

TEXAS WORKFORCE COMMISSION
Workforce Development Letter

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Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Courtney Arbour, Director, Workforce Development Division

Subject: **Employment Service Complaint Determination Appeals**

PURPOSE:

The purpose of this Workforce Development (WD) Letter is to provide Local Workforce Development Boards (Boards) with information and guidance on the process for individuals and interested parties to appeal an Employment Service (ES) complaint determination.

BACKGROUND:

Title 20, Code of Federal Regulations (CFR) §658.410, requires the Texas Workforce Commission (TWC) to establish and maintain a uniform complaint system for accepting, investigating, resolving, and referring ES complaints to the Wagner-Peyser Act Employment Service. This complaint system must include a process to address appeals regarding complaints.

PROCEDURES:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”

Local Board Complaint Policy

NLF: Boards must ensure that their local complaint policies and procedures address the ES complaint determination appeals process as outlined in this WD Letter.

ES Complaint Determinations

NLF: Boards must be aware that all TWC determination notices relating to ES complaints will be sent to the parties and/or their representative(s) by certified mail, and a copy of the TWC Determination Notice will be sent via email (when available). The TWC Determination Notice will include:

- the results of the investigation;
- the conclusions reached on the allegation(s) of the complaint;
- confirmation that TWC will initiate procedures for the discontinuation of services to the employer when there is a final determination indicating a violation of ES regulations by the employer;
- an explanation of why the complaint was not resolved if a resolution was not reached; and
- a statement advising the complainant or employer of their right to appeal and informing them that requests for appeal hearings must be made within 20 working days after the certified date of receipt of the TWC Determination Notice, if the complaint is against TWC or if the complaint is against an employer and the TWC Determination Notice shows that the employer has not violated ES regulations.

ES Complaint Appeals Hearings

NLF: Boards must be aware that if TWC receives a written request for an appeal hearing (via hard copy or email) within 20 working days from the certified date of receipt of the TWC Determination Notice, the TWC Special Program Appeals department will schedule the hearing.

NLF: Boards must ensure that Workforce Solutions Office staff inform customers and other interested individuals who wish to appeal a final TWC complaint determination that appeal hearing requests must include the following:

- Complainant's name
- Complainant's last four digits of their Social Security Number
- Complainant's current address
- The date of the TWC Determination Notice
- A copy of the TWC Determination Notice, if possible
- An explanation of the complainant's disagreement with the TWC Determination Notice
- Any dates that the complainant will not be able to participate in the hearing

NLF: Boards must ensure that Workforce Solutions Office staff inform customers and other interested individuals who wish to appeal a final TWC complaint upon determination that appeal hearing requests must be submitted within 20 working days from the certified date of receipt of the TWC Determination Notice using one of the following methods:

- Mail
TWC Special Program Appeals
101 East 15th Street, Room 414
Austin, Texas 78778-0001

- Email
specialprogram.appeals@twc.texas.gov
- Fax
(512) 463-9318

LF: Boards may authorize Workforce Solutions Office staff to accept appeal hearing requests on behalf of complainants. If staff accepts an appeal hearing request, they must immediately forward and confirm receipt with TWC Special Program Appeals department via email at specialprogram.appeals@twc.texas.gov.

NLF: Boards must be aware that once a request for a hearing is received, TWC will inform the interested parties, through written notification (via mail and email, if provided), of the date, time, and location of the hearing, and of the following:

- Parties are entitled to representation by an attorney or other representative at the hearing.
- Parties are allowed to present witnesses and/or documentary evidence during the hearing.
- Cross-examination of opposing witnesses by the parties is permissible at the hearing.
- The determination of the complaint will rely on the evidence presented at the hearing.
- TWC Special Program Appeals may reschedule the hearing upon the request of a party or its representative.
- A written withdrawal of the hearing request is allowed with the consent of TWC Special Program Appeals.

Resolution of Complaints

NLF: Boards must be aware that a complaint is considered resolved when:

- the complainant indicates satisfaction with the outcome in writing;
- the complainant chooses not to elevate the complaint to the next level of review;
- the complainant or the complainant's authorized representative fails to respond to a written request for information by the Workforce Solutions Office or TWC within:
 - 20 working days; or,
 - 40 working days in cases where the complainant is a migrant and seasonal farmworker (MSFW);
- the complainant exhausts all available options for review; or
- a final determination has been made by an enforcement agency.

INQUIRIES:

Send inquiries regarding this WD Letter to wfpolicy.clarifications@twc.texas.gov.

ATTACHMENTS:

None

REFERENCES:

20 CFR §658.411(d) - (f)