

CHAPTER 9

Grievance and Complaint Processes

Overview

Introduction

Chapter 9 of the Workforce Development Department (WDD) Program Guide explains the processes adopted by the San Bernardino County Local Workforce Development Area (LWDA) to address customer complaints and grievances at the local level.

References

This handbook chapter contains information regarding WIOA regulations, signed into law in 2014 and State directives received from the U.S. Department of Labor (DOL) and/or Employment Development Department (EDD):

- Training and Employment Notice (TEN) 28-16
- Workforce Services Directive (WSD) 17-03, 18-05, and 20-12

Chapter forms

The following forms are located in the **Intranet>Misc. Forms** folder.

Form #	Title
FWSD 12-18	Incident Report
ADD	Application Disclosure Documents
WDD 181C	Program Complaint and Grievance Request for Hearing (English and Spanish)
WIOA 190	Discrimination Complaint Information Form (English and Spanish)

In this section

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Fraud and Abuse Policy

Introduction

All suspected or known instances of fraud, waste, abuse or other criminal activity related to programs funded under the Workforce Investment Act must be reported immediately to the Workforce Development Department (WDD) Administration for transmittal to the State Employment Development Department (EDD) and to the U.S. Department of Labor (DOL).

References

The Fraud and Abuse procedures are based on:

- Title 20 Code of Federal Regulations Sections 667.505 and 667.630, and
 - DOL Training Employment and Guidance Letter 2-12, Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct.
-

How to file a report

Known or suspected instances of fraud or abuse involving Workforce Innovation and Opportunity Act (WIOA) funds and/or WIOA-funded activities should be reported within one (1) working day of the detection of the incident, using the FWSD 12-18 form.

- The report should not be delayed even if all the facts are not readily available.
 - The incident report should include a statement of all facts known at the time, and any known or estimated loss of WIOA funds resulting from the incident.
 - The WDD Management will forward any facts subsequently developed to the DOL and to the State EDD in a supplemental incident report.
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Where to send the report

Fraud and abuse reports involving WIOA-funds or activities should be sent to:

Brad Gates, Director
County of San Bernardino Workforce Development Department
290 North D Street, Suite 600, San Bernardino, CA 92415-0046
Phone: (909) 387-9862; (California Relay Service - 711)
Fax: (909) 387-9870

Applicability

The procedures included in this section of WDD Program Guide Chapter 9 applies to WDD staff and to service providers who receive Title I-financial assistance through the San Bernardino County Local Workforce Development Area.

Additional information

Section 8 and 12 of the WDD Administrative Handbook includes additional information about reporting fraud, abuse and criminal activity.

Discrimination Complaints - Overview

Introduction	<p>The Local Workforce Development Area has established an informal complaint process to afford its customers the opportunity to resolve discrimination complaints fairly and expeditiously at the local level.</p>
Advising customer of his/her rights	<p>Customers are advised of his/her right to file a discrimination complaint and of the formal complaint process through the <i>Equal Opportunity is the Law</i> form. Customers are advised of the informal process for filing a discrimination complaint through the <i>Discrimination Complaint Procedures</i> form. The forms are part of the Application Disclosure Documents (ADD), which are provided to customers:</p> <ul style="list-style-type: none">• At Orientation,• At Workforce Innovation and Opportunity Act (WIOA) registration, or• Upon enrollment into an employment or training program operated by an agency who receives WIOA Title-I funding through the Workforce Development Department (WDD). <p>The original, signed copy of the ADD form is scanned in the participants file and a copy is given to the customer. Case note indicating this notification occurred, date of the notification, and name of the staff person who provided the forms.</p> <p>Participant:</p> <ul style="list-style-type: none">• Has the right to file a grievances or complaints at any time within one (1) year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing.• May file an appeal or request a separate review by EDD if he/she experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.• Has the right to receive technical assistance in filing the grievance or complaint.
Who may file a complaint?	<p>Any person who believes that he/she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIOA may file a complaint, or a representative may file the complaint on the person's behalf.</p>
Confidentiality	<p>All communications pertaining to a discrimination complaint are confidential and should only be discussed with affected personnel.</p>
Timeframe for filing a complaint	<p>When a person files a discrimination complaint through the local process described in this chapter, he/she must notify the America's Job Center of California (AJCC) of the complaint within ninety (90) calendar days of the alleged discrimination.</p> <p>Complaints filed with the LWDA Equal Opportunity (EO) Officer or Civil Rights Center must be filed in writing within 180 calendar days of the alleged discrimination.</p>

Discrimination Complaint Process

Introduction

This section provides the process for a discrimination complaint.

Stages to resolve a complaint

The following stages are completed when a customer chooses to file a discrimination complaint by following the locally established process:

Stage	Description												
1	Customer informs an America's Job Center of California (AJCC) staff of a complaint.												
2	<ul style="list-style-type: none"> Workforce Development Specialist (WDS) determines who is involved in the allegation: <table border="1"> <thead> <tr> <th>If the allegation is the ...</th><th>Then refers the complaint to ...</th></tr> </thead> <tbody> <tr> <td>Workforce Development Department (WDD),</td><td>The Supervisor on the same day the complaint is received.</td></tr> <tr> <td> <ul style="list-style-type: none"> Contracted service provider, or Partner agency, </td><td>The Local Workforce Development Equal Opportunity Officer (EOO).</td></tr> </tbody> </table> Provide technical assistance, if applicable. Technical assistance includes, but is not limited to providing instructions on how to file, copies of relevant document, federal and state regulations, etc. WDS is not required to violate any confidentiality or provide legal advice. 	If the allegation is the ...	Then refers the complaint to ...	Workforce Development Department (WDD),	The Supervisor on the same day the complaint is received.	<ul style="list-style-type: none"> Contracted service provider, or Partner agency, 	The Local Workforce Development Equal Opportunity Officer (EOO).						
If the allegation is the ...	Then refers the complaint to ...												
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Not resolved,	Refer complaint to EOO within one (1) working day.												

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Discrimination Complaint Process, Continued

Stages to resolve a complaint (continued)

Stage	Description						
5	EEO will discuss complaint with the customer within seven (7) working days from the date the complaint is received by the Manager.						
	<table> <tr> <th>If the complaint is ...</th><th>Then ...</th></tr> <tr> <td>Resolved,</td><td> <ul style="list-style-type: none"> • Document in case file, and • Advise Deputy Director of outcome. </td></tr> <tr> <td>Not resolved,</td><td> <ul style="list-style-type: none"> • Advise the customer he/she may file a written complaint within 180 calendar days of the date the alleged discrimination occurred with the: <ul style="list-style-type: none"> – LWDA or – Department of Labor Civil Rights Center (CRC), • Give the customer the Discrimination Complaint Information Form (WIOA 190), or • Refer them to www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm. <p>Note: Technical assistance will be provided in preparing the written complaint as needed.</p> </td></tr> </table>	If the complaint is ...	Then ...	Resolved,	<ul style="list-style-type: none"> • Document in case file, and • Advise Deputy Director of outcome. 	Not resolved,	<ul style="list-style-type: none"> • Advise the customer he/she may file a written complaint within 180 calendar days of the date the alleged discrimination occurred with the: <ul style="list-style-type: none"> – LWDA or – Department of Labor Civil Rights Center (CRC), • Give the customer the Discrimination Complaint Information Form (WIOA 190), or • Refer them to www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm. <p>Note: Technical assistance will be provided in preparing the written complaint as needed.</p>
If the complaint is ...	Then ...						
Resolved,	<ul style="list-style-type: none"> • Document in case file, and • Advise Deputy Director of outcome. 						
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Filing Discrimination Complaints with the CRC or LWDA EOO

Introduction	This section provides information related to filing discrimination complaints with the Department of Labor Civil Rights Center (CRC) or the Local Workforce Development Area (LWDA) Equal Opportunity Officer (EOO).
Customer choice	Customers who do not wish to pursue the local complaint process may instead, file a written complaint directly with the LWDA EOO or with the Department of Labor CRC.
Timeframe	Complaints must be filed with the LWDA EOO or the CRC within 180 calendar days of the date the alleged discrimination occurred. The LWDA EOO must issue a written decision within 60 days of the official filing date and shall send a copy of the grievance or complaint to the respondent.
Content of complaint	<p>Complaints filed with the LWDA Equal Opportunity Officer or CRC must:</p> <ul style="list-style-type: none">• Be signed by the complainant or his/her representative• Include the complainant's name, address, or another means of contacting the complainant• Include the name and contact information of the complainant's representative, if applicable• Identify the agency and individual who is allegedly responsible for the discrimination• Describe the allegation in sufficient detail to allow the LWDA EEO or CRC to determine whether:<ul style="list-style-type: none">– CRC or the LWDA has jurisdiction over the complaint,– The complaint was filed within 180 calendar days of the date the alleged discrimination occurred, and– Has apparent merit (i.e. whether the allegations, if true, would violate the WIOA non-discrimination and Equal opportunity regulations).
Complaints filed with the EOO	<p>Customers may use the <i>Discrimination Complaint Information Form</i> (WIOA 190) to file a written complaint with the LWDA Equal Opportunity Officer. Complaints should be sent to:</p> <p style="text-align: center;">County of San Bernardino Workforce Development Department 290 North D Street – Suite 600, San Bernardino CA 92415-0046 Attn: Fred Burks, Equal Opportunity Officer</p>
Complaints filed with the CRC	<p>Customers may find complaint forms for Civil Rights Center (CRC) at www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm</p> <p>Complaints are filed with the Civil Rights Center (CRC) should be mailed to:</p> <p style="text-align: center;">U.S. Department of Labor Civil Rights Center 200 Constitution Avenue NW, Room N-4123 Washington, DC 20210 Attn: The Director</p>

Program Complaints – Overview

Introduction

The procedures discussed in this section of Chapter 9 provide instructions for WDD staff to follow when they receive a non-criminal grievance or complaint that pertains to a WIOA Title I program and/or activity.

Note: The procedures in this section do not apply to complaints involving discrimination, fraud, abuse or other criminal activity.

Who may file a complaint?

Any customer or other interested party who believes that s/he has been adversely affected by a decision or action of the local workforce system, including decisions of partner agencies and service providers, has the right to file a grievance or complaint with the Local Workforce Development Area (LWDA) at any time within one (1) year of the alleged violation.

Retaliation is prohibited

Any person who files a grievance or complaint shall be free from restraint, coercion, reprisal, or discrimination.

Grievance and complaint procedures

Customers are advised of the local grievance and complaint procedures and of the instructions on how to file a complaint through the *Program Complaint and Grievance Procedures* form.

- The *Program Complaint and Grievance Procedures* form bearing the customer's original signature is kept in the participant case file and documented in each customer's case notes by the WDS at WIOA registration.
- Staff must assure that the grievance and complaint process is understood by affected customers and other individuals, including youth and those with limited English proficiency.
- A copy of the form is given to the customer

Note: The *Program Complaint and Grievance Procedures* form is part of the Application Disclosure Documents, which is provided to the customer during the enrollment process.

Timeframe

Grievances and complaints filed under the informal resolution process discussed in this section must be filed within ninety (90) days of the alleged violation. Grievances or complaints filed under the formal resolution process discussed in Section 11 and 12 of the Administrative Handbook must be filed within one (1) year of the alleged violation.

Program Complaints – Informal Resolution Process

Introduction

This section provides information on the informal resolution process.

Complaint resolution

As noted on *Program Complaint and Grievance Procedures* form, the following informal process has been established to afford WIOA customers with the opportunity to resolve program-related grievances and complaints fairly and expeditiously at the local level.

Stage	Description						
1	Customer informs an America's Job Center of California (AJCC) staff of a complaint.						
2	<p>Workforce Development Specialist (WDS) determines who is involved in the allegation:</p> <table> <tr> <th>If the allegation is the ...</th><th>Then refer the complaint to ...</th></tr> <tr> <td>Workforce Development Department (WDD),</td><td>A Supervisor on the same day the complaint is received.</td></tr> <tr> <td> <ul style="list-style-type: none"> Contracted service provider, or Partner agency, </td><td>The Workforce Development Department (WDD) Deputy Director.</td></tr> </table>	If the allegation is the ...	Then refer the complaint to ...	Workforce Development Department (WDD),	A Supervisor on the same day the complaint is received.	<ul style="list-style-type: none"> Contracted service provider, or Partner agency, 	The Workforce Development Department (WDD) Deputy Director.
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Workforce Development Department (WDD),	A Supervisor on the same day the complaint is received.						
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3	<p>The Supervisor will discuss complaint with customer within three (3) working days from the date he/she receives the complaint.</p> <table> <tr> <th>If the complaint is ...</th><th>Then ...</th></tr> <tr> <td>Resolved,</td><td> <ul style="list-style-type: none"> Document in case file, and No further action is required. </td></tr> <tr> <td>Not resolved,</td><td>Refer complaint to Manager within one (1) working day.</td></tr> </table>	If the complaint is ...	Then ...	Resolved,	<ul style="list-style-type: none"> Document in case file, and No further action is required. 	Not resolved,	Refer complaint to Manager within one (1) working day.
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Resolved,	<ul style="list-style-type: none"> Document in case file, and No further action is required. 						
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Resolved,	<ul style="list-style-type: none"> Document in case file, and No further action is required. 						
Not resolved,	<ul style="list-style-type: none"> Refer complaint to WDD Deputy Director within one (1) working day, and Instruct the customer to address a letter to the Deputy Director explaining the incident surrounding the complaint within three (3) business days. 						

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Program Complaints – Informal Resolution Process, Continued

Complaint resolution (continued)

Stage	Description						
5	Deputy Director will: <ul style="list-style-type: none">• Contact the customer within seven (7) working days of receiving the notice of grievance.						
	<table><tr><th>If the complaint is ...</th><th>Then ...</th></tr><tr><td>Resolved,</td><td><ul style="list-style-type: none">• Document in case file, and• Advise the Equal Opportunity Officer (EOO) of outcome.</td></tr><tr><td>Not resolved,</td><td><ul style="list-style-type: none">• Arrange a meeting to discuss complaint with:<ul style="list-style-type: none">– WDD staff, if applicable,– Customer, and– Witnesses.• Schedule meeting with 25 working days of the date the complaint is received by the Supervisor.</td></tr></table>	If the complaint is ...	Then ...	Resolved,	<ul style="list-style-type: none">• Document in case file, and• Advise the Equal Opportunity Officer (EOO) of outcome.	Not resolved,	<ul style="list-style-type: none">• Arrange a meeting to discuss complaint with:<ul style="list-style-type: none">– WDD staff, if applicable,– Customer, and– Witnesses.• Schedule meeting with 25 working days of the date the complaint is received by the Supervisor.
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Formal resolution process

Section 11 and 12 of the WDD Administrative Handbook discusses the formal resolution process completed for complaints.

Employment Service Complaint System

Introduction

Under 20 Code of Federal Regulation, the Employment Development Department (EDD) is required to establish and maintain a uniform system for accepting, investigating, resolving, and referring complaints. This system is known as the Employment Service Complaint System (ESCS).

It is important to note the ESCS is separate from the *Workforce Innovation and Opportunity Act (WIOA) Grievance and Complaint Resolution Procedures*. Although this is an EDD policy, this policy applies to all partners within the America's Job Center of California (AJCC) network (WSD23-09).

ESCS Complaint System

The ESCS is administered by the EDD within the AJCC network. The EDD has Complaint Representatives stationed in AJCC offices throughout the state who accept and process complaints. The ESCS manages complaints related to ESCS regulations and employment-related law.

EDD Complaint Representative

An EDD staff member who reviews, processes, and responds to complaints and apparent violations. There is an EDD Complaint Representative housed at each AJCC site with co-located EDD staff.

State Monitor Advocate

The State Monitor Advocate is a designated individual within EDD responsible for monitoring the ESCS to ensure complaints are locally resolved or referred to the appropriate agency for assistance.

ESCS complaints

ESCS related complaints are filed against an employer regarding a specific job a customer was referred to through the CalJOBS system. These complaints include, but are not limited to:

- Violation of the terms and conditions of the job order,
- Health/safety,
- Discrimination complaints against employer,
- Unfair employment practices (immigration related), and
- Complaints from individuals with disabilities.

ESCS related complaints can also be filed against EDD staff, policies, and/or procedures (including acts or omissions under ES regulations). **For example:** a complainant felt he/she were discriminated against by staff or staff misrepresented information on a job order during a referral.

ESCS complaints not covered

The ES Complaint System **does not** cover complaints related to Unemployment Insurance or Disability Insurance. These complaints should be provided to EDD using the Comments, Suggestions, and/or Complaints form located on EDD's Contact EDD webpage.

Continued on next page

Employment Service Complaint System, Continued

ESCS poster

The ES Complaint System Poster publicizes the ES Complaint System and informs complainants how to file a complaint. The poster must be displayed in a prominent location in each AJCC site and must contain contact information for the local Complaint System Representative, State Monitor Advocate, and individual who oversees language access, in the designated fields.

Each AJCC site must populate the poster fields with the contact information that is applicable to his/her office. In AJCC sites with co-located EDD staff, **EDD staff are responsible for populating the poster and displaying in an appropriate location.**

ESCS procedures

Customers who would like to file a complaint regarding the ESCS regulations or employment-related law, the AJCC staff will refer the customer to an EDD staff partner. The EDD staff member will connect the customer with the EDD Complaint Representative. No further action is required to be taken by the AJCC staff.

Definitions

Introduction

List of terms used in this chapter are defined in the table below.

Term	Definition
Complainant	Any participant or other interested or personally affected party alleging a noncriminal violation of Workforce Innovation and Opportunity Act (WIOA) Title I requirements.
Complaint file	A file maintained in a central location within each office, which includes a copy of each complaint filed along with pertinent documentation.
Compliance Review Office	The organization within the Employment Development Department (EDD) who oversees the administrative resolution of WIOA Programmatic complaints.
Days	Consecutive calendar days, including weekends and holidays.
Grievance or complaint	A written expression by a party alleging a violation of WIOA Title I, regulations promulgated under WIOA, recipient grants, subgrants, or other specific agreements under WIOA.
Hearing Officer	An impartial person or group of persons who shall preside at a hearing on a grievance or complaint.
Local Area	The Local Area administrative entity and its subrecipients to who the administrative entity has delegated the grievance and complaint resolution process.
Participant	An individual who has been determined to be eligible to participate in and who is receiving services under a program authorized under WIOA.
Recipient	An entity to which a WIOA grant is awarded directly from the US Department of Labor to carry out a program under WIOA Title I.
Service Provider	A public agency, private nonprofit organization, or private-for-profit entity who delivers educational, training, employment, or supportive services to WIOA participants.
State Review Panel	An entity within EDD composed of representatives from EDD's Compliance Review Office, Legal Office, and Director's Office. This panel shall review and approve or disapprove decisions and recommendations regarding grievances or complaints.
Subrecipient	An entity to which a recipient awards funds and is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.