Closing Cases with Merit or No Merit
SOP# 1100

Employment Discrimination Bureau
North Carolina Department of Labor

Procedure approved by: Tiffany Lathan, Bureau Chief

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STANDARD OPERATING PROCEDURE MANUAL

1. PURPOSE and SCOPE

1.1. Purpose

This SOP establishes the procedure used to close merit and no merit complaints. This procedure has the following goal(s):

- To encourage settlement attempts in merit cases;
- To ensure the issuance of an appropriate right-to-sue letter, when required;
- To ensure that the investigator properly informs the parties of the findings and the meaning of the right-to-sue letter.

1.2. Scope

This SOP outlines the necessary steps involved in closing investigations that result in merit or no-merit findings, including the closing conferences and the issuance of the right-to-sue letter. Furthermore, in merit cases, additional settlement and/or litigation should be explored by the investigator, and as such is discussed in this SOP. 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. 13 NCAC 19.0603;

1.3.2. 13 NCAC 19.0604;

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

1.3.4. 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	• In merit cases, the investigator shall explore settlement possibilities *again* at the conclusion of the case. • In merit cases, the investigator should consider the possibility of litigation on behalf of the Complainant. • The investigator shall issue a right-to-sue letter at the closure of the case, unless the parties settle or the Dept. of Labor wishes to litigate. • The investigator shall conduct a closing conference with the parties to explain the investigation findings and the right-to-sue letter or litigation potential.

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 when an investigation is completed and the investigator has found merit or no merit to the allegations.

4.2. Primary Procedure

4.2.1. If the investigator intends to find merit based on the evidence gathered during the investigation, then the investigator should attempt additional settlement discussions.

a. The investigator should make it known that neither party is required to settle, but should encourage the parties to consider settlement given the evidence.

b. The investigator may discuss the potential benefits of settlement, such as how settlement would allow the parties to avoid litigation expenses, additional attorney fees, potential treble damages in court, and the possible lengthy process of litigation.

c. If the parties agree to settle, refer to SOP# 800. Otherwise, proceed as follows.

4.2.2. The investigator shall draft a report of investigation (ROI) per SOP# 1000. Once the ROI is complete, proceed below.

4.2.3. In a merit case, the investigator should decide whether to pursue the possibility of DOL litigation on the Complainant's behalf.

a. The investigator may confer with DOL Legal Affairs and the Bureau Chief regarding the potential for litigation or may proceed with 4.2.4. instead.

b. If the Legal Affairs Division wishes to pursue litigation, the investigator shall obtain guidance from Legal Affairs on how to address the parties from this point forward. No right to sue letter will be given at this time.

c. Assuming the DOL does not file litigation, the investigator shall proceed as follows with 4.2.4.

4.2.4. The investigator shall conduct separate closing conferences with the parties. In the closing conference, the investigator shall:

a. Explain the outcome of the investigation, preferably including significant relevant facts that led to the conclusion;

b. Explain the right-to-sue letter and that a lawsuit must be filed within 90 days of the date on the letter if the Complainant wishes to file suit;

c. Allow for any questions;

d. Consider any additional arguments made by the parties. If some new relevant information surfaces that could possibly change the outcome of the case, then the investigator shall return to the investigation and alter the ROI as necessary. If the new information does not change the outcome of the investigation, then the investigator shall proceed with closing.

4.2.5. The investigator shall issue a merit or no-merit right-to-sue letter to the Complainant and mail a copy to the Respondent. Refer to Exhibit 1100-1 and 1100-2 respectively for sample merit and no merit letters. The right-to-sue letter must:

a. State the Complainant's name and address, as well as Respondent's name;

b. State that there is sufficient or insufficient evidence (depending on merit or no merit) to establish that a violation of law occurred;

c. State that the Complainant has only 90 days from the date on the letter to file a lawsuit, if he/she wishes to do so. After the expiration of the 90 days, the Complainant is barred from filing a lawsuit under REDA;

d. Be dated the day the investigation is closed (after the report of investigation is completed). If the letter cannot be mailed that day, then the letter may be dated

with the next business date. For instance, a letter completed after mail pickup on a Friday afternoon may be dated for the following Monday.

4.2.6. The investigator must keep a copy of the right-to-sue letter in the file.

4.3. Alternative Procedures – N / A

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 (Complainants and Respondents)	Clear communication, both in writing and verbally, is a must so that the parties understand all information being discussed. It is necessary to remain courteous and respectful when dealing with the public, even in the face of frustration. Though the investigator must remain professional at all times, verbal abuse from a party or witness will not be tolerated, and the investigator may end a conversation in such circumstances.

6. DATA AND RECORD MANAGEMENT

6.1. Data Entry in Oracle

6.1.1. If a merit or no-merit right-to-sue letter is issued at the close of the investigation, the investigator must enter the following information into Oracle (Refer to Exhibit Oracle for screenshot):

a. Investigator
b. Assigned Date
c. Received
d. R Contact
e. C Contact
f. Completed (date the investigation was completed, which should be the same day as closed date)
g. Inv Finding (D/RTS for no merit or M/RTS for merit)
h. Closure Date (date the case was closed)

6.1.2. If a merit case goes to Legal Affairs for litigation review, but the case is not litigated by DOL, then investigator must enter the following information (Refer to Exhibit 1100-3 for screenshot):

a. Investigator
b. Assigned Date
c. Received
d. R Contact
e. C Contact
f. Completed (date the investigation was completed)
g. To Admin (date case was sent to Legal for review)
h. Inv Finding (D/RTS or M/RTS)
i. Closure Date (date the RTS letter was issued (after any review by Legal Affairs, etc.))

6.1.3. If the case is litigated, the investigator shall enter (Refer to Exhibit 1100-3 for screenshot):

a. Investigator
b. Assigned Date
c. Received
d. R Contact
e. C Contact
f. Completed (date the investigation was completed)
g. To Admin (date case was sent to Legal for review)
h. Inv Finding (Merit) (note this is different than M/RTS)
i. Closure Date (date the litigation concludes)

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. Records include, but are not limited to, a copy of the right-to sue letter, the ROI, the activity log, complaint form, questionnaire, emails, and any evidence submitted by the Complainant or Respondent.

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 1100-1 (copy of merit right-to-sue letter)

7.1.2. Exhibit 1100-2 (copy of no-merit right-to-sue letter)

7.1.3. Exhibit Oracle (screenshot of merit / no merit right-to-sue closure)

7.1.4. Exhibit 1100-3 (screenshot including "to admin" field)