

**CHAPTER 41
WORKFORCE NEW JERSEY**

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C.A. § 1554 and 20 C.F.R. 627.500 et seq.

Source and Effective Date

R.1999 d.31, effective December 23, 1998.
See: 30 N.J.R. 3924(a), 31 N.J.R. 136(a).

Executive Order No. 66(1978) Expiration Date

Chapter 41, Workforce New Jersey, expires on December 23, 2003.

Chapter Historical Note

Chapter 41, formerly Division of Employment and Training, was adopted as R.1989 d.38, effective January 17, 1989. See: 20 N.J.R. 2626(a), 21 N.J.R. 168(a). Pursuant to Executive Order No. 66(1978), Chapter 41 was readopted as R.1994 d.78. See: Source and Effective Date.

Chapter 41, Office of Employment and Training, was redesignated Chapter 41, Workforce New Jersey by R.1998 d.34, effective January 5, 1998. See: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

Pursuant to Executive Order No. 66(1978), Chapter 41, Workforce New Jersey, was readopted as R.1999 d.31, effective December 23, 1998. See: Source and Effective Date.

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SUBCHAPTER 1. JOB TRAINING PARTNERSHIP ACT (JTPA): NON-CRIMINAL COMPLAINT/GRIEVANCE, HEARING AND REVIEW PROCEDURES AT EMPLOYER, SDA, STATE AND FEDERAL LEVEL

12:41-1.1 Purpose

The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Job

Training Partnership Act (JTPA) at 29 U.S.C.A. § 1554 and the regulations that implement the JTPA at 20 CFR Sec. 627.500 et seq.

Amended by R.1989 d.475, effective September 5, 1989.
See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA.
Amended by R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.2 Scope

(a) Employers of JTPA participants shall follow the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.5. The employer grievance and hearing procedures shall apply to any JTPA participant aggrieved by his or her employer.

(b) Each SDA shall follow, at a minimum, the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.6. The SDA grievance and hearing procedures shall apply to the following:

1. JTPA participant appeals from decisions at the employer level;
2. JTPA participant complaints;
3. Local recipient complaints (schools; contractors; employers with on-the-job training contracts; and consultants); and
4. Complaints from other interested persons.

(c) The State review procedures set forth at N.J.A.C. 12:41-1.7 shall apply to the following:

1. JTPA participant appeals from decisions at the employer level;
2. Local recipient appeals from decisions at the SDA level; and
3. Appeals by other interested persons from decisions at the SDA level.

(d) The State hearing procedures set forth at N.J.A.C. 12:41-1.8 shall apply to local recipients adversely affected by the results of monitoring and/or investigations and to any other complainants who must seek resolution initially at the State level (complaint not subject to review at the SDA level), and any other participant or interested party aggrieved by an SDA.

1. All SDAs shall provide its participants, upon their enrollment, with a copy of the State hearing procedures.
2. Each SDA shall also provide local recipients with a copy of the State hearing procedures no later than the date of the contract between the SDA and the local recipient.

(e) The audit resolution procedures set forth at N.J.A.C. 12:5-1 shall apply to subrecipients adversely affected by the results of an audit.

(f) The Federal review procedures set forth at N.J.A.C. 12:41-1.9 shall apply pursuant to 20 CFR 627.600 et seq. to appeals from complainants who did not receive a decision at the State level.

(g) Nothing in this subchapter shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

Amended by R.1989 d.475, effective September 5, 1989.
See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA.
Amended by R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).
Amended by R.1994 d.491, effective September 19, 1994.
See: 26 N.J.R. 2864(a), 26 N.J.R. 3872(a).

12:41-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner, New Jersey Department of Labor or his or her authorized designee.

“Complainant” means the individual, group or agency alleging a non-criminal violation of the JTPA and/or related agreements and makes an informal and/or formal complaint.

“Director” means the Director of the Division of Employment and Training, Workforce New Jersey-Careers, New Jersey Department of Labor.

“Local recipient” means any person or government department, agency or establishment (private-for-profit/non-profit) that receives Federal JTPA funds to carry out JTPA programs through a State or local government but does not include an individual who is a beneficiary of such a program.

“JTPA” means Job Training Partnership Act, 29 U.S.C.A. § 1501 et seq.

“Participant” means any individual who has been determined eligible for participation upon intake, and may have started receiving employment, training, or services (except post-termination services) funded under the JTPA following intake.

“Recipient” means the State of New Jersey.

“Respondent” means the individual, group or agency against whom a complaint is made and to whom opportunity is given to participate in the complaint resolution process.

“SDA” means Service Delivery Area as defined in 29 U.S.C.A. § 1511.

“Secretary” means the United States Secretary of Labor.

“Substate grantee (SSG)” means the entity which receives JTPA Title III funds for one or more SDAs from the State.

Amended by R.1989 d.475, effective September 5, 1989.

See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions and definition added regarding NJJTA.

Amended by R.1994 d.78, effective February 7, 1994.

See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

Amended by R.1998 d.34, effective January 5, 1998.

See: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

Changed “Assistant Director” to “Director”.

12:41-1.4 Deadline for filing complaints

The deadline for filing non-criminal complaints at the employer, SDA and State level shall be one year from the date of the alleged occurrence.

12:41-1.5 Grievance and hearing procedures at the employer level

(a) Each employer, including private-for-profit employers under the JTPA, shall maintain a grievance and hearing procedure relating to the terms and conditions of employment available to its participants.

1. Each employer may operate its own grievance and hearing system or may utilize the grievance and hearing system established by the SDA or by the Department at N.J.A.C. 12:41-1.6.

(b) Each employer grievance system shall provide for, upon request of the complainant, a review of an employer's decision by the SDA and the Director, if necessary, in accordance with N.J.A.C. 12:41-1.6 and 1.7, respectively.

Amended by R.1989 d.475, effective September 5, 1989.

See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA.

Amended by R.1994 d.78, effective February 7, 1994.

See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

Amended by R.1998 d.34, effective January 5, 1998.

See: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

12:41-1.6 Grievance and hearing procedures at the SDA level

(a) Each SDA shall establish and maintain grievance and hearing procedures for grievances or complaints about its programs and activities from participants, local recipients and other interested persons. The procedures shall include the resolution of complaints alleging a violation of the JTPA, regulations, grants or other agreements under the JTPA.

(b) The grievance and hearing procedures shall contain, at a minimum, the following requirements:

1. Upon enrollment into a JTPA program, the SDA shall provide participants with a written description of the grievance procedures which shall include the requirements set forth in (b)4 through 7 below. The SDA shall also provide local recipients with these procedures no later than the date of execution of the contract between the SDA and the local recipient.

2. The SDA shall maintain evidence that the grievance and hearing procedures have been provided to participants and to local recipients.

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the JTPA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4. The SDA may provide for an informal resolution of a complaint/grievance which, if provided, shall be completed prior to the hearing date.

5. The SDA shall provide for a hearing on a complaint/grievance to be conducted in the locale of the complainant within 30 days of the filing of the complaint or grievance and a written decision shall be provided not later than 60 days after the filing of a complaint/grievance.

6. The SDA shall provide participants and local recipients with the name, address and telephone number of the local official to whom complaints and grievances can be directed.

7. At a minimum, the SDA shall also provide participants and local recipients with the following:

i. A written notice of the date, time and place of the hearing;

ii. An opportunity to be represented by an attorney or other representative of the complainant's choice;

iii. An opportunity to bring witnesses and documentary evidence. SDA recipients or other subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant, and to release requested documents unless privacy laws or other laws intervene to take precedence;

iv. An opportunity to question any witnesses or parties;

v. An impartial hearing;

vi. A verbatim or tape recording of the hearing;

vii. Written notice that the complainant is entitled to a hearing within 30 days of filing the written grievance and that a written decision shall be made by the hearing officer or designated representative of the SDA within 60 days of the filing of the complaint/grievance;

viii. Written notice that the complainant has a right to an administrative review by the Commissioner if the decision is adverse or is not made within 60 days of the filing of the complaint.

ix. The name and address of the State agency to whom the request for an administrative review is to be addressed and other information needed to file the request for review with the State;

x. Written notice that the complainant must file the request for an administrative review with the Director within 10 days of receiving the adverse decision or within 15 days of the date the decision should have been made by the SDA;

xi. Written notice that the complainant has one year to submit a complaint after the date of the occurrence (except for complaints regarding discrimination, which have a 180 day limitation subject to an extension for good cause granted by the Directorate of Civil Rights);

xii. Written notice that the complainant may submit a complaint alleging violations of Section 143 labor standards to the Secretary of Labor when the complainant has exhausted the local and State grievance procedures, or when the 60 day time period specified for reaching a decision has elapsed without a decision. The complainant should also be informed that he or she has a right to submit the complaint to binding arbitration if a collective bargaining agreement covering the parties to the grievance so provides, and that if the complaint is submitted to binding arbitration, the Federal review procedure is not available for appeals of labor standards complaints;

xiii. Written notice that the complainant has the right to request a review by the Commissioner and by the Secretary if the State does not render a decision within 60 days of the filing of the complaint/grievance, and that the Federal review is confined to allegations of violations of law under the JTPA; and

xiv. Written notice that the complainant must exhaust the remedies at each level prior to making an appeal to the next higher level.

8. The SDA may require the complainant to notify the SDA when an appeal is made to the State or to the United States Department of Labor.

Amended by R.1989 d.475, effective September 5, 1989.

See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA and the Administrative Procedure Act.

Amended by R.1994 d.78, effective February 7, 1994.

See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

Amended by R.1998 d.34, effective January 5, 1998.

See: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

12:41-1.7 Review procedures at the State level

(a) If a participant, local recipient or other interested person does not receive a decision at the SDA level within

60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant may file a written request for a review at the State level.

1. The request for a review shall be filed within 10 days of receipt of the adverse decision or 15 days from the date on which the complainant should have received a decision.

(b) Each request for a review shall be submitted to:

New Jersey Department of Labor
Director, Division of Employment and Training,
Workforce New Jersey-Careers
PO Box 055
Trenton, New Jersey 08625-0055

(c) Upon filing the request for review, the complainant shall simultaneously submit the following:

1. The full name, address and phone number of person(s) making the complaint/grievance;
2. The full name and address of the respondent (if any) against whom the complaint or grievance was made;
3. A clear and concise statement of the facts of the grievance;
4. Pertinent dates including the date the grievance was filed at the local level, the date of the alleged occurrence or act for which the complaint was filed and the date a written decision was reached or should have been reached;
5. If applicable, citations to the provisions of the JTPA or other agreements under the Act believed to have been violated;
6. A statement disclosing other steps pursued at any level regarding the complaint/grievance in question; and
7. A copy of the local written decision if such was rendered.

(d) The Commissioner shall issue a written decision within 30 days. The Commissioner's decision is final.

(e) If the complaint or grievance is based upon alleged discrimination the complaint shall be submitted to either the SDA or the Directorate of Civil Rights in accordance with Section 167 of the JTPA, P.L. 102-367.

Amended by R.1989 d.475, effective September 5, 1989.

Sec: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJTA and the Administrative Procedure Act.

Amended by R.1994 d.78, effective February 7, 1994.

Sec: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

Amended by R.1998 d.34, effective January 5, 1998.

Sec: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

Amended address.

12:41-1.8 Hearing procedures at the State level

(a) Any local recipient of JTPA funds adversely affected by the results of monitoring and/or investigations, or any other complainant who must seek resolution initially at the State level, having a complaint not subject to review at the SDA level, may submit to the Commissioner a request for review. The request for review shall be in writing and specify the basis for the complaint.

1. Any participant, subcontractor or other interested party aggrieved by a local recipient may submit to the Commissioner a written request for review.

(b) Upon receipt of the written request for a review, the Commissioner shall provide the complainant or respondent with written notice of the request. The written notice shall set forth that the complainant or the respondent may present documentary evidence he or she deems necessary for the Commissioner to render a decision. The Commissioner shall review the documentary evidence presented by the parties and shall request any additional information or conduct any investigation necessary to render a decision.

(c) The Commissioner's decision shall be based on the written record and rendered within 30 days after receipt of the request for review. The decision shall advise the parties of the right to an impartial hearing.

1. The Commissioner shall attempt to resolve the complaint informally prior to rendering a decision based on the written record.

2. The Commissioner may, upon agreement by both parties, extend the time period for the review by 15 days if an informal resolution seems imminent.

(d) If the decision of the Commissioner is adverse to either party or the decision is not made within 30 days, the complainant or respondent may request an impartial hearing.

1. The request for an impartial hearing shall be submitted in writing to the Commissioner within 10 days receipt of the adverse decision or 15 days from the date on which the complainant should have received a decision.

(e) The Commissioner shall issue a written decision within 30 days of receipt of the complaint. The Commissioner's decision shall be final. Upon receipt of the request for a hearing, the Commissioner shall refer the matter to the Office of Administrative Law for hearing before an administrative law judge.

(f) The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-16.1 et seq. The administrative law judge shall render a written decision in the matter within 60 days of the receipt of the written request for a hearing. The administrative law judge's decision shall be final.

(g) If the administrative law judge fails to issue a written decision within 60 days of receipt of the complaint, the complainant or respondent may appeal to the Secretary pursuant to 20 C.F.R. 627.600 et seq. utilizing the procedures set forth at N.J.A.C. 12:41-1.9.

Amended by R.1989 d.475, effective September 5, 1989.
See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA and the Administrative Procedure Act.

Amended by R.1994 d.78, effective February 7, 1994.

See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

Amended by R.1998 d.34, effective January 5, 1998.

See: 29 N.J.R. 4439(a), 30 N.J.R. 72(b).

In (a), added last sentence; deleted (b)1, (b)3 and (b)4; rewrote (b)5 and (c); added a new (f); and recodified former (f) as (g).

12:41-1.9 Federal review procedures

(a) If the Commissioner fails to issue a decision as required by N.J.A.C. 12:41-1.7 and 1.8, respectively, the complainant or respondent may request a determination from the United States Secretary of Labor whether reasonable cause exists to believe that the JTPA or its regulations have been violated.

(b) A complainant or respondent making a request to the Secretary due to non-decision by the Commissioner on a grievance shall use the following procedures and submit the following information when filing the appeal:

1. The request shall be filed no later than 15 days from the date on which the complainant should have received a decision. Appeals shall be submitted to:

Secretary of Labor
United States Department of Labor
Washington, D.C. 20210

2. The full name, address and telephone number of the person making the complaint;

3. The full name and address of the respondent against whom the complaint is made;

4. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

5. Citations to the provisions of the JTPA, regulations, grant or other agreements under the JTPA believed to have been violated;

6. A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

7. A statement of the date the complaint was filed with the Commissioner, the date on which the Commissioner should have issued a decision, and an attestation that no decision was issued.

(c) A request shall be considered filed when the Secretary receives from the complainant or respondent a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and SDA grant recipient.

(d) The Secretary shall act within 90 days of the receipt of the request. When there is cause to believe that the JTPA or regulations have been violated, the Secretary shall direct the Department to issue a decision to adjudicate the dispute pursuant to State and local procedures. The Commissioner or his or her designee shall issue a decision within 60 days of the Secretary's order.

(e) A complaint alleging violation of the JTPA, Section 143 labor standards may be submitted to the Secretary of Labor under the terms and conditions specified at N.J.A.C. 12:41-1.12, Section 143 labor standards complaints.

(f) A complainant or respondent shall notify the Commissioner if he or she plans to submit an appeal to the United States Department of Labor. Any local recipient or SDA upon learning of a complainant's or respondent's intention of filing an appeal to the United States Department of Labor shall inform the Commissioner.

Amended by R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.10 Protection of complainants

(a) No recipient of JTPA funds shall discriminate against or unlawfully deny JTPA benefits to any participant or individual connected with the administration of the program who has filed a complaint or instituted or caused to be instituted any proceeding related to the JTPA, or has testified or is about to testify in any such proceeding or investigation under or related to the JTPA.

(b) The Secretary, as set forth at 20 CFR 627.600 et seq., or the Commissioner shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

Amended by R.1989 d.475, effective September 5, 1989.
See: 21 N.J.R. 1498(a), 21 N.J.R. 2799(a).

Provisions added regarding NJJTA; deletion of U.S.C.A. reference and addition of Commissioner at (b).

Amended by R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.11 Eligibility determination complaints

In cases where an applicant disagrees with the eligibility determination made by a Service Delivery Area, the local level grievance procedure shall apply. Applicants who disagree with the eligibility determination must be advised that they may use the grievance system to appeal the initial eligibility determination.

New Rule, R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.12 Section 143 labor standards violations: complaints

(a) Pursuant to the Federal Job Training Reform Amendments of 1992, P.L. 102-367, complainants alleging violations of labor standards at Section 143 of the JTPA may appeal to the Secretary of Labor under the conditions described below. Section 143 labor standards cover health and safety, worker's compensation, benefit and working conditions, nondisplacement of currently employed workers, payment of minimum wage, noninterference in union organizing and compliance with the Davis-Bacon Act, U.S.C.A. 276(a) et seq.

(b) A complaint alleging JTPA Section 143 violations may be submitted to the Secretary of Labor by either party to the complaint when:

1. The complainant has exhausted the local and State grievance procedures set forth in this chapter; or
2. The 60-day time period specified in this chapter for reaching a decision under the local or State procedure has elapsed without a decision.

(c) Pursuant to 20 CFR 627.600 et seq., the Secretary of Labor shall investigate the allegations contained in a complaint alleging violation(s) of JTPA Section 143, make a determination whether a violation has occurred, and issue a decision within 120 days of receipt by the Secretary of Labor of the complaint. Such complaints are to be directed to the:

Secretary of Labor
United States Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

New Rule, R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.13 Section 143 labor standards complaints: remedies

(a) Except as provided below, violations of Section 143 shall be limited to:

1. Suspension or termination of payments under JTPA;
2. Prohibition of placement of a participant, for an appropriate period of time, in a program under the Act with an employer that has violated Section 143; and/or
3. Appropriate equitable relief (other than back pay).

(b) Remedies are available under the following conditions: for violations of the benefits and working condition requirements, Section 143(a)(4); displacement of currently employed workers, Section 143(b)(1); employing participants when another individual is on layoff or the employer terminates regular employees to hire JTPA participants, Section 143(b)(3); or when the prevailing wage requirements of the Davis-Bacon Act are not met.

(c) Available remedies for violations of Sections 143(a)(4), (b)(1), (b)(3), and (d) are those listed in (a) above and the following:

1. Reinstatement of the grievant to the position held prior to displacement;
2. Payment of lost wages and benefits; and/or
3. Reestablishment of other relevant terms, conditions, and privileges of employment.

(d) A grievant may pursue remedies authorized under another Federal, State, or local law for a violation of Section 143 of the JTPA.

New Rule, R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).

12:41-1.14 Section 143 labor standards complaints: binding arbitration

(a) As an alternative to the procedure set forth at N.J.A.C. 12:41-1.12, a person alleging a violation of Section 143 may submit the grievance to binding arbitration if a collective bargaining agreement covering the parties to the grievance so provides.

(b) A person electing to have her or his complaint on JTPA Section 143 labor standards violation(s) processed under binding arbitration provisions is subject to the following requirements:

1. The person shall choose binding arbitration before, and in lieu of, initiating a complaint under other grievance procedures provided under Section 144 of the JTPA; and
2. The person may not elect binding arbitration for a complaint that previously has been subject to any other grievance procedure established under the JTPA.

(c) Binding arbitration decisions under this section are not reviewable by the Secretary of Labor.

(d) The remedies available to a grievant under binding arbitration are limited to:

1. Appropriate equitable relief (other than back pay);
2. Reinstatement of the grievant to the position held by the grievant prior to displacement;
3. Payment of lost wages and benefits; and
4. Reestablishment of other relevant terms, conditions, and privileges of employment.

(e) The grievant may pursue remedies authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

New Rule, R.1994 d.78, effective February 7, 1994.
See: 25 N.J.R. 5456(a), 26 N.J.R. 810(a).
Amended by R.1994 d.491, effective September 19, 1994.

See: 26 N.J.R. 2864(a), 26 N.J.R. 3872(a).