

## **10504 Precomplaint Compliance Procedures**

### **10504.1 Overview**

Experience has demonstrated that taking conscious steps to facilitate compliance *during initial case processing* greatly enhances the Agency's chances of achieving prompt and complete remedies for violations of the Act. Board agents are encouraged to learn to identify potential compliance problems as they conduct the initial case investigation. Greater attention to potential compliance issues early in the investigation will help to avoid situations where the Agency prevails in litigation only to fall short of obtaining a remedy.

Formal compliance cases involve ensuring a respondent's compliance with the requirements of a Board order or a court judgment that enforces a Board order. However, compliance-related issues also arise in connection with informal settlement agreements. Informal settlement agreements are usually negotiated by the Board agent who investigated the original charge or by the trial attorney assigned to litigate the case. Since many of the same principles apply to both formal compliance cases and informal settlement agreements, it is appropriate for all Board agents to acquaint themselves with the Agency's compliance processes.

### **10504.2 Information from Charging Parties/Potential Discriminatees**

Estimates of backpay liability are often necessary for the parties to consider settlement options prior to the issuance of complaint. Therefore, all information in the charging party's and/or discriminatees' possession that is relevant to calculating backpay should be obtained as part of the initial investigation. Care should be taken to avoid creating the impression that requesting this information indicates the Region already considers the charge meritorious. Thus, it is appropriate to explain to the charging party/discriminatee/respondent that the Agency collects such information so that it will be prepared for potential settlement discussions *in the event* a charge is found to have merit. The following is a list of information that should routinely be obtained during the initial investigation and should generally be included in affidavits in 8(a)(3) discharge cases.

- Names, addresses, phone numbers, e-mail addresses (contact information)
- Job classification(s)
- Wage rate(s)
- Hours of work
- Overtime (typically an estimated weekly average and whether it was seasonal or consistent throughout the year)
- Benefits, health insurance, pension, vacation/severance
- Bonuses (whether routine, for example, holiday or year-end bonus)
- Whether this is construction industry salting case (establish backpay period)

A more extensive compliance check list for Board agent use during initial investigations is set forth in Appendix 1.

### **10504.3 Identifying Unnamed Discriminatees**

In cases involving a large number of potential discriminatees, for example, allegations involving a mass layoff/discharge or a unilateral change affecting a large number of employees, identifying information should be sought for all persons who might be subject to the remedy. While it is not necessary to include such information in an affidavit, it is frequently possible to obtain, at minimum, a list of all employees and their contact information, such as addresses, telephone numbers, and e-mail addresses. An often-overlooked source of information in this regard is the membership records of an incumbent union. If necessary, Regions may also consider the use of Section 11 subpoenas. Sections 10508.9 and 10618.1.

### **10504.4 Recording Social Security Numbers/Interim Employers**

Social Security numbers may be used to locate missing discriminatees/witnesses and to obtain earnings verification from the Social Security Administration. In the interest of protecting privacy rights, Social Security numbers should never be included in affidavits. The preferable method is to record Social Security numbers in a separate file memo or to place in the file a copy of a document that includes the Social Security number(s). To the extent it is necessary to identify individuals by Social Security numbers in any document that may be subject to disclosure, only the last 4 digits should be used. The format of the number would be ###-##-\_\_\_\_. Care should be taken to ensure that complete Social Security numbers are not made part of any public document or otherwise inappropriately released.

Similarly, the identity of interim employers and the wages received by discriminatee(s) during the backpay period may become an important issue in settlement negotiations and/or future compliance proceedings. While it is not necessary or appropriate to include this information in an affidavit, it is helpful to record in the file any available information regarding interim employment.

### **10504.5 Obtain Full and Correct Name of Charged Parties**

It is often taken for granted that the identity of the charged party is correctly reflected in the charge. The accurate name and related information about a potential respondent is critical to obtaining compliance. Sections 10506.2(a), 10508.3, and 10682.2. Accordingly, every effort should be made to ensure that charged parties are correctly identified by name and that the status of incorporation, partnership or proprietorship, if any, is known. In the event the investigation raises a question as to the identity of the charged party, the Board agent should immediately seek to obtain all information relevant to resolving the issue. See Section 10508.6 for a list of investigatory resources. When clarifying information is obtained, all related pending charges should be promptly amended to correctly identify all charged parties.

### **10504.6 Labor Organization Respondents**

In cases involving charges against labor organizations, the full and correct name and related identifying information for the charged union (names and titles of officers) must be obtained. Similarly, complete identifying information should also be obtained

for any related entity (for example, a union-sponsored and/or administered benefit fund) if the related organization is implicated by the charge. If the investigation discloses that multiple parties are involved, all pending charges should be promptly amended to correctly identify all potential respondents.

#### **10504.7 Identifying Recidivist Respondents**

Early identification of business entities, individuals, and labor organizations that have a history of violating the Act and that have prior judgments against them permit Regions to take prompt remedial action. In cases involving Respondents that have previously settled cases informally, the Region may elect to require a formal settlement of later filed charges. (See ULP Manual sections 10164–10170 for a complete discussion of formal settlements.) More importantly, in instances where the Region’s initial investigation discloses the existence of a prior court judgment, the case may warrant prompt submission to the Contempt Litigation & Compliance Branch for consideration of contempt action. Prior judgments may be found by using the Appellate Court Lookup System (available on the intranet) or by performing a nationwide query using the Agency’s Case Activity Tracking System (CATS). Settlement history, both in a given Region and in the rest of the Agency’s jurisdiction, may also be obtained through CATS. See Section 10632 for a discussion of contempt and other post judgment proceedings.

#### **10504.8 Investigation of Alter Ego Operations, Disguised Continuances and Successors**

Some of the Agency’s most challenging investigations and litigation involve attempts by a respondent to avoid liability under the Act by creating new business entities, disguising ownership and/or selling its business operations. Prompt identification and investigation of these issues greatly enhance the likelihood that a satisfactory remedy will be obtained in what may otherwise prove to be an extremely problematic case. Sections 10506.2(a) and 10508.4. The Agency has many research tools to aid in such investigations. See Sections 10508.6–10508.9 for a description of the investigative resources available and OM 95-39 for a description of the evidence that may be available through these resources.

#### **10504.9 Derivative Liability**

In certain circumstances, persons or business entities other than the named-charged party may be held liable to remedy an unfair labor practice. Information that identifies and explains any such business relationship should be sought as soon as the existence of a related entity comes to light. In some cases, it may also be appropriate for the Region to consider “piercing the corporate veil” in order to assign personal liability to the principal officer(s) of the charged party. See Section 10682 for a more complete discussion of derivative liability.

#### **10504.10 Bankruptcy Coordinator**

Occasionally, during initial case investigations, Regions learn that the charged party is in the process of filing, has filed, or may be planning to file a bankruptcy petition. In order to insure that all appropriate steps are taken to safeguard the Agency’s interests in these situations, all such information should be immediately brought to the attention of the supervisory staff and the Region’s bankruptcy coordinator. See Section 10670.

**10504.11 Compliance Assistance From the Contempt Litigation & Compliance Branch**

The Contempt Litigation & Compliance Branch is available to consult with Regions about a broad range of compliance questions and problems. The Contempt hotline phone number is (202-273-3740).