

The EO representative shall refer complaints alleging discrimination by employers to the Equal Employment Opportunity Commission or other appropriate enforcement agency. Complaints retained by an EO representative shall be subject to the hearing and appeal rights as are normally provided in accordance with this subpart. The State agency complaint specialist shall follow-up with the EO representative or with other responsible enforcement agency monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and shall inform the complainants of the status of the complaint periodically.

(2) All JS-related and non-JS related complaints other than those described in paragraph (b)(1) of this section shall be handled by the local office manager or assigned by the local office manager to a local office employee trained in JS complaint procedures.

(c) Assignment of complaints to State office personnel shall be as follows:

(1) The handling of all JS-related complaints received by the State office alleging unlawful discrimination by race, color, religion, national origin, sex, age, physical or mental status unrelated to job performance (handicap) status shall be assigned to a State EO representative and, where appropriate, handled in accordance with procedures set forth at 29 CFR part 31.

(2) The handling of all other JS-related complaints and all non-JS-related complaints received by the State office shall be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints shall be the State MSFW Monitor Advocate.

§ 658.412 Complaint resolution.

(a) A JS-related complaint is resolved when:

(1) The complainant indicates satisfaction with the outcome, or

(2) The complainant chooses not to elevate the complaint to the next level of review, or

(3) The complainant or the complainant's authorized representative fails to respond within 20 working days or in cases where the complainant is an

MSFW, 40 working days of a written request by the appropriate local or State office, or

(4) The complainant exhausts the final level of review, or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

§ 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

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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 provided 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 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.