

APPENDIX A

**Grievance Rights for Regular Employees of
CWEP, JOIN, Employer Incentive Program (EIP),
and Employment Subsidy Program (ESP) Employers**

A. DEFINITION

The Department of Health and Human Resources acknowledges that CWEP, JOIN, EIP, **and ESP** work assignments shall not:

1. Result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;
2. Impair existing contracts for services or collective bargaining agreements;
3. Result in the employment or assignment of a participant or the filling of a position when any other person not supported under this program is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this program;
4. Shall not infringe in any way upon promotional opportunities of persons currently in jobs not funded under this program; and
5. Shall not result in the filling of any established unfilled position vacancy by a participant assigned to the WV WORKS program. (This applies to CWEP and JOIN only.)

B. PROCEDURES TO FOLLOW TO RESOLVE REGULAR EMPLOYEE GRIEVANCES

1. The grievance must be filed within 90 days of the date that the perceived displacement occurred.
2. Each worksite will be provided with Employee Grievance Posters and grievance procedures and forms. The posters shall be placed in locations conspicuous to employees.

3. The procedures for resolving complaints by regular employees or their representatives that a work assignment of a WV WORKS participant violates the above prohibition are as follows:

Step 1: The grievant attempts to resolve the complaint with his/her immediate supervisor within two (2) days of the alleged occurrence. A conference or hearing can be held.

The supervisor shall give a written response to the grievant within three (3) days. The grievant may accept the decision or proceed to:

Step 2: The grievant requests a review from the employer within two (2) days. The employer gives a written response to the grievant within five (5) days. Grievant accepts the decision or proceeds to:

Step 3: Written WV WORKS Grievances form is forwarded by the employer within two (2) days to the local WV WORKS Supervisor.

The WV WORKS Supervisor will forward the grievance form to the DHHR Hearing Officer within two (2) days of receipt of the form from the employer. The Hearings Officer will generally render a decision within fifteen (15) days.

Step 4: The decision of the Hearings Officer may be appealed by the grievant within 30 days after the receipt of the Hearings Officer's decision. The appeal must be sent to the:

Office of Administrative Law Judges
U.S. Department of Labor
Vanguard Building
Room 600
1111 20th Street, N.W.
Washington, D.C. 20036

The appeal shall contain:

- (a) The full name, address and telephone number of the appellant;
- (b) The provisions of the Statute or regulations believed to have been violated;

- (c) A copy of the original complaint filed by the appellant with the State; and
- (d) A copy of the State's funding and decision regarding the appellants complaint.

The Office of Administrative Law Judges will request the following from the Hearings Officer:

- 4. Upon receipt of an appeal the Office of Administrative Law Judge shall request from the State agency and the State shall, within 30 days of such request, certify and file with the Office of Administrative Law Judges the entire administrative record of the matter under appeal. The DHHR shall send copies of this record to the Assistant Secretary for Employment and Training and the Assistant Secretary for Family Support at the addresses set forth in Step 4 of this section.
- 5. Upon receipt of the above information, the Assistant Secretary for Employment and Training shall review the record and through the Office of the Solicitor of Labor, file, if appropriate, a brief or a report with the Office of Administrative Law Judges for that office's consideration. DHHR and the Assistant Secretary for the Family Support may also file a report with the Office of Administrative Law Judges.
- 6. The decision of the Office of Administrative Law Judges outlined in Step 4 of this section shall be the final decision of the Secretary of Labor on the appeal.