

§ 658.415

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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 a 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

under paragraph (b), the appropriate local office official shall investigate and attempt to resolve the complaint immediately upon receipt. If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, the local office official shall send the complaint to the State office for resolution or further action except that if the local office has made a written request for information pursuant to § 658.412(a)(3), these time periods shall not apply until the complainant's response is received in accordance with § 658.412(a)(3). The local office shall notify the complainant and the respondent, in writing, of the results of its investigation pursuant to this paragraph, and of the referral to the State office.

(d) If the complaint is filed initially with the State office, and is not transferred to a local office under § 658.415(a), or not referred to an enforcement agency under paragraph (b) of this section, the appropriate State office official shall investigate and attempt to resolve the complaint immediately upon receipt. If the State office receives the complaint on referral from a local office, the State official shall attempt to resolve the complaint immediately and may, if necessary, conduct a further investigation. If resolution at the State office level has not been accomplished within 30 working days (20 working days with respect to complaints by MSFWs) after the complaint was received by the State office (whether the complaint was received directly or from a local office pursuant to paragraph (c) of this section), the State office shall make a written determination regarding the complaint and shall send copies to the complainant and the respondent except that if the State office has made a written request for information pursuant to § 658.412(a)(3) these time periods shall not apply until the complainant's response is received in accordance with § 658.412(a)(3). The determination must be sent by certified mail. The determination shall include all of the following:

(1) The results of any State office investigation pursuant to this paragraph.

(2) Conclusions reached on the allegations of the complaint.

(3) An explanation of why the complaint was not resolved.

(4) If the complaint is against an employer, and the State office has found that the employer has violated JS regulations, the determination shall state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F.

(5) If the complaint is against an employer and has not been referred to an enforcement agency pursuant to paragraph (b)(1) of this section, and the State office has found that the employer has not violated JS regulations, an offer to the complainant of the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(6) If the complaint is against the State agency, an offer to the complainant of the opportunity to request in writing a hearing within 20 working days after the certified date of receipt of the notification.

(e) If the State office, within 20 working days from the certified date of receipt of the notification provided for in paragraph (d) of this section, receives a written request for a hearing in response thereto, the State office shall refer the complaint to a State hearing official for hearing. The parties to whom the determination was sent (the State agency may also be a party) shall then be notified in writing by the State office that:

(1) The parties will be notified of the date, time and place of the hearing;

(2) The parties may be represented at the hearing by an attorney or other representative;

(3) The parties may bring witnesses and/or documentary evidence to the hearing;

(4) The parties may cross-examine opposing witnesses at the hearing;

(5) The decision on the complaint will be based on the evidence presented at the hearing;

(6) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(7) With the consent of the State agency's representative and of the State hearing official, the party who

requested the hearing may withdraw the request for hearing in writing before the hearing.

§ 658.417 Hearings.

(a) Hearings shall be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. They may be, for example, the same referees who hold hearings under the State unemployment compensation law or any official of the State agency, authorized by State law to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously in this fashion.

(c) The State hearing official, upon the referral of a case for a hearing, shall:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Re-schedule the hearing, as appropriate.

(d) In conducting a hearing the State hearing official shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas, if empowered to do so under State law, if necessary;

(3) Assure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take any other action which is necessary to insure an orderly hearing.

(e) The testimony at the hearing shall be recorded and may be transcribed when appropriate.

(f) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but shall not act as advocate for any party.

(h) The State hearing official shall receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the document to other parties to the hearing upon request.

(i) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the State hearing official. The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as *amicus curiae* (friends of the court) with respect to specific legal or factual issues relevant to the complaint. Any documents submitted by the *amicus curiae* shall be included in the record.

(m) The following standards shall apply to the location of hearings involving parties in more than one State or in locations within a State but which are separated geographically so that access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official.

(1) Whenever possible, the State hearing official shall hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, and with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official pursuant to paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office with all parties and their representatives not choosing to be present at that