

OGC ULP INVESTIGATORY PROCESS

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PRE-CHARGE ASSISTANCE

- TECHNICAL ASSISTANCE - EXPLAIN
 - Rights and Obligations
 - ULP procedures
 - FLRA web site
 - Forms; written materials
- DRAFTING THE CHARGE
- COLLECTING AND ORGANIZING SUPPORTING EVIDENCE
- LEGAL IMPEDIMENTS TO FILING CHARGE

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ALTERNATIVE DISPUTE RESOLUTION SERVICES

- CODIFIED IN 2423.1(a) and (b)
- PROVIDED BEFORE AND AFTER CHARGE IS FILED
- SERVICES PROVIDED:
 - Facilitation
 - Intervention
 - Training
 - Education
- PARTIES ARE INFORMED ABOUT ADR THROUGH COMMUNICATION WITH RO AND OGC MATERIALS
- CRITERIA FOR PROVIDING ADR SERV.

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FILING A ULP CHARGE

- WHO MAY FILE?
 - Any person = individual, labor organization or Agency (section 2421.2)
- WHERE TO FILE?
 - Region where alleged ULP occurring/ed
 - If occurred in more than 1 region – file in either
- WHEN TO FILE?
 - Within six months of occurrence of alleged ULP (7118(a)(4)(A))
 - Exceptions

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INTAKE PROCEDURES

- **DOCKETING**
 - Reviewed generally – not docketed if deficient
- **CLARIFICATION – AMENDED CHARGE?**
- **OPENING LETTER TO PARTIES**
 - Description of ULP process
 - RO Agent contact
 - ADR
- **REVIEW OF CHARGE AFTER DOCKETING**
 - Jurisdiction
 - ADR
 - TRO - injunction
 - Related cases

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INITIAL CONTACT WITH PARTIES

- **BY LETTER OR TELEPHONE**
 - Explanation of ULP process
 - Request for documents; e.g. CBA
 - Witness list
 - Questionnaires - information case
 - Clarify issues
 - Statutory bars
 - Cooperation
 - Reference to Elements of the Violation
 - ADR tip sheet

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ALTERNATIVE CASE PROCESSING PROCEDURE

- VOLUNTARY PROCEDURE TO RESOLVE PENDING ULPS PRIOR TO RD MERIT DETERMINATION USING INTEREST-BASED APPROACH
- DOES NOT INVOLVE INVESTIGATING FACTS (no evid. taken) -NO MERIT DET.
- AGENT IS A FACILITATOR
- IF THIS FAILS, CASE IS INVESTIGATED BY ANOTHER AGENT (no communication between agents about failed ADR process) and RD issues merit determination

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INFORMAL RESOLUTION OF DISPUTES BEFORE MERIT DETERMINATION

- UNLIKE ALT. CASE PROCESSING PROCED. THIS OCCURS DURING INVESTIGATION
- EMPLOYS INTEREST-BASED APPROACH
- AGENT EXPLAINS PROCESS TO PARTIES
- DISPUTE IS CLARIFIED
- PARTIES' INTERESTS ARE EXPLORED
- AGENT CONTROLS PROCESS
- PARTIES' AGREEMENT IS WRITTEN AND CHARGE IS WITHDRAWN

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PREPARATION FOR INVESTIGATION

■ STEPS OF PREPARATION

- Identify issues of charge
- Review info. to develop areas of inquiry
- Research relevant case law
- Identify all allegations are covered
- Advise witnesses of date, time, location, and purpose of investigation
- Identify all available on site
- Explore settlement

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QUALITY STANDARDS

- EVERY INVESTIGATION MEETS THE QUALITY STANDARDS
- BEST POSSIBLE EVIDENCE IS OBTAINED
- ALL EVIDENCE IS RELEVANT AND ASSISTS RD IN REACHING PROPER DISPOSITION
- CASE FILE CONTAINS ALL RELEVANT EVIDENCE AND INFO. DISCOVERED
- FAIR AND EQUITABLE TREATMENT OF ALL PARTICIPANTS OF INVESTIGATION
- CHARGES PROCESSED EXPEDITIOUSLY

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SCOPE OF INVESTIGATIONS

■ CRITERIA FOR DETERMINING SCOPE OF ALL INVESTIGATIONS:

- Do the facts support finding a violation occurred/ing?
- Does case law support theory of violation?
- Is there jurisdiction over the charge?
- Are all elements of the violation established?
- Even if charge has merit, should prosecutorial discretion not to issue complaint be applied?

■ INVESTIGATION MAY BE CONCLUDED IF ANY OF THE CRITERIA ARE MET

■ SOLICITATION OF WITHDRAWAL

■ ABSENT WITHDRAWAL, DISMISSAL

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SETTLEMENTS

■ OGC SEEKS TO RESOLVE ULP DISPUTES AFTER A CHARGE IS FILED BUT BEFORE AN RD MERIT DETERMINATION

■ GOAL OF ALL SETTLEMENTS IS TO ENHANCE PARTIES' RELATIONSHIP; RESOLVE ISSUES; FURTHER THE PURPOSES AND POLICIES OF THE STATUTE

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ON-SITE INVESTIGATION

- AGENT CONSIDERS GOING ON-SITE:
 - Type of charge - e.g., physical evidence must be seen
 - If local
 - Cost is not a factor
 - Difficult credibility issues
 - Multiple ULPs to be investigated
 - Settlement would
 - Parties are new to ULP process
- ARRANGING OFFICIAL TIME FOR WITNESSES -COORDINATE WITH AGENCY REP.

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EVIDENCE

- INVESTIGATIVE TECHNIQUES
 - Taking affidavits and collecting documentary evidence in person
 - Sworn affidavit through telephone interview
 - Sworn interrogatories by mail
 - Confirming letters
 - Investigatory subpoena, issued by GC if criteria met
- ALL INVESTIGATIONS OBTAIN BEST POSSIBLE EVIDENCE
- AGENT ENSURES THAT ALL EVIDENCE IS IN CASE FILE – INCLUDING EVID. THAT REFUTES CHARGE

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DUTY OF THE PARTIES

- **DUTY TO COOPERATE (sec. 2423.8(b)(1))**
 - Making union officials, employees, agency supervisors and managers available to give testimony
 - Producing documentary evidence
 - Providing statements of position
- **LACK OF COOP. AT OUTSET OF AN INVESTIGATION**
 - Possible dismissal for lack of cooperation
- **LACK OF COOP. DURING INVESTIGATION - ADDIT. EVID. NOT SUBMITTED**
 - Possible dismissal on the merits

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DUTY OF PARTIES - #2

- **LACK OF CHARGED PARTY COOPERATION**
 - Consideration of investigatory subpoena

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SOLICITATION OF WITHDRAWAL BEFORE RD MERIT DETERMINATION

- AN AGENT CAN SOLICIT WITHDRAWAL BEFORE A MERIT DET. IS MADE WHEN IT IS MANIFESTLY CLEAR THAT:
 - Under case law that charge has no merit
 - There is no jurisdiction over the charge
 - An element of the violation is missing
- RD'S HAVE DISCRETION TO AUTHORIZE AGENTS TO SOLICIT WITHDRAWAL BEFORE RD DECISION BASED ON AGENT'S EVAL. OF WEIGHT OF EVID.

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CONSULTATION, ADVICE, CLEARANCE

- REGIONS CONTACT OGC HQ TO:
 - Discuss novel legal issues, generally or case-specific
 - Ask questions pertaining to case processing matters covered in the ULPCHM
 - Seek legal advice concerning a novel legal issue or clearance before taking certain actions

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RD MERIT DETERMINATIONS

■ METHODS TO PRESENT CASE TO RD:

- ▶ Final investigative report - contains info. re:
 - the parties
 - date the charge was filed
 - method of investigation
 - the allegations
 - material facts
 - applicable law
 - analysis (application of law to facts)
 - agent's recommendations
- ▶ Agenda - preparation of agenda minute
- ▶ Team presentation to RD

■ RD WEIGHS EVIDENCE

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PRE-COMPLAINT SETTLEMENT AGREEMENTS AFTER MERIT DETERM.

- Unilateral Settlement Agreement (sec. 2423.11(b))
- Bilateral Settlement Agreement (sec. 2423.12(a))

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SOLICITING WITHDRAWAL AFTER RD NON-MERIT DETERMINATION

- THE AGENT CONTACTS THE CHARGING PARTY TO ALLOW WITHDRAWAL OF THE CHARGE BEFORE THE CHARGE IS DISMISSED
 - Agent explains RD's rationale
 - Charging Party is allowed brief period of time to withdraw charge or dismissal will issue
 - Charging Party cannot delay decision to seek resolution of case with Charged Party

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PROSECUTORIAL DISCRETION

- DISMISSAL OF MERITORIOUS ULPs (DURING OR AFTER INVESTIGATION) WHEN LITIGATION DOES NOT EFFECTUATE THE PURPOSES AND POLICIES OF THE STATUTE
- CRITERIA APPLIED:
 - Nature of violation
 - Harm to bargaining relationship
 - Harm to employees
 - Pattern of conduct
 - Cure
 - The remedy
 - Changed circumstances
 - Precedent

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DISMISSAL LETTERS

- IF CHARGE HAS NO MERIT, AND IS NOT WITHDRAWN, RD ISSUES DISMISSAL LETTER ON BEHALF OF GC
- A QUALITY DISMISSAL LETTER CONTAINS:
 - Succinct statement of facts
 - Statement of applicable law with supporting case cite/s
 - Application of the case law to the facts of the case
 - Conclusion
 - Appeal Rights

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ULP APPEALS PROCESS

- CHARGING PARTY MAY FILE AN APPEAL OF DISMISSAL OF CHARGE TO OGC
- APPEAL IS GRANTED IF 1 OF THE FOLLOWING GROUNDS ARE ESTAB.:
 - RD failed to consider material facts that would have resulted in issuance of complaint
 - RD's decision is based on a finding of a material fact that is clearly erroneous
 - RD's decision is based on an incorrect statement of the rule of law
 - There is no Authority precedent
 - The conduct of the investigation resulted in prejudicial error

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ULP APPEALS - # 2

- POSSIBLE DISPOSITIONS OF APPEALS:
 - When grounds are established - remand to Region for
 - further investigation
 - further analysis, or
 - issuance of complaint and notice of hearing
 - When grounds are **not** established
 - appeal is denied and case is closed
 - When grounds are established as to one or more allegations but not the other/s
 - appeal is sustained in part and denied in part
- DECISION OF GC IS FINAL AND NOT APPEALABLE TO THE AUTHORITY

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COMPLIANCE

- REGIONS ARE RESPONSIBLE FOR ATTEMPTING TO OBTAIN COMPLETE, AND VOLUNTARY COMPLIANCE WITH THE TERMS OF AN AUTHORITY ORDER
- OGC HQ IS NOTIFIED IF ATTEMPTS FAIL AND, IF NECESSARY, ENFORCEMENT OF AUTHORITY'S ORDER IS COORDINATED WITH AUTHORITY

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