

New Jersey Unified One-Stop Career Center

Customer Complaint Procedure

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New Jersey Department of Labor and Workforce Development

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1. Purpose

To create a uniform One-Stop Career Center (OSCC) customer complaint process that, regardless of the OSCC partner involved, provides the customer with a common complaint form and common complaint specialist to address the complaint.

The unified procedure details steps that OSCC management and staff must follow to publicize, document, and process complaints alleging discrimination by OSCC staff, violations of the Workforce Innovation and Opportunity Act (WIOA), actions or omissions by the Job Service/Labor Exchange [Employment Service (ES) staff], complaints from customers placed into On-the-Job Training (OJT) programs, and complaints from customers referred to employers who are allegedly in violation of labor standards. Complaints lodged by Migrant and Seasonal Farmworkers (MSFWs) are to be treated as Employment Service or employment-related law complaints regardless of how the worker found the job.

This document along with all referenced forms, handouts, scripts, and logs can be found on the New Jersey Department of Labor and Workforce Development's (LWD) Workforce Professionals page at .

2. Scope

1. To define requirements for publicizing the Unified Customer Complaint procedure.
2. To promulgate a common customer complaint form and duties of the complaint specialist.
3. To explain the procedures for the receipt, resolution, and/or disposition of customer complaints including an appeal process.
4. To create a general plan for ensuring that complaint specialists and staff serving customers are aware of and receive initial and periodic refresher training on the complaint procedure.
5. To ensure that a process is established to monitor compliance with the Unified One-Stop Customer Complaint Procedure.

3. Designation of State and Local Complaint Specialists/Equal Opportunity Officers

Each OSCC shall designate a Complaint Specialist and backup and an Equal Opportunity Officer (EOO) in consultation with the LWD and the local WIOA entity. The Complaint Specialist and EOO may be the same person and the default Complaint Specialist is the Workforce Development Manager (ES manager). Complaints alleging discrimination necessitate the involvement of the EOO.

Local Complaint Specialists/EOs at the time of this issuance are found in Attachment 3.

4. Types of Complaints – Chart 1 (Formal complaints must be in writing and signed by the complainant preferably using ETA Form 8429)

Type of Complaint	How to File A Written Complaint	What Happens Next	Appealing a Decision	Secondary Appeals	Applicable Policy and Procedures Document
<u>Discrimination</u> Complaint alleging discrimination by the OSCC (Job Service/ Workforce Innovation and Opportunity Act (WIOA) Title I funded entity) because of race, color, religion, sex, national origin, age, disability, political affiliation, belief, or citizenship status as a lawfully admitted immigrant authorized to work in the US.	Within 180 days of the alleged act of discrimination, a complaint can be filed with the Local or State EEO or Complaint Specialist	The recipient of the complaint has 90 days to respond to the complainant with a Notice of Final Action	The complainant has 30 days after the Notice of Final Action to file an appeal with the USDOL - Civil Rights Center. If no Notice of Final Action is received, the complainant has 30 days from the end of the 90 days to file an appeal.	n/a	29 CFR Part 38
<u>Workforce Innovation and Opportunity Act (WIOA) Services</u> Complaint alleging violation of the WIOA and/or provisions of a related agreement	Complaints should be filed with the local One Stop Complaint Specialist. There is no time limit for filing a complaint.	Within 60 days of filing the complaint, the recipient of the complaint will conduct a hearing and offer a written decision	If complainant does not receive a decision within 60 days, or receives an adverse decision, complainant has 30 days to file an appeal to the LWD - Director, Workforce Field Services	When complainant has exhausted the local and State complaint process, complainant may appeal to the Secretary of the U.S. Department of Labor	NJAC § 12:42-1.1 et seq.
<u>Job Service/Labor Exchange</u> Complaint about One-Stop Job Service actions or omissions	Within 1 year of the alleged occurrence, a complaint can be filed with the local One- Stop Complaint Specialist	Complaint specialist will attempt to resolve complaint within 15 working days (5 days for complaints by MSFWs)	If the local complaint specialist does not resolve the complaint, it is sent to the State Complaint Specialist who has 30 days (20 days for complaints by MSFWs) to respond	When complainant has exhausted the local and State complaint process, complainant may appeal to the Regional Administrator, USDOL ETA	20 CFR § 658.400 et seq.
<u>Employer/Labor Standards</u> Complaint from customer placed into an On-the- Job Training program alleging labor standards violations under 29 USC § 2931(b)	Complaints should be filed in writing with the local One-Stop Complaint Specialist	Within 60 days of filing the complaint, the recipient of the complaint will complete a hearing and offer a written decision	If complainant does not receive a decision within 60 days, or receives an adverse decision, complainant has 30 days to appeal to the LWD, Dir. Workforce Field Services	When complainant has exhausted the local and State complaint process, complainant may appeal to the Secretary of Labor	NJAC § 12:42-1.1 et seq.
<u>Employer/Job Service Referral</u> Complaint against an employer about the specific job that an applicant was referred to by the Job Service at the One-Stop	Within 1 year of the alleged occurrence, a complaint can be filed with the local One- Stop Complaint Specialist	Complaint specialist will attempt to resolve complaint within 15 working days (5 days for complaints by MSFWs)	If the local complaint specialist does not resolve the complaint, it is sent to the State Complaint Specialist who has 30 days (20 days for	When complainant has exhausted the local and State complaint process, complainant may appeal to the Regional Administrator	20 CFR § 658.400 et seq.
<u>Trade Assistance Act TAA/TGAAA of 2009</u> Petitions and determinations of eligibility to apply for worker adjustment assistance. Appeal for Redetermination of TRA benefits	A TAA Program Complaints should be filed in writing with the local One-Stop TAA Staff/Complaint Specialist in writing within 30 days.	Complaint Specialist will route Reconsideration request /complaints to the appropriate enforcement agency(USDOL) and also a Judicial Review	The certifying officer shall make and issue a determination granting or denying reconsideration within 15 days after the receipt of the application.	Workers who are denied certification may seek Judicial Review. Appeals must be filed with the case management supervisor of US Court of International Trade in NY. Within 60 days	20 CFR, Part 617 29 CFR, Part 90
<u>Other Complaints</u>	Complaints should be filed in writing with the local One-Stop Complaint Specialist	Complaint Specialist will route complaints to the appropriate enforcement agency, another public agency, or other appropriate assistance	Complaints will be handled according to each agency's established complaint resolution process	Complaints will be handled according to each agency's established complaint resolution process	
New Jersey LWD is an Equal Opportunity Employer with equal opportunity programs. Auxiliary aids and services are available upon request to individuals with disabilities.					

- **Complaints by Migrant and Seasonal Farmworkers (MSFWs) Alleging Violations of Laws Enforced by United States Department of Labor (USDOL) Wage and Hour or Occupational Safety and Health Administration (OSHA)** - Such complaints are to be logged locally and elevated immediately to the State Monitor Advocate who will refer the complaint to the proper enforcement agency (USDOL Wage and Hour, OSHA, NJ Wage and Hour).

State Monitor Advocate Performance Accountability Unit,
 Labor Planning and Analysis
 New Jersey Department of Labor and Workforce Development
 P.O. Box 056, Fifth Floor
 Trenton, NJ 08625
 Phone: 609-292-7022
 Att: Abdiel Custodio

- **Complaints Against Employers From Another State** - Such complaints are to be logged locally and elevated immediately to the State level. If the complaint is filed by a Migrant and Seasonal Farm Worker (MSFW), local staff will refer the complaint to the State Monitor Advocate. The State Complaint Specialist or State Monitor Advocate will refer the complaint to the appropriate agency in that state.
- **Complaints Involving More Than One New Jersey OSCC** - Such complaints are to be logged locally and elevated immediately to the State Complaint Specialist.
- **Complaints Alleging Statewide Violations** – Such complaints are to be logged locally and elevated immediately to the State Complaint Specialist.
- **Complaints Alleging Violations of Unemployment Insurance (UI), Vocational Rehabilitation (VR) or Temporary Assistance for Needy Families (TANF) Law/Regulations** - Such complaints are to be logged locally on the Unified Complaint Log and absent an established local program specific reporting mechanism (chain of command), elevated immediately to the State level. The State Complaint Specialist, Program Director and State Monitor Advocate will process such complaints within the parameters set forth in the respective regulations.

5. Publicizing Complaint Procedures to One-Stop Career Center Customers

OSCC staff must take these actions to ensure that OSCC customers are made aware of the customer complaint system.

1. **Complaint Poster** - Prominently place in a public area of the OSCC a One-Stop Career Center Complaint Poster that contains the name and contact information for the local OSCC's Complaint Specialist and the State Monitor Advocate. In addition to English and Spanish, if the OSCC serves significant populations of other language speakers, the poster should be displayed in these languages as well. Copies of the Complaint Poster can be ordered from the Director, Division of Workforce Field Services. Ordering instructions and a facsimile can be found under the Workforce section of Inform.
2. **Equal Opportunity is the Law Poster** – Prominently display in a public area of the OSCC in both English and Spanish. Must contain the name and contact information for the local OSCC EEO and State EEO. Copies of the Equal Opportunity is the Law poster can be ordered from the Director, Division of Workforce Field Services. Ordering instructions and a facsimile can be found under the Workforce section of Inform.
3. **Orientation Script** - Include in the Re-employment Orientation and other customer presentations information on filing a complaint.
4. **Handouts and Acknowledgement** - Have each new OSCC customer acknowledge receipt during the registration process of the handouts summarizing the types of complaints/how to file a complaint and advising them of the Equal Opportunity is the Law language. Customers should sign an

acknowledgment form. Attachment 4 contains the handouts and acknowledgement form templates. Each One-Stop must insert the name and contact information of the Complaint Specialist and EO Officer before giving to customers. Electronic versions of the forms are available on Inform.

5. **Record Acknowledgement** - Record customer acknowledgment of having received information on Unified Customer Complaint Procedure in America's One-Stop Operating System (AOSOS) by designating the EO activity.

6. **Customer Complaint Form**

Regardless of the type of complaint or the OSCC partner to which the complaint is directed, one standard customer complaint form (Attachment 1 - **ETA 8429**) will be used to capture the complainant's information and the description and nature of the complaint.

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

- The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant).
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
- A description of the complainant's allegations.
- The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

When a customer indicates a desire to file a complaint, the Complaint Specialist should first attempt to resolve the issue to the customer's satisfaction before a written complaint is filed. The Complaint Specialist should listen and offer to help remediate the cause of the complaint. This informal resolution should first be offered to the customer as an alternative to the formal filing of a written complaint using the ETA 8429 Form. Although informal complaints and their resolution should be documented locally, they do not have to be included on the complaint log. Only written complaints with a written or electronic signature will be entered into the log. (Note the exception for complaints involving an MSFW; all MSFW complaints should be logged.)

Checklist:

- ✓ Complaint Specialist should first attempt an informal resolution of the customer complaint.
- ✓ If informally resolved, the Complaint Specialist must document the resolution and maintain a file on the complaint, but should not include the complaint as part of the formal complaint reporting and resolution process found in this document (Excel Complaint Log). However, apparent violations involving MSFWs do need to be logged in the Complaint Log. See the Apparent violations section later in this document for more information.
- ✓ If Form 8429 is used by the Complainant, Part II of Form 8429 should be completed by the OSCC Complaint Specialist.
- ✓ An original copy will be kept on file by the local office, one copy will be given to the complainant, one copy will be sent to the State Complaint Officer
- ✓ MSFW complaints will be sent to the State Monitor Advocate.
- ✓ All written and signed complaints must be logged, recorded, and reported in accordance with the procedures contained in this document (Complaint Log, Timelines and Appeal Process).
- ✓ The Complaint Specialist must involve the EOO in all complaints alleging discrimination.

7. Implementation Details for State and Local OSCC Management/Staff

Each Workforce Innovation Development Board (WDB) shall adopt this Unified OSCC Customer Complaint Procedure and incorporate the procedures into the WDB area and OSCC standard operating procedures.

Customers with complaints should be directed to the local Complaint Specialist who will listen to the complainant in order to determine the nature of the complaint, whether informal resolution is possible, and what actions will be taken to address the complaint. A list of the Complaint Specialists, Complaint Specialist backups, and EOOs can be found as Attachment 3 to this document.

Customer complaints against the OSCC can be grouped into three general categories – service delivery complaints such as for poor service, rudeness, and adverse decisions; complaints alleging discrimination such as based on race, color, religion, national origin, age, genetic information, disability, political affiliation or belief, or on the basis of citizenship/status as a lawfully admitted immigrant authorized to work in the United States; and complaints involving the MSFW program, including Apparent Violations.

The Complaint Specialist will use Chart 1 and Part II of ETA Form 8429 to help identify and document the type of complaint and what next steps are needed to satisfactorily resolve or refer the complaint.

Key items regarding the customer complaint process:

- **Designation of Local Complaint Specialist and Backup** – Each OSCC shall designate one Complaint Specialist and one backup in consultation with the LWD and WIOA entity. The default Complaint Specialist is the Workforce Development manager. The Complaint Specialist shall be responsible for initial handling of complaints pursuant to this issuance. The name, business address and telephone number of the designated Complaint Specialist shall be publicized and included in all customer information describing how to file a complaint. The Complaint Specialist must immediately determine the type of complaint in order to apply the appropriate process and timeframes (see Chart 1).
- **Local Customer Notification Process** - Each OSCC must ensure that *all* customers are notified of their complaint rights. This may be accomplished in a group or individual setting. Handouts describing the local complaint process should be included in the package of orientation materials and receipt should be acknowledged in writing by the customer. A script should be used to ensure that complete and accurate complaint procedures are communicated during orientations and other group presentations. OSCCs must also ensure that other appropriate local mechanisms are in place to promote maximum notification and that individual notification is duly recorded in the AOSOS database (add as EOO activity) as part of the customer record. OSCC must also ensure that the complaint process is initiated in a timely manner when a customer expresses a desire to file a complaint.
- **Public Notice** - All direct recipients of WIOA/Wagner-Peyser funds including Local WDBs, OSCCs, WIOA Title I Administrators, WIOA Fiscal Agents and WIOA service providers are required to prominently display in public view the official New Jersey Unified OSCC Customer Complaint poster with local Complaint Specialist contact information added and the Equal Opportunity is the Law poster. The handouts provided in Attachment 4 must also be made available to customers, program participants, employees, OSCC partners, service providers, other interested parties and members of the public. Posters and handouts should be available in English, Spanish and other languages as appropriate.
- **Complaint Logs** - Each OSCC must establish procedures for the use and maintenance of the Unified OSCC Customer Complaint Log consistent with guidance provided, herein. Electronic copies of the Complaint Log can be found under the Workforce tab on the LWD Workforce Professionals Page. A Link is provided at the end of this document.

- ✓ The Complaint Log must clearly identify each individual complaint.
 - ✓ Each complaint must have a unique identification number (Last two digits of the Program Year followed by a sequential three-digit number beginning with 001 and the name of the office.)
 - ✓ A copy of the complaint and all related documents needs to be kept on file with the local office and, upon request, provided to the Director, Workforce Field Services.
 - ✓ The Complaint Log is available in, and is to be completed and maintained in an Excel format.
 - ✓ Local area Complaint Logs will be maintained on an annual basis consistent with the *state fiscal year* (July 1 – June 30). Each annual complaint log will be kept for a period of three years following the end of the fiscal year for which the log was kept.
 - ✓ Complaint logs will be submitted to the Director, Workforce Field Services, on a quarterly basis within 15 days following the end of that quarter.
 - ✓ If there are no complaints, an empty copy of the log must be submitted.
- **Written Determinations** – All formal complaints require a written determination to the complainant within specified time frames (refer to Chart 1).
 - **Appeals** -Every complainant must be provided the opportunity to appeal any local adverse decision.
 - **Follow-Up** – Workforce Areas should make a concerted effort to provide follow-up on all customer matters referred to outside enforcement agencies.

Local complaint procedures must be followed to ensure that OSCC customers’ rights under the New Jersey Unified OSCC Customer Complaint Procedure are respected and that complaints are processed in an objective and consistent manner. Local area, State, and direct recipient grievance must provide for:

For All Complaints

Local area/OSCC complaint resolution procedures must provide:

Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. Grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 686.960 et seq.

- Dealing with written complaints from customers and other interested parties affected by the local workforce investment system as well as entities and organizations administering funds and providing services under the WIOA, including WDBs, OSCC Operators and partners, WIOA Title I Administrators, WIOA Fiscal agents and WIOA service providers.
- Each Local WDB shall ensure that other local entities, based on their status as direct recipients of WIOA Title I and/or Wagner-Peyser funds from the WDB (or its designated fiscal agent) shall also establish and maintain complaint procedures consistent with this document.
- Protecting a complainant’s confidentiality to the extent possible and, when consent has been provided for the release of the complainant's identity, ensuring that such disclosure is made under conditions that will promote confidentiality.
- Advising complainants and respondents (object of the complaint) of their right to due process including the right to:
 - ✓ Representation by an attorney or other individual of his/her choice.
 - ✓ Present evidence.
 - ✓ Question others who present evidence.
 - ✓ Receive an impartial decision made strictly on recorded information.
- Ensuring that no person, organization or agency may discharge or in any manner retaliate against any person or WIOA entity because that person/entity has filed a complaint, instituted any

proceeding related to the WIOA Title I and Wagner-Peyser Regulations, testified or is about to testify in a proceeding or investigation, or has provided information or otherwise assisted in an investigation.

- Providing an opportunity for informal resolution prior to the submittal of a written complaint and a hearing to be completed within 60 days of filing the complaint.
- A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides.
- Providing an opportunity for an appeal of a local level decision to the New Jersey LWD when:
 - No decision is reached within 60 days; or
 - Either party is dissatisfied with the local hearing decision.
- Providing an opportunity for an appeal for discrimination complaints directly to the UDSOL–Civil Rights Center.
- Implementing corrective action and/or sanctions when warranted.
- Maintaining all complaint related written materials in a secure file to reasonably ensure confidentiality for a period of three years.
- Staff must offer and provide assistance to any customer seeking to file a complaint including assistance with completing all associated forms.
- The local Complaint Specialist may choose to make a determination based solely on the information included in the case file or conduct further investigation before issuing a written determination.
- New Jersey State complaint resolution procedures must provide an opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

The Secretary investigates allegations arising through the complaints and grievance procedures from the local and state level appeals.

All appeals must be submitted by certified mail, return receipt requested, to the:

Secretary, U.S. Department of Labor,
200 Constitution Ave. NW,
Washington, DC 20210, Attention: ASET.

A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

- If the local Complaint Specialist has requested additional information from the complainant or the complainant's authorized representative and does not receive a response within 20 days from the date the request was made (or, in the case of an MSFW initiated complaint, *within 40 days*), the complaint is considered resolved. The request for additional information temporarily stops the clock on the response timeframes given in Chart 1.
- The Complaint Specialist must provide the complainant with a written determination.
- The Complaint Specialist must include the procedures for appeal within the written determination.
- Complainants may elect to initially file a complaint at the state level by submitting the complaint to the State Complaint Specialist who may choose to process the complaint through resolution. Complaints filed at the state level may, however be remanded back to the local level by the State Complaint Specialist for adjudication. Complaints initially filed at the state level *may not* later be filed at the local level.
- If complaint resolution occurs above the local level, a copy of the resolution notice will be forwarded to the local entity/organization with which the complaint was originally filed.
- When a complaint is against the WIOA entity, Vocational Rehabilitation, or UI, the Complaint Specialist must determine in consultation with the responsible program area if established program

specific complaint resolution procedures apply to address the customer complaint. If so, the complaint specialist will turn over the complaint information to the program area for action. The Complaint Specialist should maintain communication with the program area to ensure the timely and satisfactory resolution of the complaint and update the Complaint Log and related records accordingly.

- Send copies of local determinations related to OSCC written complaints to:
 - ✓ The complainant by certified mail, return receipt requested

Equal Opportunity Officer NJ Department of Labor and Workforce Development 12th Floor, Trenton, NJ 08625-0393 Phone: 609-292-84448	Director, Workforce Field Services NJ Department of Labor and Workforce Development PO Box 055, 5 th Floor Trenton, NJ 08625-0055 Phone: 609-777-1042
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For Complaints involving Migrant and Seasonal Farmworkers or Apparent Violations Only Also include:

State Monitor Advocate Performance Accountability Unit, Labor Planning and Analysis New Jersey Department of Labor and Workforce Development P.O. Box 056, 5 th Floor Trenton, NJ 08625 Phone: 609-292-7022

Discrimination Complaints Only

- If a customer alerts an OSCC staff of his/her intent to file a discrimination complaint, steps should be taken to connect the complainant with the designated local Complaint Specialist, who if he is not also the local EOO, will immediately involve the EOO in all aspects of the complaint.
- In all possible instances involving a discrimination complaint, the designated local EOO should personally meet with the complainant(s) in an area of the agency's offices that ensures confidentiality. The purpose of this preliminary interview is to:
 - ✓ Determine the complainant's name, address and means of contact.
 - ✓ Determine the basis of the complaint.
 - ✓ Develop a detailed description of the allegation(s).
 - ✓ Determine the date of the most recent alleged event of discrimination.
 - ✓ Identify the proper respondent (object of the complaint).
- If the complainant elects to have their discrimination complaint resolved at the local level, the EOO must request that the customer allow one day for preparation of a written letter to either acknowledge receipt of the complaint or to provide a Notice of Lack of Jurisdiction. If this is not possible, the complainant should be asked to wait in the public reception area while the EOO examines the complainant's statement and a response is prepared. The EOO, however, has 90 days to issue a Notice of Final Action (decision).
- The EOO must review the information provided and determine if they have jurisdiction.
- Once determined, the EOO must declare in writing that they either have jurisdiction over the complaint or do not have jurisdiction based on one or more of the following reasons:
 - ✓ The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 38.
 - ✓ The complaint was not filed with the prescribed timeframes within 180 days of the date that the discriminatory act (s) allegedly occurred.
 - ✓ The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIOA Title I financial assistance as defined in 29 CFR Part 38.

- If it is determined that the EOO does not have jurisdiction, he/she should provide the complainant with the address and phone number of the appropriate agency with jurisdiction or remand back to the Complaint Specialist.
- If it is determined that the OSCC does not have jurisdiction in the particular matter, a Notice of Final Action citing one or more of the above reasons shall immediately be provided in writing. The written notice must include the specific phrase “lack of jurisdiction” in describing why the OSCC is not the appropriate entity to resolve the complaint. The notice should also inform the complainant that they have 30 days from the date of receipt to file a complaint with the USDOL – Civil Rights Center. The *original* signed complaint should be included with the notice. A *copy* of the complaint should be maintained on file with the OSCC.
- If the discrimination complaint is within the EOO’s jurisdiction, an acknowledgement letter must be prepared. The acknowledgement letter should contain the following:
 - ✓ Notice of complaint receipt.
 - ✓ Assignment of a distinct complaint number (e.g. YY-001 – last two digits of physical year (PY) consecutive 3 digit number and the name of the office).
 - ✓ Restatement of the issues raised in the complaint.
 - ✓ Notice of which issues have been accepted.
 - ✓ Explanation, if necessary, of issues that will not be investigated.
 - ✓ A notice that the complainant has a right to representation by any individual they choose during the complaint process. The notice should specify that if an attorney is chosen to represent the complainant, all legal fees are the sole responsibility of the complainant.
 - ✓ Preliminary fact-finding describes the issues raised by the complainant and the respondent (object of the complaint).
 - ✓ A statement that a “Notice of Final Action” will be issued to the complainant within 90 days of the filing date of the complaint.
 - ✓ A notice that the complainant has the right to file their complaint with the USDOL if the EOO fails to issue said “Notice of Final Action” within the 90 days cited below.
 - ✓ A choice of “Alternate Dispute Resolution” (ADR) as an appropriate option for resolution.

ADR includes “mediation” as a way of resolving the issues or differences between the parties to the complaint. The ADR objective and process should be briefly explained in the letter. The choice to use ADR rests with the complainant and such a choice to use ADR should be communicated to the EOO by the complainant as quickly as possible.

Mediation as an Alternative Dispute Resolution Process

Each OSCC must comply with Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations. In carrying out these duties OSCC conducts both compliance reviews and discrimination complaint investigations.

Mediation is an informal process that is offered as an alternative to the traditional investigative or litigation process. Mediation is a voluntary, strictly confidential, and non-adversarial dispute resolution process or conference that allows individuals who have a dispute to talk and decide for themselves how to end their dispute. The sessions are not tape-recorded or transcribed. Notes taken during the mediation are discarded. Mediation gives the parties the opportunity to discuss the issues raised in the allegation(s), clear up the misunderstandings, determine the underlying interests or concerns, find agreements and to reach a resolution. The decision to mediate is completely voluntary for the complainant. The mediator does not take sides or make decisions for people, but assists the parties in agreeing on a mutually acceptable resolution.

ADR should not be considered as an appropriate mechanism for resolution when the complaint:

- ✓ Involves legal issues.

- ✓ Involves the potential for setting a policy precedent.
- ✓ Impacts other members of a protected group.
- The EOO complaint process including fact-finding, ADR, settlement agreement, and “Notice of Final Action” must be completed within 90 days of the date that the complaint was filed at the local level.
- The respondent (object of the complaint such as ES, Unemployment Insurance (UI), Vocational Rehabilitation Services (DVRS), etc.) to the complaint must also be notified that a complaint alleging discrimination has been filed and is being processed. The respondent must be provided a summary or copy of the complaint and give written notice that any form of retaliation or intimidation is against the law. The respondent must also be notified if ADR has been offered to the complainant as a means of resolution.

For complaints involving Migrant and Seasonal Farmworkers or Apparent Violations only—also include:

State Monitor Advocate
 Performance Accountability Unit, Labor Planning and Analysis
 New Jersey Department of Labor and Workforce Development
 P.O. Box 056, 5th Floor
 Trenton, NJ 08625
 609-292-7022

8. State Level Appeal

Chart 1 describes for each type of complaint, the applicable appeal process. Complaints against entities that have established processes for addressing customer complaints are appealed outside of the scope of this Unified Procedure. Examples of OSCC entities or programs with established appeal processes include UI and DVRS, for example.

Formal Hearing Process

The Department’s decision shall advise the complainant and respondent of the right of an impartial hearing if the Department’s decision is adverse to either party or not timely. Upon receipt of a request for a hearing, the Commissioner of the NJ Department of Labor and Workforce Development shall transmit the matter to the Office of Administrative Law for hearing, pursuant to the Administrative Procedures Act, NJSA 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedures Rules, NJAC 1:1.

9. Addressing Apparent Violations Involving the Working or Living Conditions of Migrant and Seasonal Farmworkers

Apparent Violations-Apparent violations are informal complaints about employers received from individuals (customers or staff) or agencies that are not documented or handled as part of the formal Unified OSCC Customer Complaint Procedure process described in this document. Reporting suspected or apparent violations by employers when no formal complaint has been filed is allowable under regulations found at 20 CFR 653 covering services to MSFWs, specifically 20 CFR 653.107(k) and 653.113(a)(b)(c). Apparent violations can be recorded and processed using Form ETA 8429

Examples of *Apparent Violations* include (but are not limited to):

- ✓ A local staff person speaks with a MSFW who complains about unfair treatment by an employer, and though the individual provides credible information alleging an employer violation, the person chooses not to file a complaint (through the formal Complaint Process). The staff person still suspects a violation occurred.
- ✓ An OSCC staff person attempts to take a job order from an agricultural employer who insists on a requirement that is a violation of employment related laws(s).

- ✓ An OSCC staff person visiting a farm labor job site observes a possible violation of housing standards, but no complaint has been filed.

Note: While Apparent Violations are to be logged on the Complaint Log, they are processed separately and are an exception to the formal Complaint Process. Apparent Violations must, however, be reported in writing to the Local OSCC Operator. Upon receipt of a report of an Apparent Violation, the OSCC Operator must determine:

- ✓ If the employer filed a job order with the New Jersey OSCC system within the previous 12-month period; and
- ✓ If the apparent violation involves Wagner-Peyser Job Service regulations, terms/conditions of the job order or employment related law(s).

If it is determined that the employer has filed a job order within the previous 12 months, the OSCC Operator must contact the employer and attempt to achieve *informal resolution within five working days*.

If the issue is not resolved and there is an apparent violation of:

- ✓ **Wagner-Peyser Job Service regulations**, the OSCC Operator must refer the matter to the State Complaint Specialist for investigation. If a violation is found to have occurred, OSCC may have to initiate *Discontinuation of Services* to the employer under the terms of §658.501(a)(b)(c).
- ✓ **Federal, state or local employment related law(s)** - the OSCC Operator must refer the matter in writing to the State Complaint Specialist in order that procedures can be initiated for the *Discontinuation of Services* to the employer. The OSCC Operator must also refer the matter in writing to the State Monitor Advocate who will refer (in writing) the apparent violation to the appropriate enforcement agency and will notify the OSCC Operator of the final disposition of the matter, upon final resolution.

If the employer has not filed a job order within the previous 12 months, the OSCC Operator need only refer the matter to the State Monitor Advocate as Job Service regulations are not considered to have been violated if a job order had not been listed within the 12-month time frame.

The State Monitor Advocate will forward a copy of all apparent violations involving MSFWs and/or H-2A employers/contractors to the Regional Monitor Advocate (RMA) assigned to the USDOL Regional Office and the USDOL Wage and Hour Division and will contact the Office of Foreign Labor Certification's Chicago National Processing Center (OFLC-CNPC) in the event that US workers are withheld from the job prior to the arrival at the job site of H-2A workers.

- **Apparent violations of Child Labor Law** must also be reported in writing to the State Monitor Advocate for action by the local office of the Wage and Hour Division of the USDOL.

10. Complaints Not Covered By This Policy

Complaints Alleging Federal Contractor Violations - Federal contractors must adhere to a number of wage and labor standard requirements mandated under a variety of federal statutes. Complaints alleged against federal contractors should be forwarded to the appropriate federal agency. This type of complaint is not logged on the Unified OSCC Customer Complaint Log.

OSCC Staff Personnel Complaints - Staff complaints (other than discrimination complaints) should be handled through the appropriate employer of record Human Resource office or union grievance procedure. This type of complaint is not logged on the Unified OSCC Customer Complaint Log.

Criminal Complaints – All information and complaints alleging criminal fraud, waste, abuse or other criminal activity under WIOA must be reported immediately to the USDOL's Office of Inspector General (20 CFR § 667.630). A copy of the complaint must simultaneously be provided to the LWD, Office of Internal Audit. This type of complaint is not logged on the Unified OSCC Customer Complaint Log.

Office of Inspector General 200 Constitution Avenue, NW, Room S-5506 Washington, D.C. 20210 Online: http://www.oig.dol.gov/hotlinemain.htm Toll free: 1-800-347-3756 FAX: 202-693-5210	Dept. of Labor and Workforce Development Office of Internal Audit, 2 nd Floor PO Box 950 Trenton, NJ 08625 Phone: 609-292-1885
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Complaints of Discrimination by an Employer – All complaints regarding discrimination by an employer must be referred to the New Jersey Division on Civil Rights or EEOC for adjudication. This type of complaint is not logged on the Unified OSCC Customer Complaint Log.

Offices of the NJ Division on Civil Rights:

Trenton Regional Office 140 East Front Street Trenton, NJ 08625 Phone: 609-292-4605	Newark Office 31 Clinton Street, 3 rd Flr Newark, NJ 07102 Phone: 973-648-2700	Atlantic City Office 1325 Boardwalk, 1 st Flr Tennessee Avenue and Boardwalk Atlantic City, NJ 08401
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Federal EOC Offices:

U.S. Equal Opportunity Commission 801 Market Street, Suite 1300 Philadelphia, PA 19107-3127	U.S. Equal Employment Opportunity Commission One Newark Center, 21 st Floor Raymond Blvd at McCarter Hwy (Rt. 21) Newark, NJ 07102 Phone: 973-645-6383
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13. State and Federal Contacts

U.S. Department of Labor Employment and Training Administration 200 Constitution Ave, NW Washington, DC 20210 Attention: Asst. Secretary Employment & Training	Regional Administrator Employment and Training Administration U.S. Department of Labor, Room 350 JFK Building Boston, MA 02203
Director Civil Rights Center U.S. Department of Labor, Room N-4123 200 Constitution Avenue, NW Washington, DC 20210	Equal Opportunity Officer New Jersey Department of Labor and Workforce Development P.O. Box 393, 12 th Floor Trenton, NJ 08625 609-292-8448
Director, Division of Workforce Field Services Department of Labor and Workforce Development 5 th Floor, P.O. Box 055 Trenton, New Jersey 08625-0055 609-777-1042	State Monitor Advocate Labor Planning and Analysis New Jersey LWD P.O. Box 056, 5 th Floor Trenton, NJ 08625 609-292-7022

14. Attachments

Attachment 1: ETA Form 8429 https://wdr.doleta.gov/directives/attach/TEN/TEN_1-17_Attachment.pdf

Attachment 2: Unified OSCC Customer Complaint Log <http://www.nj.gov/labor/wioa/resources/>

Attachment 3: Complaint Specialists
<https://www.nj.gov/labor/wioa/documents/techassistance/ComplaintSpecialist.pdf>

Attachment 4: Customer Handouts and Acknowledgement Form
<https://www.nj.gov/labor/wioa/documents/resources/EqualOpportunityHandout.pdf>