

Settlements

SOP# 800

Employment Discrimination Bureau
North Carolina Department of Labor

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STANDARD OPERATING PROCEDURE MANUAL

1. PURPOSE and SCOPE

1.1. Purpose

This SOP establishes the procedure used in the settlement of REDA cases. This procedure has the following goal(s):

- To ensure the proper closure of settled complaints in both 3rd party and investigator-prepared settlements;
- To establish requirements for every investigator-prepared settlement agreement.

1.2. Scope

This SOP outlines the necessary steps involved in preparing a settlement agreement, including the proper form, specific language to be used, and execution requirements. This SOP also discusses the appropriate closure process for both investigator prepared and 3rd party settlements. 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:

- 1.3.1. 13 NCAC 19.0605;
- 1.3.2. Article 21 of NCGS 95 (NCGS §95-240, et al); and
- 1.3.3. 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	<ul style="list-style-type: none"> • When preparing a settlement agreement, the investigator shall use required legal language in the agreement; • The investigator shall require payment, when applicable, prior to case closure; • The investigator shall require proof of 3rd party settlements prior to case closure; • Shall close the REDA investigation after the settlement agreement is executed.

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 the parties have agreed to settle a REDA complaint and the investigator is to *prepare and draft* a settlement agreement.

4.2. Primary Procedure

- 4.2.1. The investigator shall prepare a settlement agreement using the standard EDB settlement agreement, only altering it as necessary. Refer to Exhibit 800-1. At the very least, the agreement must:
- a. Be in writing;
 - b. List the parties to the agreement;
 - c. Address the closure of the specific REDA complaint (ID'd by case number) as a result of the settlement;
 - d. Specify the relief obtained, such as
 - i. Back pay -- Back pay is what the Complainant would have earned had he/she remained employed until the current date. Unemployment Insurance (UI) benefits and new employment earnings are taken into consideration when calculating back pay. (See SOP# 1000 4.2.6. for a calculation formula and 4.3.1 for an alternative UI calculation in settlements.)
 - ii. Reinstatement
 - iii. An arbitrary sum of money
 - iv. Other remedies (The parties are welcome to agree to almost anything in order to settle. For instance, the parties may settle for a written apology.);
 - e. Discuss taxes (who is responsible for paying the taxes--the W2 or a 1099);
 - f. Require any check to be made out to the Complainant but mailed to the investigator;
 - g. Be signed and dated by both parties.

- 4.2.2. The settlement agreement (if drafted by the investigator) may *not* include language that settles a workers' compensation claim, as all workers' compensation claim settlements must be approved by the Industrial Commission.
- 4.2.3. The investigator must ensure execution of the agreement before closing the REDA case:
 - a. If payment is being made, the investigator must ensure that the payment is received. The check should be mailed to the investigator, who will then forward the check to the Complainant. If for some reason the payment is made directly to the Complainant, the investigator should receive a copy of the check, when possible, and notification from the Complainant that the payment was received.
 - b. The investigator must make sure that both parties have signed the agreement.
- 4.2.4. Once the settlement agreement has been signed and executed, the investigator shall conduct separate closing conferences with the parties. In the closing conference, the investigator shall:
 - a. Explain that the REDA case is closed as a result of the settlement and that no further action will be taken by EDB in this matter;
 - b. Explain to both parties that they will receive a copy of the executed agreement and a closure letter;
 - c. Explain to the Complainant that he/she will receive the settlement check (assuming settlement consisted of payment) in addition to the agreement and closure letter;
 - d. Confirm mailing addresses.
- 4.2.5. The investigator shall draft a memo to file regarding the settlement reached. The memo should include, at minimum:
 - a. The relief obtained, including any dollar amount if known;
 - b. The date of the agreement;
 - c. The date of case closure.
- 4.2.6. The investigator shall make a *copy* of any check *payment* and the executed settlement *agreement* to be maintained in the case file.
- 4.2.7. The investigator shall draft a closure letter. Refer to Exhibit 800-2 for closure letter. The investigator must mail a copy of the closure letter and a copy of the executed agreement to both parties. In addition, the investigator shall include any payment check with the letter to the Complainant.
- 4.2.8. No right-to-sue letter will be issued.

4.3. Alternative Procedures – N/A

4.4. Exception Procedures - 3rd Party Settlements

- 4.4.1. In many cases, the parties will draft their own settlement agreement, either during the course of the investigation or as part of a separate negotiation process. For instance, the Complainant and Respondent may reach an independent settlement agreement pertaining to the Complainant's workers' compensation claim. That agreement may contain "global" language that also settles other legal matters, such as the REDA complaint. When a 3rd party settlement agreement is reached, the investigator must ensure:
 - a. That the agreement contains language that closes Complainant's REDA case;
 - b. That the agreement has been executed (signed by both parties).
- 4.4.2. To determine that 4.4.1.a and b have been met:
 - a. The investigator *must* review and obtain a copy of the actual agreement (or the relevant portion of the agreement) for specific language to determine whether the REDA case has been included in the settlement; *or*
 - b. If a copy of the agreement is not provided, the investigator *must* obtain a written statement from Complainant or Complainant's attorney stating that the REDA claim has been settled as part of the separate agreement.
- 4.4.3. If 4.4.1. and 4.4.2. are not met, then the REDA investigation must proceed.
- 4.4.4. If 4.4.1. and 4.4.2. are met, then the REDA investigation may be closed. The investigator shall:
 - a. Draft a memo to file explaining that the case was closed as a result of a 3rd party settlement, the date of the 3rd party settlement, and the date of closure;
 - b. Place a copy of the 3rd party agreement or the statement from Complainant in the file;
 - c. Conduct a closing conference with the parties, as in 4.2.4.;
 - d. Draft and mail a closure notice to the parties, similar to 4.2.7., absent the payment and copy of the agreement. Refer to Exhibit 800-4 for a sample letter.

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. After settlement execution and case closure (**including 3rd party settlements**), the investigator must enter the following information into Oracle. Refer to Exhibit 800-3 for a screenshot.

- a. Investigator
- b. Assigned Date
- c. Received
- d. R Contact
- e. C Contact
- f. Completed date (date the case was closed)
- g. Inv Finding (Settled)
- h. Closure date (the date the case was closed)
- i. Amt Paid / Rehire / Other (if information known)

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, the settlement agreement, a copy of the check (if available), the memo to file, the settlement closure letter, the complaint form, and the Complainant questionnaire.

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 800-1 (sample agreement)
- 7.1.2. Exhibit 800-2 (sample closure letter)
- 7.1.3. Exhibit 800-3 (screenshot of Oracle)
- 7.1.4. Exhibit 800-4 (3rd party closure letter)