



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, October 20, 2022

Time: 8:30 a.m. – 11:30 a.m.

Location: ZOOM meeting due to COVID-19

Committee members present

- Jon DeVaney
- Victoria Ruddy
- Edgar Franks
- Michele Besso
- Jeff Perrault
- Rosalinda Guillen
- Michael Gempler

Non-voting agency representatives

- Ignacio Marquez
- Todd Phillips
- Carmen Rivera for Uriel Iñiguez

Committee members absent

- Delia Peña

ESD staff

- Dan Zeitlin
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Margarito Cabrera
- Gustavo Aviles
- Rene Maldonado
- Gary Kamimura

Summary

Meeting Recorded

This meeting was recorded and is available on <https://esd.wa.gov/newsroom/Ag-committee>

Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked Vickie Carlson to take roll. Seven voting members were present. Motion to approve the September 15th meeting minutes- Jon DeVaney, 2nd from Jeff Perault. Motion carries.

Agenda

Recording timestamp **00:02:00**

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. (See Addendum I.)

ASWS Office – Bertha Clayton, Director, ASWS Office, ESD (See Addendum II.)

ASWS Office Update – Bertha Clayton, Director

Recording timestamp **00:05:15**

FLC Applications – Petra Meraz, Lead FLC Program Coordinator

Recording timestamp **00:11:52**

ASWS Compliance Team Update – Margarito Cabrera, Compliance Supervisor

Recording timestamp **00:15:42**

Customer Experience Survey Update (See Addendum III.)Recording timestamp **00:21:36**

Gustavo Aviles, Chief analytics officer and director, Data, Architecture, Transformation & Analytics (DATA) Division

Summary of Final Federal Rules: Temporary Agricultural Employment of H-2A**Nonimmigrants** (See Addendum IV.)Recording timestamp **00:32:53**

Gary Kamimura, Workforce Policy Manager, ESPI, ESD

Complaint Process Presentations – Bertha Clayton (See Addendum V.)

- **Presentation of complaint process for MSFW complaints** Recording timestamp **00:55:09**
Rene Maldonado, State Monitor Advocate, ESPI, ESD
- **Presentation of 2022 ASWS complaint data & case examples** Recording timestamp **01:11:08**
Bertha Clayton, Margarito Cabrera
- **Discussion of inter-agency coordination of complaints** Recording timestamp **01:44:51**
Bertha Clayton

Overview of Enforcement Processes (See Addendum VI.)

- Tom Silva, Seattle Region Director, US DOL WHD Recording timestamp **01:50:10**
- Steve Yunker, Statewide Agriculture Compliance Manager, LNI - DOSH Recording timestamp **02:03:56**
- Jerry Caird, Tempory Worker Housing Lodging Program Supervisor, DOH Recording timestamp **02:22:50**

Complaint Panel Q&ARecording timestamp **02:32:57**

Rene Maldonado (SMA, ESD), Bertha Clayton (ASWS) Margarito Cabrera (Compliance, ESD), Tom Silva and Stephen Yim (US DOL WHD), Jerry Caird (DOH), Steve Yunker (LNI)

Future Agenda ItemsRecording timestamp **02:48:38****Public Comments**

None

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:30 a.m.

2022 Meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **November 17, 2022 – 8:30 a.m. to 11:30 a.m. – Zoom Meeting**

Addendums

ADDENDUM I.

Agenda



AGENDA

Agricultural and Seasonal Workforce Services (ASWS)
Advisory Committee Meeting

Thursday, October 20, 2022, | 8:30 am -11:30 am | Zoom | 212 Maple Park Ave SE Olympia WA 98501

TIME	TOPIC
8:30 am	Welcome – Daniel Zeitlin, Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> • Roll Call – Vickie Carlson • Agenda Review – Daniel Zeitlin
8:40 am	Approval of Meeting Minutes – Daniel Zeitlin <ul style="list-style-type: none"> • September 15, 2022
8:45 am	ASWS Office Update – Bertha Clayton, Director, ASWS Office <ul style="list-style-type: none"> • ASWS Office Update – Bertha Clayton, Director • FLC Applications – Petra Meraz, FLC Lead Coordinator • ASWS Compliance Team Update – Margarito Cabrera, Compliance Unit Supervisor
9:00 am	Customer Experience Survey update – Gustavo Aviles, Chief analytics officer and director, Data, Architecture, Transformation & Analytics (DATA) Division
9:15 am	Summary of Final Federal Rules: Temporary Agricultural Employment of H-2A Nonimmigrants – Gary Kamimura, Workforce Policy Manager, ESI
9:30 am	Complaint Process Presentations – Bertha Clayton <ul style="list-style-type: none"> • Presentation of complaint process for MSFW complaints <ul style="list-style-type: none"> ◦ Rene Maldonado, State Monitor Advocate, ESD Employment System Policy & Integrity Division • Presentation of 2022 ASWS complaint data & case examples <ul style="list-style-type: none"> ◦ Bertha Clayton, Margarito Cabrera • Discussion of inter-agency coordination of complaints <ul style="list-style-type: none"> ◦ Bertha Clayton (ASWS), Steve Yunker (LNI-DOSH), Juan Gamez (DOH), Tom Silva and Stephen Yim (USDOL WHID)
10:20 am	Break
10:30 am	Overview of LNI, USDOL WHID & DOH enforcement processes
11:00 am	Complaint Panel Q&A – Rene Maldonado (SMA, ESD), Bertha Clayton (ASWS) Margarito Cabrera (Compliance, ESD), Tom Silva and Stephen Yim (USDOL WHID), Juan Gamez (DOH), Steve Yunker (LNI)
11:20 am	Closing Discussion <ul style="list-style-type: none"> • Future Agenda Items
11:25 am	Public Comment
11:30 am	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II.

ASWS Office update



Bertha Clayton, ASWS Director, ESD

Office update - October 2022



Compliance site visits winding down, FLC team revving up

Creation of two (2) Developmental Job Assignment Positions (DJAs)

- Using supplemental FLC grant allocation (\$202,678.00)
- DJA Period: November 1, 2022 to March 1, 2023

Office update - October 2022



Discontinuation of Services (DOS)

- Employer A: Initiated on 8/8/2022 as a result of non-compliance findings from a Field Check. Pending administrative hearing date.
- Employer B: To be initiated as a result of final U.S. DOL WHD findings.

H-2A related complaint processing – peak activity

- Regular inter-agency communication and coordination

Office update - October 2022



All-Staff Training Conference, November 2-3, 2022, Yakima, WA

- Year in review (reflection, recognition)
- Key objectives and deliverables
- Complaint training
 - Development of Standard Operating Procedures (SOPs) and best practices based on experiences this year
 - Development of ASWS complaint guide
 - Cross-training sessions in FLC work

FLC applications update



Petra Meraz, Lead FLC Program Coordinator, ESD

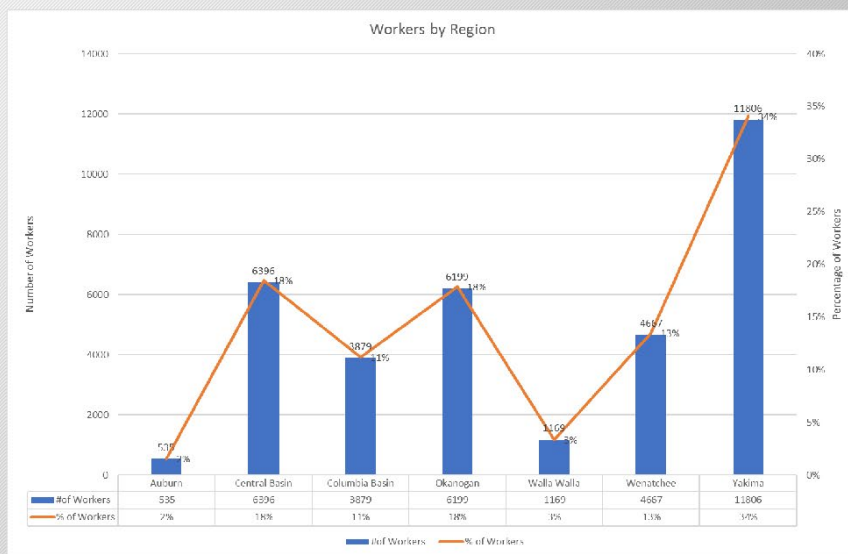
FLC Applications



	PY 2022 H-2A Data		PY 2021 H-2A Data	
	10/1/2021	9/10/2022	10/1/2020	9/10/2021
	Applications	Workers requested	Applications	Workers requested
Total to date	395	34655	345	29925
Withdrawn/Denied	30	2682	13	595
Contracts Commenced	352	31311	324	28958
Contract Impossibility	4	406	0	0
Active Cases	313	28050	278	26423

*The numbers reported are not reflective of the number of foreign workers that arrive in Washington State.

Compliance Unit Region Office	
Counties served	# of workers
Auburn	
Pierce, King, Snohomish, Skagit, Whatcom, Thurston, Mason, Kitsap, Grays Harbor, Jefferson, Clallam, San Juan Islands	535
Okanogan	
Okanogan, Ferry, Stevens, Pend Oreille	6199
Walla Walla	
Walla Walla, Columbia, Garfield, Asotin	1169
Columbia Basin	
Benton, Franklin	3879
Wenatchee	
Chelan, Douglas	4667
Central Basin	
Grant, Lincoln, Adams, Spokane, Whitman	6396
Yakima	
Yakima, Kittitas, Klickitat, Skamania, Clark, Coville, Waiilatup, Pacific, Lewis	11806



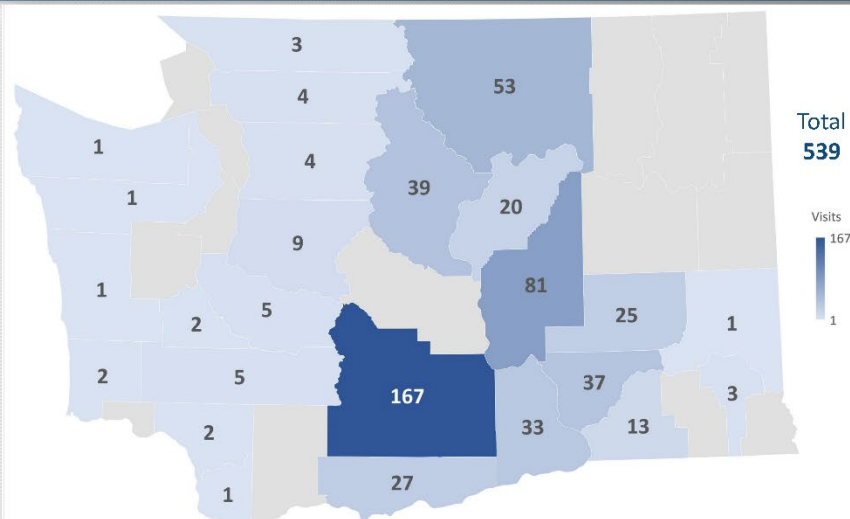
ADDENDUM II

Compliance team update

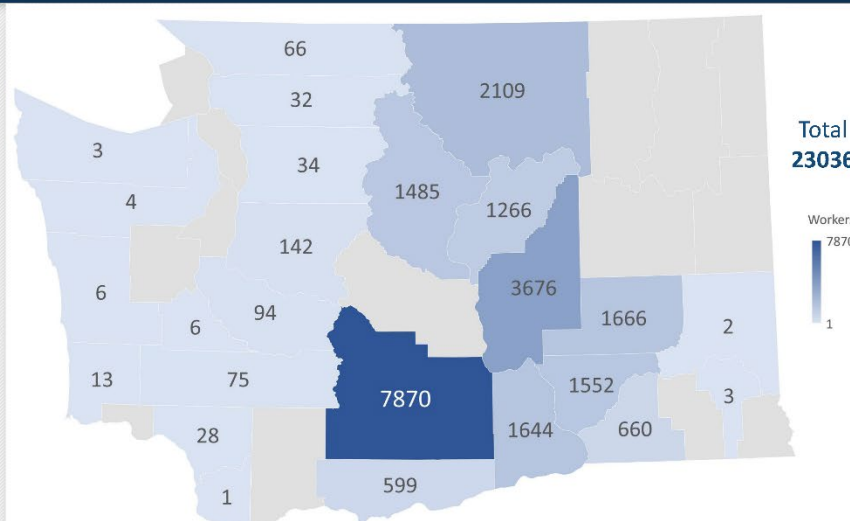


Margarito Cabrera, ASWS Compliance Unit Supervisor, ESD

Site visits by county: January 1, 2022 – October 12, 2022



Workers contacted by county: January 1, 2022 – October 12, 2022



Field Checks – 2022



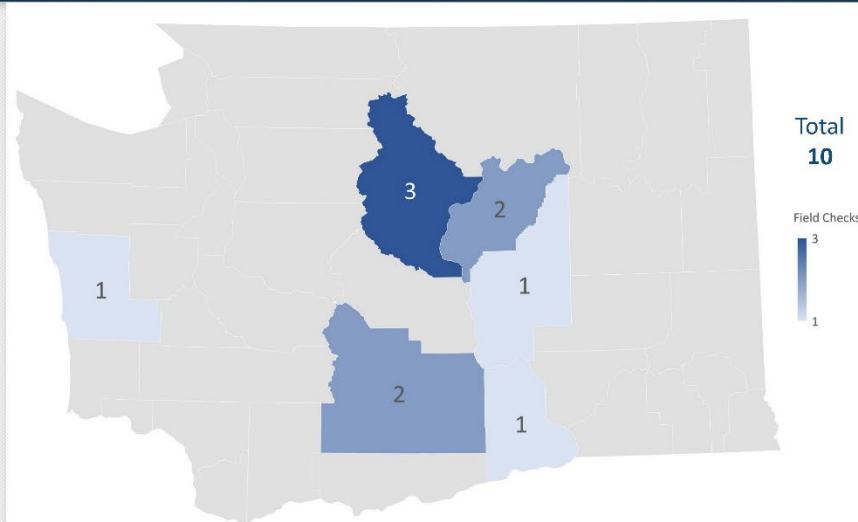
20 CFR 653.503 Field Checks

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

Number of Placements <i>(seeker referred and started working)</i>	11
Number of Field Checks Performed by ASWS	10
Number of Field Checks currently scheduled	0

Field checks by county: January 1, 2022 – October 12, 2022



ADDENDUM III.

Customer Experience Study Update



Gustavo Aviles
Chief Analytics Officer, Data Architecture, Transformation & Analytics, ESD

Olga Kondratjeva
Acting Program Evaluation, Research, and Analysis Manager, ESD

Customer Experience Study

**Contract was executed on October 5, 2022**

- The cause for delays: additional ESD's security review process; contract language clarifications; inclusion of data sharing agreement.
- The big kick-off meeting is scheduled for October 24th. (An interim check-in occurred in the middle of October).

What does it mean for the project timeline?

- Research activities are expected to begin in the end of November/beginning of December 2022 and may last until February/March 2023.
- The main deliverable (final report) is expected by the end of May 2023
- Shift in some interviewing activities, without jeopardizing the quality of the study

How will we maintain a high-quality customer experience study?

**Preserve the existing statement of work**

- Interviews with farmworkers and employers in 3 WA regions
- 4-step study process: discovery, fieldwork, data-driven scenarios; reporting

Multiple channels of communication and feedback

- Regular meetings between Anthro-Tech and the ESD research staff
- Anthro-Tech presentation(s) to the ASWS Advisory Committee
- Feedback on study materials (e.g., interview guides) from the ESD and ASWS Advisory Committee
- Additional meetings between ESD, Anthro-Tech, and the ASWS advisory committee during the "discovery" phase

Multiple methods of outreach to identify and select farmworkers to best capture "authentic" farmworker voices

- Outreach through WorkSource offices; community organizations; snowball sampling, and ESD's unemployment insurance data

What are the needed adjustments?



- We may be able to capture the end of the 2022 agricultural season (e.g., harvesting)
- We can capture the beginning of the 2023 agricultural season (e.g., pruning)
- We can use different methods to identify respondents at different times:
 - To capture more mobile workforce: Rely primarily on WorkSource offices, community organizations, and snowball sampling to conduct outreach to farmworkers during the “in-season”
 - To capture less mobile workforce: Rely primarily on ESD’s unemployment insurance data to conduct outreach to farmworkers during the “off-season”
 - Rely primarily on ESD’s data to conduct outreach to employers during the “off-season”

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What are the needed adjustments - continued



- We can expand the activities to capture strawberries and berry farming in Phase I (rather than waiting for Phase II)
- We can overlap Phase I and Phase II of the study to conduct a comprehensive, overarching study.
 - WSDA grant has been approved
 - Start the RFP process in December

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What has been done?



- ESD has prepared a draft document identifying the main counties with the highest production of apple orchards (NAICS 111331), non-citrus fruit farming (NAICS 111339, which includes pears), and grape production (grape vineyards (NAICS 111332) and wineries (NAICS 312130). This document is expected to guide the selection of three regions to conduct interviews.
- ESD has reviewed Anthro-Tech's infrastructure and processes to handle confidential information.
- ESD has prepared a datafile that will be shared with Anthro-Tech.
- Anthro-Tech has received literature materials to study the agricultural recruitment process.
- Anthro-Tech is investigating the Washington State Institutional Review Board (WSIRB) requirements.

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Customer Experience Study – Next Immediate Steps



- Kick-off meeting scheduled for October 24th
- Anthro-Tech will start the “discovery” phase of the research
- Anthro-Tech plans to present their study approach and progress updates during the monthly ASWS Advisory Meetings, starting November
- ESD will support Anthro-Tech's “discovery” phase (e.g., connecting with WorkSource office staff)

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ADDENDUM IV.

Summary of Final Federal Rules: Temporary Agricultural Employment of H-2A Nonimmigrants



Gary Kamimura, Workforce Policy Manager, ESD

Amended H-2A Final Rule



- The U.S. Department of Labor (DOL) published amended H-2A Final Rule in the Federal Register on October 12, 2022, following a process begun in July 2022 with a Notice of Proposed Rule Making (NPRM). The Final Rule go into effect 30 days after publication in the Federal Register (**November 11, 2022**).
- Employment Security, as the State Workforce Agency (SWA), did not submit formal comments in response to this NPRM.
- PDF Link: [Final Rule: Temporary Agricultural Employment of H-2A Nonimmigrants in the United States](#)

Amended H-2A Final Rule



The notable rule changes fall into three categories:

- Strengthen worker **protections** and program **integrity**
- **Modernization** of the H-2A application process and prevailing wage survey
- Expand employer **access and flexibility** to use the H-2A program

H-2A Final Rule (Protection and Integrity)



20 CFR 655.132

Revises the standards and procedures for H-2A Labor Contractors (LCs) to obtain temporary labor certification by:

- Allowing electronic submission of surety bonds
- Adjusting required surety bond amounts based on changes to adverse effect wage rates (AEWR)
- Adopting a common bond form with standard language
- Allowing debarment of LCs that don't provide adequate surety bonds

H-2A Final Rule (Protection and Integrity)



20 CFR 655.103 and 655.131

- Clarifies the definitions of *employer* and *joint employment*, their use in Applications for Temporary Employment Certification, and joint employer responsibilities.
- Joint employers are treated as such as a matter of law for purposes of compliance and enforcement, to include treating employers that do not file applications but jointly employ workers as joint employers under common law of agency.

H-2A Final Rule (Protection and Integrity)



20 CFR 655.122

- Provides that rental and/or public accommodations secured to house workers must meet applicable local, State, or Federal standards addressing certain health or safety concerns (e.g., minimum square footage per occupant, sanitary food preparation and storage areas, laundry and washing facilities)
- Requires employers to submit written documentation that housing meets applicable standards and contains enough beds and rooms to accommodate all requested workers.

H-2A Final Rule (Protection and Integrity)



20 CFR 655.182

- Enhances DOL's debarment authority by holding agents and attorneys, and their successors in interest, accountable for their own misconduct independent of the employer's violation(s).
- Clarifies that Applications for Temporary Employment Certification filed by debarred entities during the period of debarment will be denied without review.

H-2A Final Rule (Modernization)



20 CFR 655.130

- Establishes a single point of entry by requiring that employers, with some exceptions, electronically file Applications for Temporary Employment Certification, job orders, and supporting documentation through a centralized electronic system maintained by DOL.
- Permits electronic signatures that meet valid signature standards.

H-2A Final Rule (Modernization)



20 CFR 655.162, 655.164, and 655.166

- Codifies the use of electronic methods for the OFLC Certifying Officer to send notices and requests to employers, circulate approved job orders to appropriate SWAs for interstate clearance and recruitment of U.S. workers, and issues temporary labor certification decisions directly to the Department of Homeland Security (DHS).

H-2A Final Rule (Modernization)



20 CFR 655.120

- Replaces prevailing wage survey guidelines in ETA Handbook 385 with standards that more effectively produce prevailing wages for distinct crop or agricultural activities.
- Expands the entities that may conduct prevailing wage surveys beyond SWAs to include other State agencies, colleges or universities.

H-2A Final Rule (Access and Flexibility)



20 CFR 655.131

- Establishes new standards that permit individual employers with the same need for agricultural services or labor to file a single Application for Temporary Employment Certification and job order to jointly employ workers in full-time employment, consistent with statutes and DOL's longstanding practice to provide small employers who cannot offer full-time work for their H-2A employees the opportunity to participate in the H-2A program and ensure each employer is held jointly liable for compliance with all program requirements.

H-2A Final Rule (Access and Flexibility)



20 CFR 655.300-303

- Codifies a unique set of standards and procedures for employers that employ workers in animal shearing, commercial beekeeping, and custom combining according to a planned itinerary across multiple areas of intended employment (AIE) in one or more contiguous States.
- Provides appropriate flexibilities for employers engaged in these unique activities that are substantially similar to the processes formerly set out in administrative guidance letters, and greater certainty in the handling of these applications by DOL under 20 CFR Part 655, Subpart B.

ADDENDUM V.

Complaint process - MSFW complaints



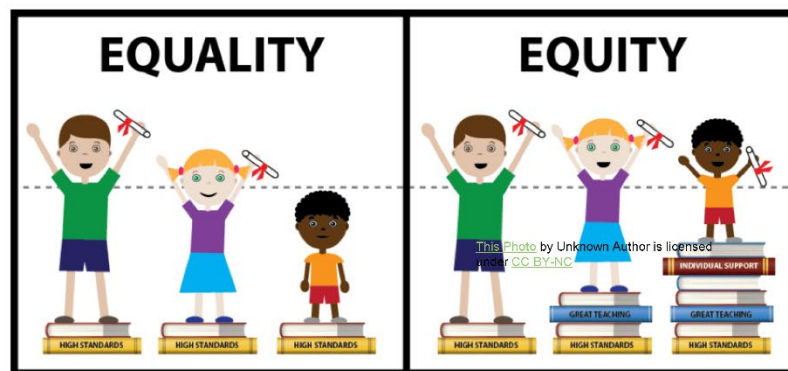
Rene Maldonado, State Monitor Advocate, ESD

ASWS Complaint Processing



Rene Maldonado
State Monitor Advocate
October 20, 2022

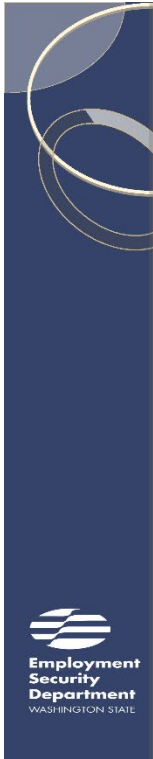
Monitor Advocate System



SMA Role



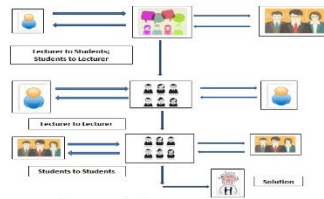
Monitoring



Monitor Advocate System Elements



Agricultural Recruitment System



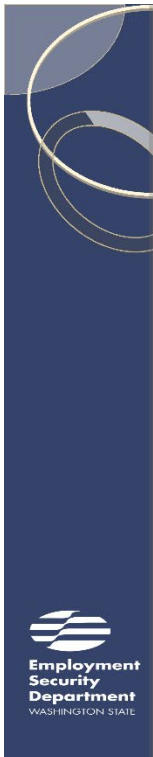
Complaint system



MSFW Outreach

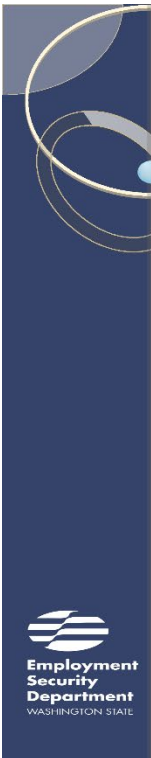


Significant and Non-Significant MSFW offices





How to resolve differences?



Who can make the Complaint?



Associations



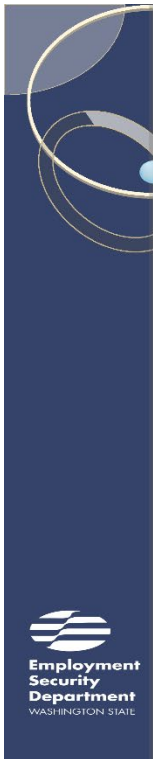
Organizations



Individuals

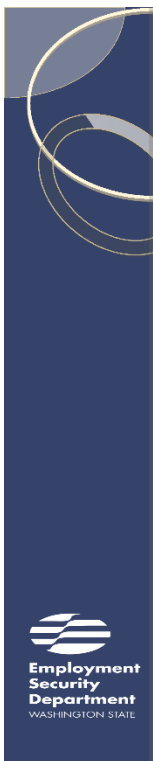


Employers

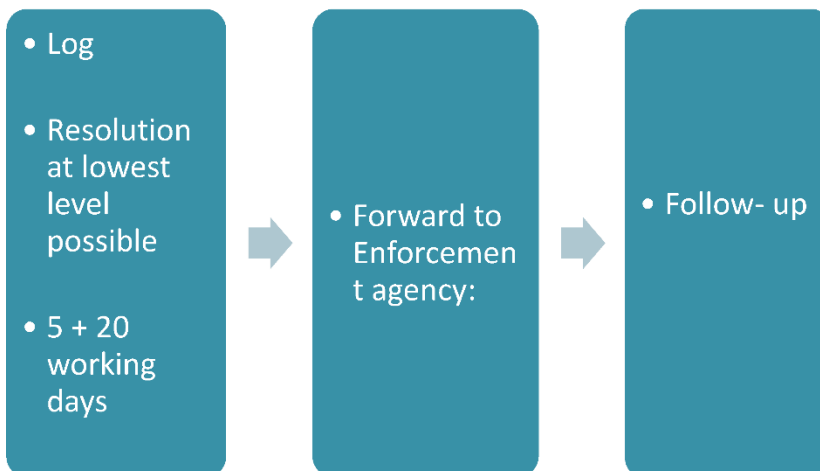


Action on complaints

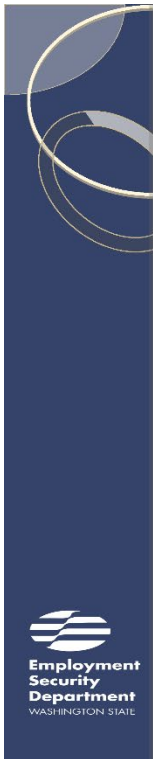
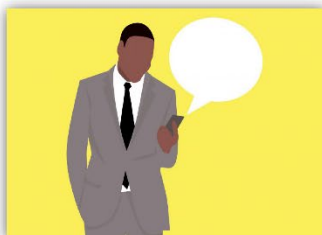
Explain Everything



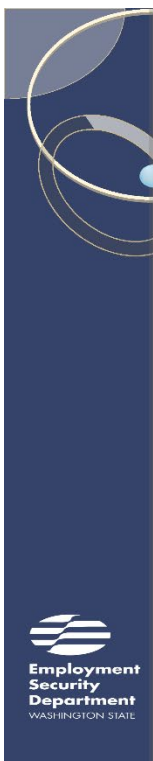
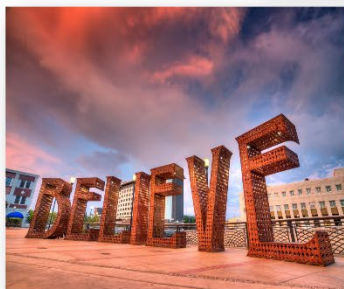
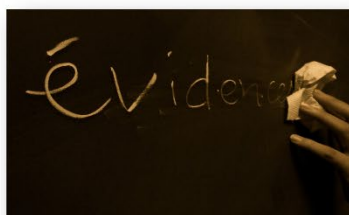
Complaint Resolution Process



Complaint: Resolved



Apparent Violations



Complaint data & case examples



Bertha Clayton, ASWS Director, ESD
 Margarito Cabrera, Compliance Team Supervisor, ESD

Quick review: Types of Issues



Complaints

- Representation made or referred by a worker alleging violation of ES regulations and/or other Federal laws enforced by the DOL WHD, OSHA, or federal, state, or local agencies enforcing employment related law.
- Worker initiated
- Need a complainant

Apparent violation

- Staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment related laws or federal employment service regulations.
- Staff initiated
- Do not need a complainant

Complaints & violations ineligible for informal resolution

- Discrimination & Sexual Harassment
- Issues that the worker does not want informal resolution of

ASWS “Jurisdiction”



RCW 50.75.020(2)(b): *The duties of the (ASWS) office are: (b) Processing complaints consistent with 20 CFR 658, Subpart E (Employment Service and Employment-Related Law Complaint System – “The Complaint System”).*

ESD

- Delegated “H-2A employer” complaints to ASWS for processing
- Automatic referral from local offices
- Non-H2A employer complaints stay with local offices for processing, referral and follow-up

State Monitor Advocate

- Delegated complaint duties and follow-up with enforcement agencies to ASWS
- SMA role under new federal rules is to monitor complaint activity rather than to directly engage in it.

Reason to Delegate to ASWS

- ASWS Compliance Specialists have training and expertise in the complaint system and federal H-2A related regulations
- ASWS has better access to information needed to investigate complaints and apparent violations (FLC data, ETA-790s, etc.)

H-2A Employer Complaints:
 Complaints in which the employer has had an H-2A job order in the last 12 months. Complainant can be foreign or domestic worker.

Overview of complaint process



COMPLAINT / APPARENT VIOLATION

1. Complete complaint form (inc. for apparent violations). Determine complaint type
2. Interview worker to learn of goals and desire for informal resolution. Gather information and documentation
3. Communicate with Work Source staff to learn of prior complaints regarding employer
4. Research ETA-790 and applicable law

CONTACT EMPLOYER

1. Communicate with employer regarding issues alleged
2. Educate employer regarding ASWS authority/role and complaint system, notify that retaliation is unlawful
3. Learn of employer's position and recommend fact finding strategies

CONDUCT FACT FINDING

1. Visit the employer/work site
2. Talk with workers
3. Obtain further documentation
4. Communicate with LNI/DOH

DETERMINATION

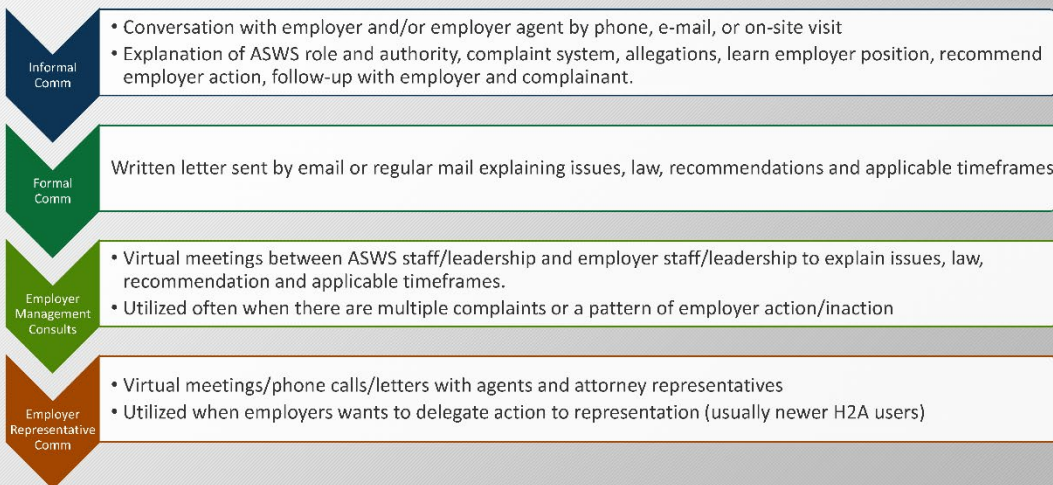
1. Communicate with employer regarding information learned
2. Recommend curative action
3. Obtain employer's position, commitment and follow-up
4. Follow up with worker

CLOSE & LOG OR REFER

1. If resolved, close case and log in ASWS Complaint Log. Communicate final action to worker & employer
2. If not resolved, refer to appropriate enforcement agency per procedure (Form, email, etc.)
3. Schedule for follow-up
4. Log updates in complaint log

* ASWS does not give legal advice, immigration advice, or refer to legal assistance.

Informal resolution strategies









Complaint activity – 1/1/22-10/12/22 by the numbers



Common issues this year (2022)



-  Wage Issues (not paying correct wages;; not paying AEWR to workers in corresponding employment, ¼ guarantee, supervisors discouraging domestic workers from applying)
-  Employer enforcement of productivity standards not approved by USDOL ETA and misuse of warnings, threats of “not bringing you back next year”
-  Non-Payment of inbound transportation and employer not providing copies of contracts to workers
-  Payroll Documentation (pay records do not include all necessary elements – Hour offered, sick-time accrued, electronic, only, etc.); Social Security number delay & back-up withholding
-  Housing Issues
Employers housing workers in housing not on the ETA-790; occupancy issues (4 persons, 2 beds), food shopping
-  Discrimination/Harassment, and Hostile work environment (Supervisor mistreatment and retaliation)

Complaint log



Complaint Log ☆

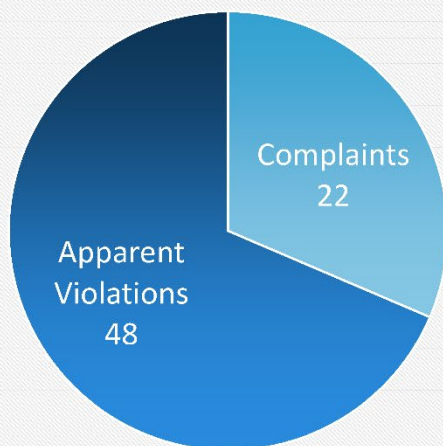
Ref No - Complai...	Complainant	Respondent	Date Filed	MSFW Rela...	Complaint Type	Allegation of
C22-01	John Doe	ABC	3/29/2022	Yes	Employment-Related Law	Wage related

H-2A or Domes...	Referred to	Pending	Resolved	Office	Received by	Processed ...	Description of Complaint or
H-2A	WHD, U.S. DOL	- Select -	Local Level	ASWS Office	Joe Doe (ES	Joe Doe	Pulvinar neque laoreet suspen consectetur libero id. Eit ulla tincidunt lobortis. Omare suspe sed viverra tellus in hac.

Description of Complaint or Apparent Violation	Action Taken	Attachments	Modified	Modified By
Pulvinar neque laoreet suspen consectetur libero id. Eit ulla tincidunt lobortis. Omare suspen sed viverra tellus in hac.	Tristique senectus et netus et malesuada fames ac turpis egestas. Et tortor consequat id porta nibh venenatis cras. Dolor sit amet consectetur adipiscing		A few seconds ago	Joe Doe (ESD)

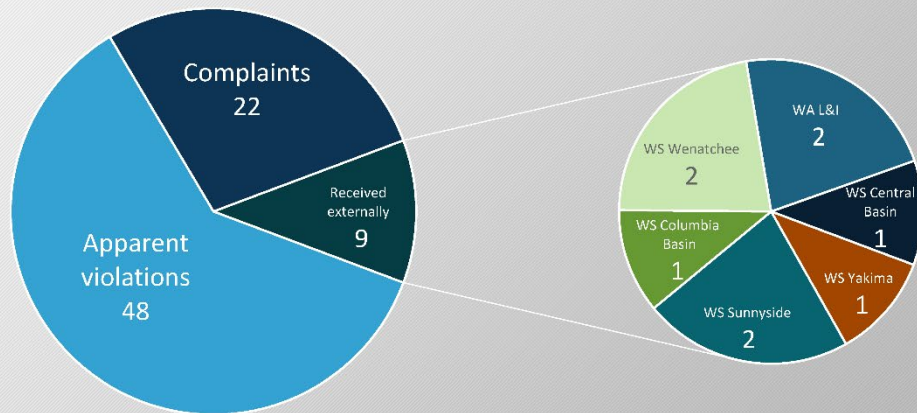
Received by ASWS

Complaints and apparent violations (1/1/22-10/12/22)

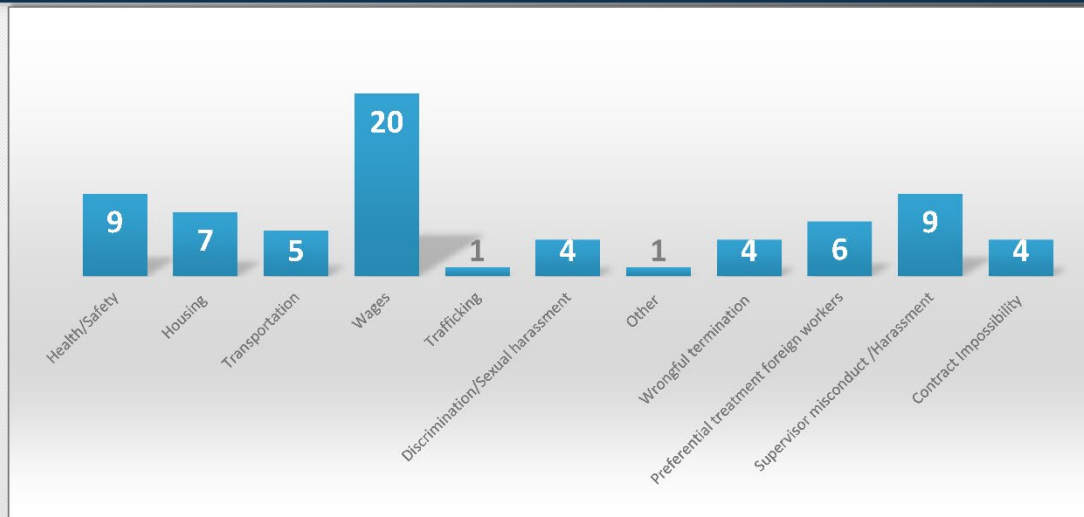


Total number of complaints:	22
Total number of apparent violations:	48
Total	70

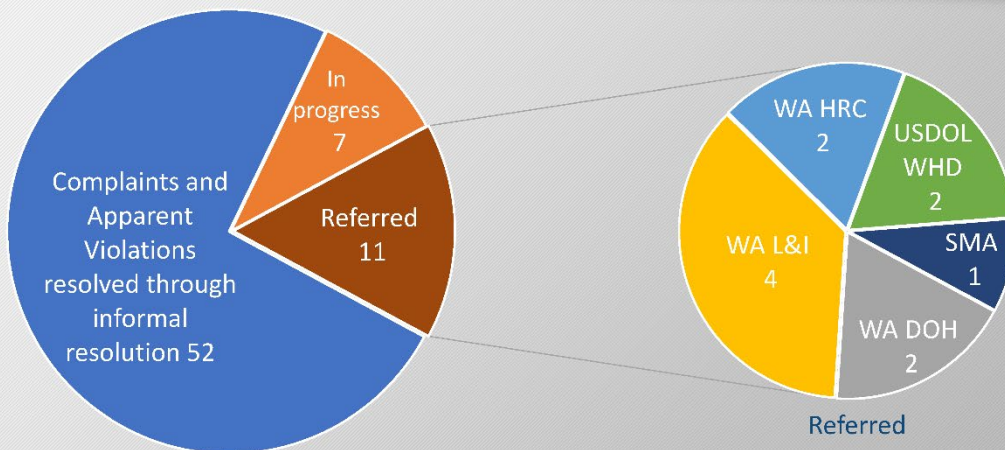
How the ASWS office received the Complaints & apparent violations (1/1/22-10/12/22)



Types of allegations Complaints & apparent violations (1/1/22-10/12/22)



Resolution of Complaints & apparent violations (1/1/22-10/12/22)



Monthly trends (1/1/22-10/12/22)



2022 vs. 2021 Total complaints & apparent violations



7

2021



70

2022



900% YOY Increase

Case examples: Wage issues



Apparent Violation

- Pre-site visit review of contract/site visit
- Domestic workers performing H2A tasks
- Not paid AEWR
- Process: Conferences with employer & counsel
- Result: Employer paid \$133,000.00 in wage reimbursement to domestic workers

Complaint

- Complaint received from worker
- Employer not paying correct AEWR wages for piece-rate workers
- Process: Letter written to employer, follow up conference
- Result: \$60,800.00 in wage adjustment reimbursement to workers

Case examples: Housing issues



Apparent Violation

- ASWS made aware by LNI of complaint through Pilot outreach coordination project. ASWS observes that workers are being housed in unlicensed housing not on ETA-790;
- Process: Worker interviews, communication with DOH, LNI and FLC team; inter-agency site visit to premises. ASWS wrote letter to employer advising that workers must be moved to licensed housing until all necessary steps taken to get license/report to SWA & DOL ETA.
- Result: Employer moved workers to hotel. ASWS confirmed with DOH that license was obtained.

Apparent Violation

- FLC issue spots inconsistency in hotel name on ETA-790. Discovers that hotel is unlicensed. Compliance team confirms that workers are being housed there.
- Process: ASWS contacts employer agent to explain issue. Recommends employers move workers to licensed housing until license can be obtained, which employers do. ASWS facilitates process between hotel and DOH. License obtained.
- Result: Employer owner learns of status (recent sale) and obtains license. Employers submit documentation to DOL to add corrected housing information to ETA-790.

Case examples: Hostile supervisors & employer behavior



Complaint

- H-2A worker terminated, employer's position is that he abandoned. Worker describes supervisor behavior (physical hitting, verbal abuse, retaliation, etc.); Other workers also report behavior to ASWS;
- Prior ESD complaints showing pattern
- Process: Formal meeting with employer leadership. Recommendations to employer. Employer put supervisor on paid leave and used written questionnaires to interview workers.
- Result: Termination of supervisor, employer written commitment to invite worker back; written commitment regarding supervisor training and expectations

ADDENDUM VI.

Enforcement agency coordination



Bertha Clayton, ASWS Director, ESD
Margarito Cabrera, Compliance Team Supervisor, ESD

Enforcement agency coordination



USDOL
WHD



WA State
LNI



WA State
DOH



WA State
HRC & EEOC

Case examples: Issues we referred



ASWS refers cases to enforcement agencies for adjudication when:

- (1) Required by law because of case type;
- (2) When informal resolution fails;
- (3) When complainant does not want informal resolution.

- Workers allege that employer's recruiter in Mexico charging each H-2A worker \$1,000.00 to get on recruitment list;
- Workers also allege that employer and employer associates threatening families (in Mexico) of H-2A workers who have spoken to state agencies about employer
- Referred to USDOL for inclusion in active investigation of this employer.

- Complainant did not want informal resolution service. Indicated that they wanted it referred to LNI

- Complainant's wife in Mexico contacts ASWS staff to state that husband has serious COVID symptoms, and the employer was not providing access to medical treatment and not following proper isolation protocols
- Referred to DOH. DOH promptly visited site, investigated and found violations
- ASWS staff followed up with worker to confirm remedial measures

US DOL WHD Tom Silva, Seattle Region Director



JURISDICTION & COMPOSITION

1. Which laws does USDOL WHD enforce?
2. What is the division's composition? (Reporting structure, investigator regions, etc.)
3. What is the process for USDOL WHD to intake a complaint?

INVESTIGATION PROCESS

1. Describe USDOL WHD's investigation process
2. What is the responsibility of the complainants during the process/are they updated on progress/can they remain anonymous?
3. What is in scope for investigation? What is out of scope?

DETERMINATION & ENFORCEMENT

1. Who/what makes findings?
2. How are these findings communicated to the employer/workers/ASWS?
3. What punitive mechanisms does USDOL impose (fines, debarment, etc.)
4. Is there an appeals process? Is there post-enforcement oversight of employers?

US Department of Labor Wage and Hour Division

Seattle District Office

Jurisdiction and Composition

Enforcement of:

- Fair Labor Standards Act (FLSA), Migrant & Seasonal Agricultural Worker Protection Act (MSPA), H-2A, H-2B, H1B, Family & Medical Leave Act (FMLA), government contracts (DBRA/SCA/CWHSSA), CCPA (garnishments), and, Polygraph Protection Act.

Seattle District Office

- 12 Investigators, 1 Community Outreach, 3 Assistant District Directors, 1 District Director, 2 Administrative staff
- Alaska & Washington (except Clark and Spokane Co.)
 - Tacoma Field Office
 - Anchorage Field Office

Complaint Intake

- Complaints are usually submitted in person or by phone
- Complaints can come from third parties
- Complaints are confidential
- Legal Status is not a concern
- No fee to file a complaint

Investigation Process

- Initial Conference/Tour Establishment
- Fact Finding
- Interviews
- Records Review
- Determination of Compliance
- Final Conference

Determination & Enforcement

- The Wage and Hour Investigator issues findings based on the evidence gathered during the investigation
- The employer is notified of findings during the Final Conference
 - If applicable, the complainant is notified prior to the Final Conference
- Possible outcomes include the assessment of Back Wages, Liquidated Damages, and Civil Money Penalties

WA LNI – DOSH Steve Yunker, Agriculture Compliance Manager



JURISDICTION & COMPOSITION

1. Which laws does LNI-DOSH enforce?
2. What is the division's composition? (Reporting structure, other LNI departments, etc.)
3. What is the process for LNI-DOSH to intake a complaint?

INVESTIGATION PROCESS

1. Describe LNI-DOSH's investigation process
2. What is the responsibility of the complainants during the process/are they updated on progress/can they remain anonymous?
3. What is in scope for investigation? What is out of scope?

DETERMINATION & ENFORCEMENT

1. Who/what makes findings?
2. How are these findings communicated to the employer/workers/ASWS?
3. What punitive mechanisms does LNI DOSH impose (fines, debarment, etc.)
4. Is there an appeals process? Is there post-enforcement oversight of employers?



L&I DOSH Agriculture Compliance

Steve Yunker

Statewide Agriculture Compliance Manager



Jurisdiction

- Employer – Employee Relationship
- No Minimum or Maximum number of employees
- Limited jurisdiction over owners exposed to hazards



RCW 49.17

Revised Code of Washington

Law Enacted by Legislature

...to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).



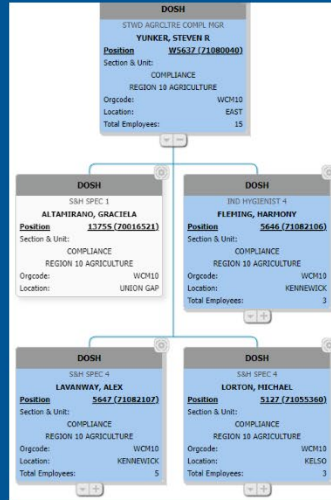
WAC 296-307

- Washington Administrative Code
- Has force of law, but enacted by agency as authorized by law

Chapter 296-307 WAC applies to all agricultural operations with one or more employees covered by the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW.



Ag Safety and Health Compliance unit



Complaint/Referral Process

<https://lni.wa.gov/workers-rights/workplace-complaints/safety-complaints>

(800) 4 BE SAFE 800-423-7233

Any L&I Service Location



Investigation Process

- Unannounced visit
- Opening Conference
- Walk-around
- Employee Interviews (in private)
- Closing Conference



Surprise Visits



Anonymity



Follow-up with complaint/referral source



Scope of inspection

Focused vs. Comprehensive



Citation and Notice

Within 180 days
Copy to Complainant
Public Record



Appeals Process



Informal Conference
Board of Industrial Insurance Appeals
Superior Court
State Supreme Court



Penalties

Serious vs. General

Monetary Penalty
\$1000-7000 per violation
Adjustments for size, good faith, and history

WA DOH:
Juan Gamez, Manager, Ofc of Env. Health & Safety



JURISDICTION & COMPOSITION

1. Which laws does DOH enforce?
2. What is the division's composition? (Reporting structure, other DOH departments, etc.)
3. What is the process for DOH to intake a complaint?

INVESTIGATION PROCESS

1. Describe DOH's investigation process
2. What is the responsibility of the complainants during the process/are they updated on progress/can they remain anonymous?
3. What is in scope for investigation? What is out of scope?

DETERMINATION & ENFORCEMENT

1. Who/what makes findings?
2. How are these findings communicated to the employer/workers/ASWS?
3. What punitive mechanisms does DOH impose (fines, debarment, etc.)
4. Is there an appeals process? Is there post-enforcement oversight of employers?



TEMPORARY WORKER HOUSING
Lodging Program- Office of Environmental Health and Safety

TEMPORARY WORKER HOUSING –OVERVIEW

Program Services:

The Temporary Worker Housing Program offers services to growers, housing operators and developers to ensure housing facilities meet the state health and safety standards. These services help developers and housing providers to move through the development and licensing system.

Services include:

- Consultation and Technical Assistance
- Construction and Building Department Services
- Inspections
- License Requirements
- Investigation and Enforcement

TEMPORARY WORKER HOUSING- JURISDICTION

What laws does DOH enforce?

- WAC 246-358 **Temporary Worker Housing**
- WAC 246-359 **Temporary Worker Housing Construction Standard (CRS)**
- WAC 246-360 **Transient Accommodations**

Construction Review Services conducts plan reviews and approvals of building standards where local jurisdictions do not apply.

Lodging Program inspectors will inspect the site for compliance with standards under TWH or TA rules.

Communicable Disease, Air Quality, and other sections are consulted in rulemaking processes.

TEMPORARY WORKER HOUSING- COMPLAINTS

COMPLAINT INTAKE

Receiving:

- Complaints are received by phone, voicemails, or emails to DOH complaint lines or inspectors
- Complaint information is entered into inspection system and assigned to the inspector that covers the area and/or facility

Fielding:

- Complaints within the TWH WAC are shared with LNI DOSH supervisors to coordinate an inspection between both agencies
- Inspectors arrive at the site together, and DOSH calls the owner/operator to send a representative to the site so the inspection can commence

TEMPORARY WORKER HOUSING- COMPLAINTS

COMPLAINT INVESTIGATION

Onsite:

- DOH inspectors will inspect Housing for compliance with WAC standards.
- Operators are given the opportunity to correct any violations found during the inspection.
- A complaint inspection report is written and provided to the operator within 24 hours.

Scope:

- DOH inspectors will apply WAC 246-358 to any licensed TWH site, and WAC 246-360 to TA facilities
- Complaints outside the scope of our jurisdiction are generally referred to an agency with jurisdiction, such as: LNI, Local Health, Ecology.
- An inspector can only substantiate a complaint if all the issues in the complaint are observed while inspector is onsite

TEMPORARY WORKER HOUSING- COMPLAINTS

COMPLAINT DISPOSITION

Follow-up:

- Complainants can request a follow-up once the inspection is conducted
- If requested, the inspector will notify the complainant of what was/wasn't observed during the inspection
- Complainants can remain anonymous, and inspectors are not to divulge the identity of complainants

TEMPORARY WORKER HOUSING- COMPLAINTS

ENFORCEMENT

Follow-up:

1. If a facility has 3 or more inspections with repeated Critical Violations that are not corrected, a Notice of Correction is issued. The NOC outlines the issues and a timeline, as a warning before other steps are taken. The NOC is sent to the owner/operator and any interested parties, such as Registered Agents, property owners, local building departments and local health jurisdictions.
2. DOH will coordinate with DOSH to determine any overlap in enforcement action, to ensure that the enforcement is not duplicated.
3. At this time, DOH would impose license penalties (denial, suspension, revocation) for severe violations, and a civil fine for operation without a license.

Questions?

For further questions, please contact us at:

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gerald.caird@doh.wa.gov

douglas.hartfield@doh.wa.gov

housing@doh.wa.gov

Closing Discussion



- Future Agenda Items



Agricultural and Seasonal Workforce Services ADVISORY COMMITTEE



Employment Security Department
WASHINGTON STATE

Next ASWS Advisory Committee Meeting

Thursday, November 17, 2022

8:30 a.m. – 11:30 a.m.

Contact information

Dan Zeitlin, Director of Employment System Policy & Integrity Division DZeitlin@ESD.WA.GOV

Employment Security Department • Policy, Data, Performance and Integrity