Report of Investigation
SOP# 1000

Employment Discrimination Bureau
North Carolina Department of Labor

Procedure approved by: Tiffany Lathan, Bureau Chief

Signature: Tiffany Lathan **Date:** 7/28/14

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Signature: Kathy Woodford **Date:** 7/28/14

STANDARD OPERATING PROCEDURE MANUAL

1. PURPOSE and SCOPE

1.1. Purpose

This SOP establishes the procedure used to prepare a Report of Investigation. This procedure has the following goal(s):

- To ensure the report includes all necessary administrative information pertaining to the case, such as the complaint file number and names of the parties;
- To ensure that the facts of the case are addressed in the report, along with source information;
- To ensure the elements of a REDA violation are analyzed logically in the report;
- To ensure the Respondent's LNR is discussed;
- To ensure overall consistency among all reports of investigation.

1.2. Scope

This SOP outlines the necessary steps involved preparing a report of investigation, including the overall appearance and organization of the report and the inclusion of separate fact and analysis sections. The report must be sure to address the four elements of a REDA violation, as well as any proffered LNR, and a conclusion regarding merit must be stated. For Occupational Safety & Health (OSH) cases, also refer to the OSH Discrimination Manual for specific OSH procedures.

1.3. Regulations

The following statutes, rules and/or codes must be followed while performing this SOP (click the links for the most up-to-date rules and laws):

1.3.1. Article 21 of NCGS 95 (NCGS §95-240, et al); and

1.3.2. Department of Labor (DOL) Record Retention Policy

2. PERSONNEL RESPONSIBILITIES

The following is a list of people who participate in the procedure and the overall responsibilities of each role.

Role	Responsibilities
Investigator	• Prepare an organized report with party names and file number; • State relevant allegations and the facts with supporting source information; • Address the four elements of a REDA violation; • Include analysis of the connection between the alleged protected activity and adverse employment action; • Include analysis of Respondent's proffered LNR; • Include a conclusion; • Write in a logical and clear fashion.

3. HEALTH AND SAFETY ISSUES

Refer to the *Employee Safety and Health Program Policies*, the *Employee Safety and Health Manual*, and the *Employee Safety Rules* on the DOL Intranet for information related to safety matters affecting EDB personnel. For information related to the Americans with Disabilities Act, refer to the ADA Checklist on the Intranet as well. To access these policies and checklists, click on the links above or visit the DOL Intranet *Safety and Health Program* and the EDB *Standard Operating Procedures* pages.

4. PROCEDURE

4.1. Trigger

This procedure is triggered after the investigation has been concluded and a determination of *merit or no merit* has been made and settlement is not possible. *A report of investigation (ROI) is only necessary in merit and no-merit cases.* Administrative closures, withdrawals, uncooperative closures, bankruptcy closures, 90-day right-to-sue closures, and settlement closures do not require a report of investigation, but rather require brief memos to file.

Note: If the investigator intends to find merit based on the evidence gathered during the investigation, then the investigator should attempt additional settlement discussions before writing the ROI.

4.2. Primary Procedure

4.2.1. **Cover Sheet**--Each report should begin with a cover sheet that includes, at minimum:

a. The date the report was concluded;

b. The file number;

c. Complainant's name and attorney representative, if represented;

d. Respondent's name and attorney representative, if represented;

e. A brief summary of the Complainant's allegation and the specific, relevant provision of REDA;

f. The finding of merit or no merit.

4.2.2. **Synopsis**--The page following the cover, should contain a brief synopsis, again stating the allegation, the parties, but most importantly, it shall include a statement pertaining to the *timeliness* of the complaint.

4.2.3. **Investigative Findings / Chronology**--The report shall contain investigative findings and/or a chronology of events. The facts contained in this section will be utilized by the investigator to draw conclusions in the later analysis section. As such, this section must set forth *all of the specific, relevant facts* of the case including:

a. Why in particular the Complainant believes he/she was retaliated against;

b. The Respondent's proffered "legitimate, non-discriminatory reason" (LNR) for termination;

c. Any evidence of pretext (that the Respondent's LNR was an attempt to cover actual retaliation, such as unequal treatment among employees in similarly situated circumstances).

4.2.4. **Source References within Investigative Findings**—The investigator *must* support all relevant facts listed in the Investigative Findings / Chronology section by referencing the source of the information. For instance, the investigator may conclude a specific fact statement with "See Interview Statement with Complainant, dated 01/01/2000" to point to the source of that particular fact, or the investigator may point to a specific piece of evidence in the file that is labeled as Exhibit C, referencing "See Complainant's Exhibit C." How the source is referenced may vary depending on the investigator's preferred style; however, it is necessary to identify how the information was obtained.

4.2.5. **Analysis**--The report shall contain a logically written analysis section, which shall specifically address the four elements of a REDA violation.

a. Each element shall be addressed separately, discussing whether the elements were proved based on the facts set forth in the previous "investigative findings" or "chronology" section. Again, the four elements to be addressed are as follows:

   i. Protected Activity—Did the Complainant act in a way (or was suspected of having acted in a way) that is protected by REDA?

   ii. Respondent Knowledge—Was Respondent aware of or suspect the Complainant's involvement in a protected activity?

   iii. Adverse Employment Action—Were Complainant's benefits of employment affected in a way that is defined by REDA?

   iv. Causal Connection—Is there a causal link between the protected activity and the adverse action? Did Respondent retaliate against Complainant as alleged?

b. The causal portion of the analysis must be written in a logical format as this is the section where the facts are all linked together to form a conclusion as to whether the Respondent violated the law. Because it is possible that multiple Complainant allegations and LNR's will need to be addressed in this section, logical and organized writing is essential. A good analysis will likely include:

   i. A statement of the issue in question, such as Complainant's allegation that he/she was retaliated against because of the protected activity;

   ii. Facts that support Complainant's allegation of a connection between the protected activity and the adverse employment action;

   iii. A statement of the Respondent's LNR;

   iv. Facts that support the Respondent's LNR and disprove Complainant's alleged causal connection;

   v. Facts that disprove Respondent's LNR or suggest pretext;

   vi. Any known issues pertaining to the truth of a party's statements;

   vii. A final concise paragraph or sentence that draws all of the facts together and concludes with a merit or no merit finding.

4.2.6. **Remedy**—*In merit cases*, the investigator should make a *recommendation* of appropriate relief in the report of investigation. The investigator is *not authorized* to cite/fine an employer under REDA. Rather, the Complainant must seek relief in court.

a. REDA authorizes *the court* to award the following types of relief:

   i. an injunction to enjoin a continued violation of REDA (meaning an order from the court to prohibit the employer's continued illegal action, such as an order to prohibit the employer from cutting the Complainant's work hours); and/or

   ii. reinstatement to the same position or an equivalent position; and/or

iii. reinstatement of full benefits and seniority; and/or

iv. compensation for lost wages, lost benefits, and other economic losses that were proximately caused by (i.e. a direct result of) the retaliatory act.

b. Typically, the investigator should focus only on the calculation of actual damages in the form of *back wages* (what the Complainant would have earned had he/she remained employed) and possibly any benefits lost, such as insurance. The court has the authority to consider additional *proximate damages* (such as missed mortgage payments directly resulting from loss of work), even without a recommendation from the investigator regarding these particular damages. However, should the investigator wish to include these additional proximate damages in the remedy recommendation, then documentary evidence must be submitted to the investigator to prove the alleged damages.

c. Unemployment insurance (UI) should be considered, and since the Complainant has an obligation to mitigate damages, any wages earned via new employment must also considered.

d. The typical remedy formula is: $ amount the Complainant would have earned from termination until current date MINUS UI received MINUS actual wages received if working in another job. Additional proximate damages, such as lost health insurance, may be added in, as well.

4.2.7. **Disposition**—The report shall contain a final, concise statement of merit or no merit.

4.3. Alternative Procedures

4.3.1. **Alt. to 4.2.6. -- Remedy Calculation of Unemployment Benefits Received:**

During the remedy calculation, rather than subtracting unemployment benefits out of the total that Respondent owes in damages, the investigator can recommend full back pay including the amount paid by the State in unemployment benefits. In such cases, however, the investigator shall require the Respondent to send a check to the Division of Employment Security in the amount necessary to reimburse the agency fully for money already paid to the Complainant via unemployment insurance. This money must go to the Division of Employment Security, rather than the Complainant, in order to prevent the Complainant's unjust enrichment (i.e. "double dipping"). The authority to do this comes from NCGS §96 – 14(8), which states that "Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the Division by the employer for application against the overpayment."

4.4. Exception Procedures - N/A

5. CUSTOMER SERVICE REQUIREMENTS

The following table lists the customer service requirements that must be satisfied for each Customer of the procedure.

Customer	Requirements
Public and Bureau Chief	It is necessary to write in a logical manner and to remain as clear and concise as possible throughout the report so that future readers may understand the case and final disposition.

6. DATA AND RECORD MANAGEMENT

6.1. Data Entry in Oracle – N/A

6.2. Record Retention

6.2.1. All records must be retained in the file and may not be destroyed, per the DOL Retention Policy. A copy of the report of investigation must be retained in the file accordingly.

7. Exhibits

Exhibits are examples of forms, letters, checklists, reports or other documents that are used or created during the execution of this SOP. Exhibits referenced in this SOP are available for view on the SOP website.

7.1.1. Exhibit 1000-1 (Sample merit ROI)

7.1.2. Exhibit 1000-2 (Sample no merit ROI)