCATION

The ES Complaint System falls under the Employment Services Division in the Agribusiness Department. This Department works and communicates directly with the State Monitor Advocate. Questions should be directed to [ESSolutions@dew.sc.gov](mailto:ESSolutions@dew.sc.gov)



**Monitoring:** The ES Complaint System aligns the mission and responsibilities of the State Monitor Advocate's (SMA) office. ES-related complaints, MSFW complaints, as well as apparent violations, will be reported to the SMA office by the Agribusiness Department. The SMA monitors the performance of the Complaint System, as set forth at [§§ 658.400](#) and [658.401 of this chapter](#). The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES office manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA. ed with monitoring the ES complaint system, its processes, and Centralized ES Complaint System log.

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## COMPLAINT SYSTEM INFORMATION LOCATION

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ES Staff will be communicated with by email, teams, and phone. The process for complaints and updates for field staff to processes are placed on DEW Connect's Employment Services Page 'Complaint System'. Staff are directed to this website for updated information for the Complaint system:

- [https://scdewgov365.sharepoint.com/sites/dewconnect\\_es/SitePages/ES-Solutions.aspx](https://scdewgov365.sharepoint.com/sites/dewconnect_es/SitePages/ES-Solutions.aspx)

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## WHO CAN FILE A COMPLAINT?

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Individuals (farmworkers and non-farmworkers), employers, organizations, associations, and other entities can file complaints. A complainant may also designate an individual to act as their representative.

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## TYPES OF WORKERS:

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- **Non-MSFW Worker:** Worker that does not fall under the definitions of MSFW.
- **Migrant or Seasonal Farm Worker (MSFW):** migrant farmworker and/or a seasonal farmworker.
  - **Migrant Farmworker:** seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day.
  - **Seasonal Farmworker:** individual who is employed, or was employed in the past 12 months, in farmwork of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. 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. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers



are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

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## WHAT COMPLAINTS DOES ES COLLECT?

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- 1. Employment-Related Law Violations:** Employment-related laws deal with the employment relationship, such as those enforced by Wage and Hour, Occupational Safety and Health Administration, or by other federal and state agencies.
- 2. ES Regulation Violations:** Employment Services provided by a State Workforce Agency or Employment Service office (one-stop center or American Job Center).
- 3. Apparent Violations (20 CFR 658.419):** DEW Employee (Working in the SC Works Center, AOC, outreach, etc.) a SWA, an ES office employee, or outreach staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer.

Note, the *Employment Service and Employment-Related Law Complaint System* does not cover complaints alleging violations under the [Unemployment Insurance](#) program, the [Workforce Innovation and Opportunity Act \(WIOA\)](#) title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under [38 U.S.C. 4212](#). However, American Job Centers can help direct complainants to find information about how to file complaints involving those topics.

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## RIGHTS AND PROTECTIONS FOR THE COMPLAINANT

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- If a customer makes a complaint or gives information related to, or assist in, an investigation of a complaint, identity will be kept confidential to the fullest extent possible under current law and as necessary to determine the complaint fairly.
- Federal laws prohibit employers from retaliating (taking negative actions) against employees who report employment-related complaints.
- If a customer experiences retaliation from an employer, notify an American Job Center complaint representative.
- A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.



## HOW A CUSTOMER FILES A COMPLAINT?

Complaints may originate from multiple sources. The source may occur within the SC Works Center, employer's location, during ES-related field checks and other outreach activities. Complainants may write, e-mail, or report a complaint during outreach. All complaints must be submitted in writing. Only Apparent violations do not require the complainant's signature only the phone number is required. An ES Complaint or Employment-Related Laws can be submitted through the following methods:

- a. In-Person
- b. U. S. Postal Service mail delivery
- c. E-Mail
- d. Telephone

## SC WORKS CENTER POSTER REQUIREMENTS

- **ETA-approved Complaint System:** Each American Job Center must prominently display the ETA-approved Complaint System posters pursuant to Training Employment [Training Employment Notice 8-23](#) in both English and Spanish.
  - ES Complaint Poster are located at: <https://scworks.org/escomplaint> for your region (Any old posters should be removed)
    - Posters are required to be hung in customers view in all SC Works Centers and on the [SC Works Center website](#)
- **SCHAC poster, both English and Spanish:**
  - <https://schac.sc.gov/about-us/affirmative-action/publications/schac-employment-poster>
- **LLR Workplace Poster Legal Size - Includes OSHA (Occupational Safety and Health) and the Labor Law Abstract (Payment of Wages and Child Labor):**
  - Website Poster Location: <https://www.llr.sc.gov/wage/posters.aspx>

## PROCESSING COMPLAINTS REQUIREMENTS

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.

Assist the complainant:

- (a) Assist the complainant with completing the Complaint/Apparent Violation Form (ETA 8429) form and provide the complainant a copy of the form.
- (b) If necessary, follow up with an email or letter to request additional information.
- (c) Provide copies of the complaint file to the state Complaint Coordinator
- (d) 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.



#### Key Processing Timeframes for Complaints:

	Response	Resolution
Non-MSFWs	20 business days	15 business days
MSFW	40 business days	5 business days

**Complaint Resolution:** If resolution for ES-related complaints is not achieved at the local area level within the allotted time frame set for the complainant based on the above chart, the complaint must be forwarded to the state Complaint Coordinator. The State Complaint Coordinator will decide, within 30 working days (20 working days for MSFW's) based on the results of the investigation conducted by the State Complaint Coordinator and/or ES Regional Manager. Once a determination is made, the Complaint Coordinator will generate a determination letter and send a copy to the complainant and the respondent via certified U.S. Postal Service.

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## COMPLAINTS PROCESS

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The ES Regional Manager is responsible for the operation of the complaint system. The Regional Manager and/or the designated staff must be available during normal business hours to take a complaint.

### General Rules in How to Handle Complaints:

Staff receiving complaint must ensure the following during their initial conversation with the complainant:

- Provide complainant with information about the full range of One-Stop services.
- [Language assistance](#) must be provided for complainants who are not fluent in English.
- Offer to explain the operation of the complaint system and offer to take the complaint in writing.
- Provide a Complaint/Apparent Violation Form ETA 8429 ([Microsoft Word](#)) ([PDF](#)) or attach the statement to the form, and/or assist in completing the form.
- A complaint/apparent violation may also be taken by an Agricultural Outreach Coordinator or FLC while on outreach.
- Make every effort to obtain all information that would be relevant to an investigation.
- Request the complainant provide all the physical addresses, email addresses, and telephone numbers through which he or she can be contacted during the investigation.

#### Step One: Determine if the complainant is a MSFW (including H-2A Visa Holders) or behalf of a MSFW.

- A migrant farmworker is someone who moves for seasonal agricultural work, making it impossible to return to his or her permanent residence within the same day during the period of employment. (includes H2-A)
- A seasonal farmworker, on the other hand, stays in one area year-round and engages in temporary farm work.



**Step Two:** After reviewing the complaint, decide the type of complaint

- 1.) Employment-related law
- 2.) ES Related Complaint
- 3.) Apparent Violation

**Types of Complaints:**

**1.) Employment-Related Law Violations:** 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 U.S. DOL's OSHA, Wage and Hour, or other Federal, State, or local agencies. *Examples:* wages, housing, transportation, harassment, and discrimination

**a. For non-MSFW complaints:**

1. Refer immediately to the appropriate enforcement agency.
2. Inform complainant or his/her representative where the complaint has been referred to in writing.
3. Log the complaint on the Complaint/Apparent Violation Log.

**b. For MSFW complaints:**

1. If the issue is not resolved within 5 business days, the Complaint Coordinator and/or the ES Regional Manager must refer the complaint to the appropriate enforcement agency for further assistance.
2. Offer to refer MSFW to other employment services should the MSFW be interested.
3. Inform complainant or their representative where complaint has been referred to in writing.
4. Log the complaint on the Complaint/Apparent Violation Log

**2.) ES Regulation Violations:** ES related complaints involve complaints against an employer that works with SC Works and/or Complaints against ES Staff and/or process in the SC Works Center. The Regional Manager and/or the Complaint Coordinator will work with the complainant and associated respondent to gain complaint resolution. Informal resolution is the preferred method (if not resolved it is escalated to the Complaint Coordinator).

**a. Employer-related Complaints:**

1. A Complaint/Apparent Violation Form ETA 8429 ([Microsoft Word](#)) ([PDF](#)) must be completed by the complainant while in the One-Stop location (SC Works Center).
2. The Regional Manager and the Complaint Coordinator conducts the investigation
3. The complaint is added to the complaint log.
4. Informal resolution is the preferred method.

**b. Agency Related Complaints:**



1. A Complaint/Apparent Violation Form ETA 8429 ([Microsoft Word](#)) ([PDF](#)) must be completed by the complainant.
2. The Regional Manager, Area Director, and the Complaint Coordinator conducts the investigation. If a DEW staff is involved, HR will need to be involved.
3. The complaint is added to the complaint log.
4. Informal resolution is the preferred method.

**3.) Apparent Violations (20 CFR 658.419):** If a DEW Employee (Working in the SC Works Center, AOC, outreach, etc.) If a SWA, an ES office employee, or outreach staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, the suspected violation must be documented using Form ETA 8429 and entered in the online Employment Service Complaint Log and sent to [ESSolutions@dew.sc.gov](mailto:ESSolutions@dew.sc.gov) and the Regional Manager for the region.

Examples Include:

- If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution as provided at 20 CFR 658.411.
- 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.
- Apparent violations of nondiscrimination laws must be processed according to the procedures described in 20 CFR 658.411(c).
- Employers must ensure that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition for H-2A and H-2B and that employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers. Instances of qualified U.S. workers not being hired should be processed as Apparent Violations.

**4.) Non-ES-related Complaint Types:** Non-ES-related complaints should be softly referred to the correct complaint group. For example, local EO complaint referred to the local EO Coordinator.

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## COMPLAINT LOGS

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### Centralized ES Complaint System Log:

The State Complaint Coordinator maintains the centralized complaint log accessible to state office staff and SMA. The complaint log will list all complaints taken by the ES office staff, outreach staff, SWA, and apparent violations identified by ES staff.

Local ES Office Complaint System Log: [Download the Complaint Log here](#)



Regional Managers are responsible for maintaining and updating the local Complaint log and emailing it monthly to the State Complaint Coordinator ([ESSolutions@dew.sc.gov](mailto:ESSolutions@dew.sc.gov)) The Local ES Office Complaint System Log will be submitted to the Complaint Coordinator no later than the first Friday of the month for the previous month. Monthly Complaint Logs are submitted indicating zero complaints for that quarter if there are no complaints.

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## ADDITIONAL FEDERAL RESOURCES

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### **U.S. Equal Employment Opportunity Commission (EEOC)**

Enforces federal statutes prohibiting employment discrimination based upon race, color, religion, sex, national origin, age, gender, or disability.

Telephone: 1-800-669-4000

Website: <https://www.eeoc.gov/>

### **U.S. Department of Labor Wage & Hour Division (WHD)**

Enforces Fair Labor Standards Act, Migrant and Seasonal Agriculture Worker Protection Act, Medical Leave Act, Consumer Credit Protection Act, Polygraph Protection Act, and the Davis Bacon Act.

Telephone: 1-866-487-9243

Website: <https://www.dol.gov/agencies/whd>

### **U.S. Department of Labor Occupational Safety and Health Administration (OSHA)**

Promotes work place safety and health through inspections, OSHA safety training, and accident prevention programs.

General Information: 1-800-321-6742

Website: <https://www.osha.gov/>

### **U.S. Department of Labor Veterans' Employment & Training Services**

Protects the rights of veterans and members of the National Guard and Reserve called to duty or training to return to their civilian jobs with all the benefits accrued during their military service.

Telephone: 1-866-487-2365

Website: <https://www.dol.gov/agencies/vets>

### **U.S. Department of Labor Office of Federal Contract Compliance Programs (OFCCP)**

Administers and enforces three federal contract-based civil rights laws that require most federal contractors and subcontractors, as well as federally assisted construction contractors, to provide equal employment opportunity.



Toll Free: 1-800-397-6251

Website: <https://www.dol.gov/agencies/ofccp>

#### **U.S. Department of Labor Employee Benefits Security Administration**

Assists employers and plan participants in understanding and complying with requirements of private employee pension and health benefit plans.

General Information: 1-866-444-3272

Website: <https://www.dol.gov/agencies/ebsa>

#### **SC DEW Office of Equal Opportunity Administrator**

Assists customers who feel they have been discriminated against by SC Works staff, programs, or services under the Workforce Innovation and Opportunity Act.

Valerie McMellan – State Level EO Officer

[VMcMellan@dew.sc.gov](mailto:VMcMellan@dew.sc.gov)

803-737-1909

#### **Additional Resources:**

- [National Farmworker Jobs Program](#)
- [Environmental Protection Agency \(EPA\) - Agricultural Worker Protection Standards](#)
- [U.S. Department of Homeland Security Blue Campaign](#)
- [U.S. Department of Health and Human Services](#)
- [Department of Justice BJA-Funded Human Trafficking Services Grantees and Task Forces](#)
- [Migrantworker.gov](#)
- [Worker.gov](#)
- Citations: [Laws and Regulations | U.S. Department of Labor](#)