
From: Tursell, Beth
Sent: Monday, January 29, 2018 4:46 PM
To: ML-Regions (R)
Cc: ML-HQ-Ops Management; Tursell, Beth
Subject: Case Processing Suggestions
Attachments: C Case Outline Final.docx

Please see the attached Case Processing Memo. The content was developed almost entirely from suggestions from all levels of the organization in both the field and headquarters including Field Attorneys, Field Examiners, supervisors, managers as well as the RD, FMA, RAG and ARD Committees, Operations Management, the Front Office and the NLRBU. The General Counsel is grateful to all who participated directly or indirectly in this effort.

The Memo is a draft summary of suggestions. Many of the suggestions will need further refinement including addition of specific steps, deadlines, extensions of deadlines and further review of decisions. Therefore, please include your suggestions on implementation details with your comments. Above all, please keep in mind that this is a draft which can, and likely will have many changes before implementation. Ideas that are unworkable or inappropriate can be removed.

For convenience, please refer to the numbered items when making comments. You may provide input to myself, or directly to Deputy General Counsel John Kyle or General Counsel Peter Robb. Peter and now John will keep the origins of the comments confidential unless the author indicates otherwise. Finally, in order to keep the process moving, please provide your comments by Friday, February 9, 2018. To help manage the responses, please put "Case Processing Suggestions" in the subject line.

We thank you in advance. Your input is important.

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Concepts

1. Regions should be given the discretion and responsibility to tailor investigations to the nature of the case, with a primary goal of promoting efficient case processing where the resources devoted to an investigation are commensurate with the likelihood that the investigation materials will be useful at a later stage and the likelihood that the case will result in formal proceedings. Early resolution of cases, through withdrawal, dismissal or bi-lateral settlement will be emphasized in all respects. RDs, ARDs, and RAs should spend most of their time dealing with potential merit cases, and cede some decision-making authority to supervisors.
2. Settlement, in lieu of litigation, should remain an important objective in all cases, including merit cases, and should receive appropriate emphasis in regional case considerations,
3. There have been many suggestions to change time targets and/or re-classify cases. In order to help evaluate the impact of our case processing changes, there will be no change for 2018. However, the impact of the changes will be considered in individual evaluations [or in light of the changes described below, the time targets for Category 1 and 2 cases will be reduced by two weeks, while the time target for Category 3 cases will be extended by one week].
4. Investigations should be handled with dispatch, with a focus on early communication to promote efficiency and early resolution, when possible.
5. Resolution through bi-lateral settlement is preferred as long as the settlement is not inconsistent with the Act.

Filing of Charge:

6. Institutional Charging Parties, such as unions, employers, other organizations, and employees who have a personal representative shall be required to file with the charge.
7. A detailed position statement or affidavit including:
 8. recitation of facts
 9. identification of relevant witnesses
 10. names of all alleged discriminatees
 11. names and titles of relevant managers/supervisors/employer agents
 12. remedy sought
 13. Relevant documents such as:
 14. collective-bargaining agreement (mandatory)

15. relevant grievances (mandatory) all communications regarding information requests (mandatory)
16. Unrepresented individual Charging Parties should provide the same information when the charge is filed.
17. Regional personnel shall assist unrepresented individual Charging Parties in drafting a position statement which should be done in affidavit form and identifying relevant evidence.
18. Unrepresented Individual Charging Parties may be given additional time to provide documentary evidence.

Docketing the Charge:

19. All charges will be sent to a District docketing center for initial processing and assignment according to criteria to be developed.
20. All communication will be by email unless a party has no email address.
21. Docketing procedures will be reviewed to insure the docketed charge gets to the Board Agent as soon as possible.
22. By email, or letter if no email address, a communication shall go out to the Charged Party prominently noting that absent extenuating circumstances, which include possible 10(b) issues, the charge is subject to dismissal if the Charging Party fails to respond to any request from the Region within two business days.
23. Institutional Charged Parties and individual Charging Parties with email addresses will be immediately sent a copy of the Charge and a communication stating that all communication shall be through email.

Investigation

24. Charging Parties will be given two business days to cure any defect in the charges and/or other information to be filed with the charge under threat of dismissal, but the Regions should not dismiss until the Charging Party has failed to comply with a second two-day letter.
25. The general rule is that all affidavits can, and should, be taken by telephone.
26. Attestation should be by email where possible with a short deadline, typically two days.
27. Failure to attest within a deadline will be grounds for dismissal.
28. A field agent will have discretion to take an affidavit in person in complex cases, but Operations must approve any travel by the Board Agent.

29. All communications and the provision of evidence should be by email where possible.
30. Investigative subpoenas should be used sparingly and must be approved by Operations.
31. Jurisdiction information should be obtained by email, where possible and should recite only the facts that would be alleged in a complaint.
32. Within two business days after contacting the Charging Party, the Board Agent should contact the Charged Party.
33. The Board Agent should go over the allegations.
34. The Board Agent should seek resolution – bilateral resolutions that are not inconsistent with the Act should be accepted absent extraordinary circumstances.
35. Non-Board resolutions may be memorialized by email.
36. Within ten business days of receiving the charge, the Board Agent and supervisor shall meet to determine how the investigation can proceed.
37. The supervisor and Board Agent may dismiss clear non-merit cases without further review (Team Dismissal).
38. The supervisor and Board Agent may approve bi-lateral non-Board and informal settlement agreements that are not inconsistent with the Act (Team Settlement).
39. The supervisor and Board Agent may approve requests for withdrawal of unfair labor practice charges (Team Withdrawal).
40. If the supervisor and Board Agent decide to pursue the investigation, they should set a deadline for ultimate disposition of the charge.
41. A brief summary of the case processing team meeting should be placed in the electronic file and copied to the Regional Attorney.

Settlements

42. Prior to the opening of a hearing, Regions may take settlements of any kind that are not inconsistent with the Act.
43. After a hearing opens, Regions must seek approval from Operations for settlements that are non-Board or include back pay at less than 80%.
44. Templates shall be followed (assuming a system for quickly updating templates can be established).
45. Where all necessary evidence can be found in the FIR or Agenda Minute, Advice submissions should be submitted in summary form with appropriate references to the FIR or Agenda Minute.

46. Advice shall develop general guidance for recurring issues.
47. Legal ethics guidance memos of general applicability and tips of the month are posted on SharePoint, and can be accessed by subject matter..
48. When positions become vacant, explore the possibility of filling the vacancy with details in lieu of permanent positions.
49. Telework opportunities will be expanded.
50. Office sharing will be reviewed for those teleworking.
51. Travel to Regions will be minimized.
52. Centralization will be explored for:
 53. Docketing
 54. Case assignments
 55. R-Case decision writing
 56. Information Officer duties
 57. Legal research
58. Investigation will not seek EIN numbers or manuals, policies, handbooks etc. unless directly related to alleged violations.
59. Six months after implementation of these changes, time targets will be reviewed.