

§ 658.413 Initial handling of complaints by the State or local office.

(a) There shall be an appropriate official available during regular office hours to take complaints in each local office.

(b) Whenever an individual indicates an interest in making any complaint to a State agency office, the appropriate JS official shall offer to explain the operation of the JS complaint system. The appropriate JS official shall offer to take the complaint in writing if it is JS related, or if non-JS related, it alleges violations of employment related laws enforced by ESA or OSHA and is filed by or on behalf of an MSFW. The official shall require that the complainant put the complaint on the JS Complaint/Referral Form prescribed or approved by the ETA. The JS Complaint/Referral Form shall be used for all complaints taken by a State agency, including complaints about unlawful discrimination, except as provided in paragraph (c) of this section. The State agency official shall offer to assist the complainant in filling out the form and shall do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants shall be named on the JS Complaint/Referral Form. The complainant shall sign the completed form. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed JS Complaint/Referral Form shall be given to the complainant(s), and the complaint form shall be given to the appropriate JS official.

(c) If a JS official receives a complaint in any form (e.g., a letter) which is signed by the complainant and includes sufficient information for the JS official to initiate an investigation, the document shall be treated as if it were a properly completed JS Complaint/Referral Form filed in person by the complainant. The JS official shall send a confirming letter to this effect to the complainant and shall give the document to the appropriate JS official. If the complainant has not pro-

vided sufficient information to investigate the matter expeditiously, the JS official shall request additional information from the complainant.

(d) If the appropriate JS official determines that the complaint is not JS-related, the official shall follow the procedures set forth in § 658.414.

(e) If the appropriate JS official determines that the complaint is JS-related, the official shall ensure that the complaint is handled in accordance with this subpart E.

(f) During the initial discussion with the complainant, the JS official receiving the complaint shall:

(1) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(2) Request that the complainant indicate all of the addresses through which he or she might be contacted during the investigation of the complaint;

(3) Request that the complainant contact the JS before leaving the area if possible, and explain the need to maintain contact during the complaint investigation.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)

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§ 658.414 Referral of non-JS-related complaints.

(a) To facilitate the operation of the coordinated enforcement procedures established at 29 CFR part 42, the State agency shall take from MSFWs in writing non-JS related complaints which allege violations of employment related laws enforced by ESA or OSHA. The official shall immediately refer the complaint to ESA or OSHA for prompt action. The JS official shall inform the MSFW of the enforcement agency (and the individual if known) to which the complaint will be referred and refer the complainant to other agencies, attorney, consumer advocate and/or other assistance where appropriate.

(b) Upon receipt of all other non-JS related complaints, the JS official shall refer the complainant to the appropriate enforcement agency, another

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public agency, an attorney, a consumer advocate and/or other appropriate assistance.

(c) For all non-JS-related complaints received pursuant to paragraphs (a) and (b) of this section, the appropriate JS official shall record the referral of the complainant and the complaint where paragraph (a) is applicable, and the agency or agencies (and individual(s), if known) to which the complainant and the complaint where paragraph (a) is applicable, were referred on the complaint log specified in § 658.410(c)(1). The JS official shall also prepare and keep the file specified in § 658.410(c)(3) for the complaints filed pursuant to paragraph (a) of this section.

§ 658.415 Transferring complaints to proper JS office.

(a) Where a JS-related complaint deals with an employer, the proper office to handle the complaint initially is ordinarily the local office serving the area in which the employer is located. Where a JS-related complaint deals with an office of a State agency, the proper office to handle the complaint initially is the local office serving the area in which the alleged violation of the JS regulations occurred. Where an agency-related complaint deals with more than one office of a State agency, with an alleged agency-wide violation, or with the State office, the appropriate State agency official may direct that the State office of that agency handle the complaint initially.

(b) The State Administrator shall establish a system whereby the office in which an JS-related complaint is filed, alleging a violation in that same State, ensures that the JS Complaint/Referral Form is adequately completed and then sent to the proper State or local office of that agency. A copy of the referral letter shall be sent to the complainant.

(c) Whenever a JS-related complaint deals with an employer in another State or another State agency, the State JS agency shall send, after ensuring that the JS Complaint/Referral Form is adequately completed, a copy of the JS Complaint/Referral Form and copies of any relevant documents to the State agency in the other State. Copies of the referral letter shall be

sent to the complainant, and copies of the complaint and referral letter shall be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies.

(d) The State agency receiving the complaint after an interstate transferral under paragraph (c) of this section shall handle the complaint as if it had been initially filed with that office.

(e) The ETA regional office with jurisdiction over the receiving State shall follow-up with the receiving State agency to ensure the complaint is handled in accordance with these regulations.

(f) If the JS complaint is against more than one State JS agency, the complaint shall so clearly state. The complaint shall be handled as separate complaints and shall be handled according to procedures at § 658.416(c) and paragraph (c) of this section.

§ 658.416 Action on JS-related complaints.

(a) The appropriate State agency official handling an JS-related complaint shall offer to assist the complainant through the provision of appropriate JS services. For complaints against employers, this may include such services as referring a worker-complainant to another job.

(b)(1) If the JS-related complaint concerns violations of an employment-related law, the local or State office official shall refer the complaint to the appropriate enforcement agency and notify the complainant in writing of the referral. The agency shall follow-up with the enforcement agency monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and shall inform the complainant of the status of the complaint periodically.

(2) If the enforcement agency makes a final determination that the employer violated an employment related law, the State JS agency shall initiate procedures for discontinuation of services immediately in accordance with subpart F. The State agency shall notify the complainant and the employer of this action.

(c) If the complaint is filed initially in a local office, and is not referred