

Chapter 839. Welfare to Work

The Texas Workforce Commission (Commission) proposes new §§839.11, 839.12, and 839.31-839.47, relating to grievance procedures for the Welfare to Work program.

The purpose of new Subchapter B is to clarify the Nondiscrimination and Equal Opportunity Provisions that apply. Sections 839.11 and 839.12 address applicability and exclusion of gender discrimination, respectively.

The purpose of new Subchapter C is to address the Welfare to Work Grievance Procedures. Sections 839.31-839.33 set out the purpose, the optional forms available, and definitions, respectively. Sections 839.34 and 839.35 address grievance filing procedures and time limits at the local level. Section 839.36 concerns the Welfare to Work Provider responsibilities. Sections 839.37 and 839.38 address the Orientation to Complaint procedure and the local level informal conference procedure. Sections 839.39 through 839.42 discuss the opportunity and request for a hearing, notice of the hearing, hearing officer, and the hearing procedure. Section 839.43 addresses the need for a written decision. Section 839.44 governs the request for a review of the written decision. Section 839.45 sets out the procedure for review. Section 839.46 discusses the final written decision. Section 839.47 sets out the remedies available.

The Balanced Budget Act of 1997 authorized the U.S. Department of Labor (DOL) to provide Welfare-to-Work (WtW) Formula Grants to states and local communities to create additional job opportunities for hard-to-employ recipients of Temporary Assistance for Needy Families (TANF). These grants will provide many welfare recipients with job placement services, transitional employment, and other support services that they need to make the successful progression into long-term unsubsidized employment. The State Welfare to Work plan is an addendum to the State's TANF plan.

Under the WtW Formula Grant Program, Texas will allocate 85 percent of its funding from DOL to the Boards. If a Local Workforce Development Area does not have a certified Board, the funds for that area will be allocated to the Private Industry Council (PIC) for that area. Boards have the jurisdiction and the authority to develop local policy, to determine which segments of the eligible population to target, to determine service delivery practices and procedures, to set the services and activities available in each local workforce development area, to demonstrate collaboration with other local partners, and to provide in-kind matching funds for the program. These activities and services are to be delivered consistent with federal and state laws, regulations, rules, and policies.

Under the WtW law, states are required to establish and maintain a grievance procedure for resolving complaints from program participants with regard to nondiscrimination, health and safety, gender discrimination and worker displacement, and from regular employees alleging displacement, as required by the WtW statute and regulations. The guidelines include an opportunity for informal resolution. If informal resolution cannot be reached, the rules provide the procedure for a dissatisfied party to receive a hearing. These procedures comply with the federal timeline that no later than 120 days after receipt of an individual's original grievance, a final written determination of any appeal must be finalized.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing and administering the rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the new rules; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the sections as proposed will be to ensure that a mechanism is in place to address any applicable grievances filed under the WtW program.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of these proposed sections.

Comments on the proposed new sections may be submitted to Reagan Faulkner, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 434T, Austin, Texas 78778; Fax Number (512) 475-2176; or E-mail to reagan.faulkner@twc.state.tx.us.

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter B. Nondiscrimination and Equal Opportunity

40 TAC §839.11, §839.12

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§839.11. Applicability.

In accordance with 20 CFR §645.255, this subchapter establishes the state JTPA rules regarding Nondiscrimination and Equal Opportunity, located in §805.260 of this title (relating to Job Training Partnership Act Rules) et seq. as the applicable procedure for resolving Nondiscrimination and Equal Opportunity complaints in the Welfare to Work Act, except as otherwise provided in this subchapter.

§839.12. Gender Discrimination Excluded.

For complaints alleging gender discrimination, the procedures in Subchapter C of this chapter (relating to Welfare to Work Grievance Procedures) will apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on January 27, 1999.

TRD-9900575

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 14, 1999

For further information, please call: (512) 463-8812

Subchapter C. Welfare to Work Grievance Procedures

40 TAC §§839.31-839.47

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§839.31. Purpose and Coverage.

(a) In addition to the grievance procedures set forth in 42 U.S.C.A. §603, and in accordance with the grievance procedures in 20 CFR §645.255, this subchapter establishes state procedures for resolving allegations of violations of the Welfare to Work Act and implementing federal regulations. These procedures apply to complaints by:

- (1) program participants alleging gender discrimination;
- (2) program participants alleging violations of health and safety standards;
- (3) program participants alleging displacement; and
- (4) regular employees alleging displacement.

(b) Nothing in these rules shall prevent the parties from addressing and resolving problems before a formal complaint has been filed.

§839.32. Optional Forms Available.

To facilitate the filing, processing, or withdrawal of a complaint under this chapter, the Commission has developed the "Welfare to Work Complaint Form," the "Withdrawal of Complaint," and the "Commission/Welfare to Work Request for Hearing Form" which may be reproduced and are available from the address listed in §839.37(b) of this title (relating to Orientation to Complaint Procedure).

§839.33. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act-The Welfare to Work Act.

(2) Board - The local workforce development board as defined by the Texas Government Code §2308.253 or, in areas, where Boards are not yet operational, the Private Industry Council as defined by 20 CFR §645.120.

(3) Commission - The Texas Workforce Commission.

(4) Complainant-A program participant or a regular employee alleging a violation of the federal Welfare to Work Act as described in §839.31 of this title (relating to Purpose and Coverage).

(5) Contractor - a service provider for the board.

(6) Equal Opportunity (EO) Officer-The person designated by a Welfare to Work contractor who shall represent the Welfare to Work contractor and facilitate the complaint process.

(7) Hearing Officer-A hearing officer is a Texas Workforce Commission employee designated to conduct fair hearings.

(8) Respondent-The person, organization or agency against whom a complaint has been filed for an alleged violation of the Act.

(9) Regular Employee - An individual who is not a program participant and is employed by a company that is participating in the Welfare to Work program.

(10) SOAH-The state agency designated to conduct a review, as described in §839.45 of this title (relating to Procedure for Review by SOAH), of the local level hearing decision (also referred to as the State Office of Administrative Hearing).

§839.34. Grievance Filing Procedures at the Local Level.

(a) A complainant alleging a violation of the Act at the local level may file a complaint by submitting a written grievance to the Welfare to Work contractor. The complainant shall provide a copy of the grievance to the Commission. The grievance must be signed and dated by the complainant and shall include the following information:

(1) the full name, complete address, and residence and work telephone numbers for the person filing the complaint;

(2) a detailed description of the action, or failure to act, which is the subject of the complaint and a reference to, or description of, the provision of the Welfare to Work Act, regulations, rules, grant, or other agreement the complainant alleges was violated;

(3) whether or not an informal conference was held in an attempt to resolve the complaint, and a copy of any written determination issued by the local EO Officer;

(4) if an informal conference was held, a description of all issues remaining unresolved;

(5) a description of the remedies or corrective actions sought by the complainant; and

(6) the name and address of each party or parties believed to be responsible for the action which is the subject of the complaint. The complainant shall explain how each party is responsible for the action which is the subject of the complaint.

(b) To facilitate the filing of a grievance or complaint, the complainant may request a Welfare to Work Grievance Information Form from the Welfare to Work contractor or send a written request to the Texas Workforce Commission, Equal Opportunity Officer, 101 E.15th Street, Austin, TX 78778-0001.

(c) All information about, and complaints involving, allegations of fraud, abuse, or other criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E.15th Street, Austin, TX 78778-0001.

§839.35. Time Limitations at Local Level.

(a) All complaints of violations as described in §839.31 of this title (relating to Purpose and Coverage) must be made within 180 days of the alleged action. The time limitations for complaint resolution specified in 20 CFR §645.270(g) shall begin to run upon the date of receipt by the Welfare to Work contractor of a properly completed written grievance according to the requirements of §839.34 of this title (relating to Grievance Filing Procedures at the Local Level). The EO Officer shall be responsible for assisting the complainant in correcting an improperly completed grievance filing.

(b) All of the complainant's outstanding and unresolved allegations under this subchapter against the respondent must be described and consolidated into a single complaint, at the time of filing. Any allegation not consolidated into the filed complaint prior to a hearing shall be deemed waived.

§839.36. Welfare to Work Provider Responsibilities.

(a) Each Welfare to Work contractor shall maintain at their principal places of business and at all intake centers a copy of the Welfare to Work grievance procedure rules and shall post notice that a copy of the rules is available upon request. Each Welfare to Work subrecipient shall maintain at each facility where a Welfare to Work participant performs work a copy of the Welfare to Work grievance procedure rules and shall post notice that a copy of the rules is available upon request. The Welfare to Work contractor shall also:

(1) upon request, assist the complainant in following Welfare to Work grievance procedures, and ensure that its subcontractors provide such assistance;

(2) designate a staff person as EO Officer who shall:

(A) ensure that the Welfare to Work contractor's staff conducts an orientation for each Welfare to Work applicant regarding the Welfare to Work grievance procedure;

(B) ensure that the required documentation relating to such orientation is retained in each participant's official record;

(C) handle all complaint correspondence and maintain complete and accurate records of all complaint proceedings;

(D) assist complainants with the Welfare to Work grievance procedure, at the complainant's request; and

(E) coordinate each step of the Welfare to Work grievance procedure occurring prior to any appeal to SOAH; and

(3) prepare and maintain all records, transcripts and other documentation required by the Welfare to Work grievance procedure to ensure that the Welfare to Work contractor is fully complying with the terms of the Welfare to Work grievance procedure.

(b) The Welfare to Work contractor, and its subcontractors, are prohibited from harassing, antagonizing, intimidating, coercing, threatening, discriminating or otherwise taking reprisal against a complainant.

§839.37. Orientation to Complaint Procedure.

(a) Each Welfare to Work contractor shall provide a copy of the "Orientation to Complaint Procedure" (orientation form) to each applicant at the time of enrollment, and shall:

(1) provide the opportunity for each applicant to read and ask questions about the orientation form to ensure that each applicant understands how to initiate a complaint;

(2) obtain the signature of the applicant on the orientation form and retain a copy of the signed form in each participant's official record;

(3) ensure that its subrecipients comply with all the provisions of this section whenever the subrecipients perform any intake functions of a Welfare to Work program; and

(4) translate the orientation form into Spanish and the language of a significant proportion of the eligible population to be served by the Welfare to Work program as determined by the Board.

(b) A copy of the orientation form can be obtained by sending a written request to the address shown in §839.34(b) of this title (relating to Grievance Filing Procedures at the Local Level).

§839.38. Local Level Informal Conference Procedure.

(a) The EO Officer may schedule an informal conference following receipt of a properly completed Welfare to Work Grievance Information Form to provide the parties an opportunity to informally resolve the complaint. The EO Officer shall notify all parties of the time, date, and location for the informal conference.

(b) If the EO Officer schedules an informal conference, the EO Officer shall serve as facilitator of the informal conference, which may be attended by the complainant, the respondent and any other persons with information or knowledge relevant to the complaint considered necessary by the complainant, respondent, or EO Officer for a fair determination of the issues. Only those issues presented at the informal conference may be addressed in subsequent hearings. The EO Officer shall provide each party with a written determination including a statement of whether or not a resolution was reached, the details of any resolution and, if the complaint was unresolved, notice to the complainant of the opportunity for a hearing, including any applicable time limits. The written determination must be sent certified mail, return receipt requested to all parties.

(c) If the EO Officer does not schedule an informal conference, the EO Officer shall schedule a hearing, in accordance with §839.39 of this title (relating to Opportunity and Request for a Hearing), following receipt of a properly completed Welfare to Work Grievance Information Form.

§839.39. Opportunity and Request for a Hearing.

(a) If there was an informal conference and a hearing is desired, the complainant must file a written request for a hearing under this section within three calendar days after receipt of the EO Officer's written determination on the informal conference. In computing this time period, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. A hearing held pursuant to the complainant's request will involve only those issues that were unresolved at the informal conference.

(b) The Texas Workforce Commission Appeals department shall hold the hearing, as provided in 40 TAC Chapter 823.

(c) The parties may be represented at the hearing by an attorney or other representative and may present witnesses and documentary evidence.

(d) All documents required, as determined by the Hearing Officer, shall be at the hearing at the time of the hearing.

(e) The complainant shall bear the burden of proving that the actions complained of involve a violation that falls within the purpose and coverage of this subchapter.

§839.40. Notice of Hearing.

Within three calendar days after receipt of a complainant's properly completed Welfare to Work Grievance Information Form, or within three calendar days after receipt of a complainant's written request for a hearing after an

informal conference, whichever occurs last, the EO Officer shall send to the complainant and all other interested parties notice of the setting for a hearing. Such notice shall include a synopsis of the issues to be considered at the hearing, and the following information:

(1) the time, date, and location of the hearing, which must be a date no later than 30 days following the filing date of a properly completed request for a Welfare to Work Grievance Information Form; and

(2) a provision that the complainant may withdraw the request for a hearing by submitting a written notice of withdrawal of the complaint to the Welfare to Work contractor at any time prior to the hearing date.

§839.41. Hearing Officer.

(a) The Welfare to Work contractor shall refer the complaint to the Texas Workforce Commission, Appeals Department, 101 East 15th Street, Austin, Texas 78778-0001.

(b) The Hearing Officer shall conduct the hearing according to the procedures set forth in this subchapter and shall consider all evidence relevant to the complaint in order to reach a fair decision based on such evidence. At any time during testimony, the Hearing Officer may ask questions to elicit additional facts and to clarify the issues or statements of a party or witness. The Hearing Officer may interrupt testimony to discourage irrelevant lines of testimony or inquiry, to avoid cumulative evidence, and to maintain or restore efficient order to the proceeding.

§839.42. Hearing Procedure.

(a) The Hearing Officer shall conduct the hearing, which may be attended by the complainant, the respondent, the EO Officer and any other persons with information or knowledge relevant to the complaint and considered necessary by a party for a fair determination of the issues.

(b) If no party has arranged for a transcript of the hearing by a certified court reporter, the EO Officer shall ensure that the Welfare to Work contractor has made adequate arrangements for making an audible, understandable electronic recording of the hearing.

(c) The Hearing Officer shall state the issues to be considered at the hearing.

(d) The Hearing Officer may accept testimony from any other person who may have information or knowledge relevant to the complaint, and may receive oral and written evidence from any party or witness. The Hearing Officer may limit the introduction of cumulative or repetitive evidence.

§839.43. Written Decision.

The Hearing Officer shall provide to the EO Officer a written decision within five days following the hearing. The EO Officer shall transmit such decision, not later than 40 days following receipt of a properly completed Welfare to Work grievance filing, to all parties of the complaint and to the Commission. Such written decision shall contain, at minimum, the following information:

(1) the time, date, and location of the hearing;

(2) the names of all persons present at the hearing and the capacities in which they appeared;

(3) a synopsis of the issues and the facts found to exist by the Hearing Officer;

(4) a statement of the decision and the basis for such decision; and

(5) a statement of any remedies to be applied.

§839.44. Request for Review of a Written Decision.

(a) The EO Officer shall issue, together with the written decision, a notice informing any adversely affected party of their opportunity to request that SOAH review the decision. The notice must inform the party that to obtain such review, a written request for review must be filed with SOAH, with a copy sent to the Welfare to Work contractor and the Commission. The written request for review of the decision must be filed with SOAH within thirty days from the date upon which the party received the written decision, or the written decision will be final.

(b) The request for review must contain a statement signed by the party requesting a review of the written decision and must include a copy of the written decision.

(c) The request for review must be dated and sent by registered or certified mail to the address shown in §839.34(b) of this title (relating to Grievance Filing Procedures at the Local Level).

§839.45. Procedure for Review by SOAH.

(a) Upon receipt of a request for review of a written decision prepared according to the format specified in §839.44 of this title (relating to Request for Review of Written Decision), SOAH shall direct the Welfare to Work contractor to provide, within five days of receipt of the request, the complete file relating to the complaint.

(b) Upon receipt of the Welfare to Work contractor's file relating to the complaint, SOAH shall reach a determination based upon a review of the information provided by each party.

(c) SOAH's review shall be limited to the process utilized at the local level and the complete file utilized at the local level hearing. SOAH shall not consider any additional evidence not presented at the local level hearing. SOAH may only overturn the local level hearing officer's determination if SOAH determines that there has been an abuse of discretion with regard to the process.

§839.46. Final Written Decision.

SOAH shall issue a written decision to all parties within 40 days from the filing of a properly completed request for review. The written decision shall be the final decision rendered at the state level on a complaint and shall either sustain or overrule in whole or in part the Hearing Officer's decision.

§839.47. Remedies.

The following remedies are available to the complainant if deemed appropriate by the Hearing Officer or SOAH officer:

(1) Suspension or termination of payments to the respondent from funds provided under the Welfare to Work program; or

(2) Prohibition of placement of a Welfare to Work participant with an employer that is found to have discriminated based on gender, violated health and safety standards, or displaced a regular employee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on January 27, 1999.

TRD-9900574

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 14, 1999

For further information, please call: (512) 463-8812