






**Dispute Resolution in the Administrative Process:
Evaluation of the Occupational Safety and Health Review Commission
Settlement Part Program**

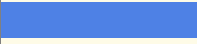



Supplemental Report on All Survey Responses

Settlement Part Survey Responses





Which of the following best describes your role in your most Settlement Part case ?

Answer		Response	%
Rep. of Employer- non attorney		8	11%
Rep of Employer- attorney		37	49%
Solicitor for DOL		19	25%
Authorized Employee Representative (Union)		8	11%
Attorney for Authorized Employee Representative		3	4%





What OSHRC Programs have you participated in?

Answer		Response	%
Simplified Proceedings		31	41%
Conventional Case through Mandatory Settlement		65	87%
Conventional case Resolved with a Trial		31	41%
Conventional Case Resolved without a Trial		47	63%





How many times have you participated in Simplified Proceedings (formerly called EZ Trial) ?

Answer		Response	%
zero times		44	59%
one time		9	12%
2-5 times		9	12%
more than 5 times		12	16%
Total		74	100%





How many times have you participated in an OSHRC Conventional Case settled through Mandatory Settlement Part?

Answer		Response	%
zero times		10	14%
one time		28	39%
2-5 times		21	29%
more than 5 times		13	18%
Total		72	100%

How many times have you participated in an OSHRC Conventional Case resolved with a Trial?

Answer		Response	%
zero times		42	57%
one time		8	11%
2-5 times		13	18%
more than 5 times		11	15%
Total		74	100%

How many times have you participated in an OSHRC Conventional Case resolved without a Trial?

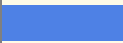



Answer		Response	%
zero times		28	38%
one time		7	9%
2-5 times		9	12%
more than 5 times		30	41%
Total		74	100%

Please describe your most recent case at Settlement Part





Answer	Response	%
Disagreement that OSHA violation(s) actually occurred	57	84%
Dispute about the fine amounts	49	72%
Dispute about the abatement period	9	13%
Dispute about OSHA's characterization of the violations as willful, repeat, or serious	49	72%
Other	7	10%

Other
NFPA Standard - Application
severe violator enforcement program
OSHA Justification, Arbitrary Enforcement
My client had bought the business in question after the violations had occurred, thus contended there was no liability.
Claimed OSHA was citing twice for same violation because no notice was given of first violation before citing same violations as a 2nd violation.
misconduct defense
We did not employ the injured.

Did you have a settlement conference on your recent case where you appeared in-person before a settlement judge?

Answer		Response	%
No, I did not have settlement conference where I appeared in person		22	30%
I appeared 1 time in person with the settlement judge for a settlement conference		34	46%
I appeared 2-5 times in person with the settlement judge for a settlement conference		15	20%
I appeared more than 5 times with the settlement judge for a settlement conference		3	4%

About how many times did you communicate with the judge during the settlement process?

Answer		Response	%
never		5	7%
only one		21	30%
2-5 times		39	55%
more than 5 times		6	8%
Total		71	100%

At what point was your case resolved? (If you had more than one case over the past year, please focus on your most recent case).

Answer		Response	%
Prior to a settlement conference		15	21%
After the conclusion of a settlement conference but before a trial was scheduled		29	40%
After the conclusion of the settlement conference, after a trial was scheduled, but before the start of a trial.		28	38%
During the course of a trial on the merits.		0	0%
After a trial on the merits.		1	1%
Total		73	100%

Do you think your case should have resolved sooner than it did?

Answer		Response	%
No		42	59%
Yes		30	42%

Yes

Ye

***Comments of Respondents are summarized and redacted to maintain confidentiality.**

..... We probably could have reached the same settlement weeks before the conference.

Would like the to address the safety issues as opposed to arguing classifications.

Workers are left exposed to uncorrected hazards until the case gets settled. This is problem with the law. ALJ's need to keep this in mind and how to improve the programs overall

The case involved extremely complex issues that would have required lengthy discussions prior to serious resolution.

The delay in settlement was due to the OSHA, not the OSHRC

[OSHA] not cooperative in settling the case.

Yes and no. Conference was earlier in the process than I would have liked, but settlement judge needed better training in ADR techniques (see 15).

The bigger the case, the more discovery needed prior to mandatory settlement. Otherwise, OSHA holds all the cards.

delays from OSHA

dragged on because OSHA not responsive

The case should have settled during the mandatory settlement conference.....

OSHA has changed from trying to help a company become a safer place to work, instead they are fining companies to be a source of income for the government.

OSHA was unreasonable

Difficulties with counsel

Inability of the OSHA..... to schedule an informal conference or consider the settlement offer of....

In your opinion, is the time at which any in-person settlement conference occurs within the life of a case:

Answer	Response	%
too early	1	1%
a little early	5	7%
just right	40	59%
a little late	11	16%
too late	0	0%
not applicable to my experience	11	16%
Total	68	100%

In your opinion, does the information exchange in advance of any in-person settlement conference begin:

Answer	Response	%
too early	2	3%
a little early	3	4%
just right	38	53%
a little late	16	22%
too late	2	3%
not applicable to my experience	11	15%
Total	72	100%

In your opinion, does information exchange (discovery) during in-person settlement conference begin:

Answer	Response	%
too early	2	3%
a little early	1	1%
just right	31	42%
a little late	15	20%
too late	3	4%
not applicable to my experience	22	30%
Total	74	100%

The following questions focus on your satisfaction with various aspects of OSHRC's Settlement Part Program. If you have more than one previous case before OSHRC, please focus on your most recent case in your responses.

Question	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied		Mean
How satisfied were you with the level of control you had over the process?	19	36	9	8	3	75	2.20
How satisfied were you with the fairness of the process?	16	39	11	8	1	75	2.19
How satisfied were you with the process overall?	12	44	10	8	1	75	2.23

Statistic	How satisfied were you with the level of control you had over the process?	How satisfied were you with the fairness of the process?	How satisfied were you with the process overall?
Min Value	1	1	1
Max Value	5	5	5
Mean	2.20	2.19	2.23
Variance	1.14	0.88	0.80
Standard Deviation	1.07	0.94	0.89
Total Responses	75	75	75

Please indicate your level of satisfaction with the following:

Question	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied		Mean
How satisfied with the level of respect with which you were treated during the Settlement Part processes?	31	38	4	0	2	75	1.72
How satisfied were you with the fairness of the Settlement Part processes?	16	36	11	7	2	72	2.21
How satisfied were you with the overall outcome of the case?	16	35	11	10	2	74	2.28

Statistic	How satisfied with the level of respect with which you were treated during the Settlement Part processes?	How satisfied were you with the fairness of the Settlement Part processes?	How satisfied were you with the overall outcome of the case?
Min Value	1	1	1
Max Value	5	5	5
Mean	1.72	2.21	2.28
Variance	0.64	0.98	1.08
Standard Deviation	0.80	0.99	1.04
Total Responses	75	72	74

Please indicate your level of satisfaction with the following :

Question	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied		Mean
How satisfied were you with the length of time it took to resolve the case?	2	30	27	13	1	73	2.74

Statistic	How satisfied were you with the length of time it took to resolve the case?
Min Value	1
Max Value	5
Mean	2.74
Variance	0.70
Standard Deviation	0.83
Total Responses	73

Do you agree or disagree with the following statements:

Question	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree		Mean
OSHRC's rules of procedure are easy to understand.	10	53	6	5	1	75	2.12
I think the scheduling of conferences, motions, and other matters was prompt.	4	33	15	21	2	75	2.79
The judge should have discretion to suspend discovery during the settlement process.	15	36	17	4	3	75	2.25
The amount of information exchanged in the case was appropriate given the facts/ nature of the case.	9	44	14	5	3	75	2.32
I was able to participate in the process fully as needed.	15	47	11	1	1	75	2.01

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagreed	Strongly Disagree		Mean
This case probably would not have settled without the help of the judge.	14	25	21	13	1	74	2.49
I think this case would have required more time if a trial on the merits was held.	20	18	18	18	0	74	2.46
I would have preferred a trial over a mandatory settlement conference.	4	10	25	26	9	74	3.35

Statistic	OSHRC's rules of procedure are easy to understand.	I think the scheduling of conferences, motions, and other matters was prompt.	The judge should have discretion to suspend discovery during the settlement process.	The amount of information exchanged in the case was appropriate given the facts/nature of the case.	I was able to participate in the process fully as needed.	This case probably would not have settled without the help of the judge.	I think this case would have required more time if a trial on the merits was held.	I would have preferred a trial over a mandatory settlement conference
Min Value	1	1	1	1	1	1	1	1
Max Value	5	5	5	5	5	5	4	5
Mean	2.12	2.79	2.25	2.32	2.01	2.49	2.46	3.35
Variance	0.59	1.01	0.95	0.84	0.53	1.08	1.29	1.08
Standard Deviation	0.77	1.00	0.97	0.92	0.73	1.04	1.14	1.04
Total Responses	75	75	75	75	75	74	74	74

Statistic	OSHRC's rules of procedure are easy to understand.	I think the scheduling of conferences and other matters was prompt.	The amount of information exchanged in the case was appropriate given the facts/nature of the case.	I was able to adequately present and defend my position.	This case probably would have settled earlier with the help of the judge.	I would have preferred engaging in formal settlement processes before a settlement judge.
Min Value	1	1	1	1	1	1
Max Value	4	4	4	4	5	5
Mean	2.03	1.82	1.91	1.74	2.73	2.79
Variance	0.65	0.52	0.50	0.44	1.31	1.06
Standard Deviation	0.80	0.72	0.71	0.66	1.14	1.03
Total Responses	66	66	68	68	66	68

Conventional Proceedings Survey Responses



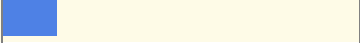

Which of the following best describes your role in your most recent Conventional Case?

Answer	Response	%
Rep. of Employer- non attorney	6	9%
Rep of Employer- attorney	40	59%
Solicitor for DOL	18	26%
Authorized Employee Representative (Union)	2	3%
Attorney for Authorized Employee Representative	0	0%
Other	2	3%





What OSHRC Programs have you participated in?

Answer	Response	%
Simplified Proceedings	38	56%
Conventional Case through Mandatory Settlement	48	71%
Conventional case Resolved with a Trial	32	47%
Conventional Case Resolved without a Trial	48	71%





How many times have you participated in Simplified Proceedings (formerly called EZ Trial?)

Answer		Response	%
zero times		30	45%
one time		6	9%
2-5 times		10	15%
more than 5 times		20	30%
Total		66	100%

How many times have you participated in an OSHRC Conventional Case settled through Mandatory Settlement.

Answer		Response	%
zero times		24	36%
one time		8	12%
2-5 times		14	21%
more than 5 times		20	30%
Total		66	100%

How many times have you participated in an OSHRC Conventional Case resolved with a Trial?

Answer		Response	%
zero times		34	52%
one time		4	6%
2-5 times		8	12%
more than 5 times		20	30%
Total		66	100%

How many times have you participated in an OSHRC Conventional Case resolved without a Trial?

Answer	Response	%
zero times	20	30%
one time	8	12%
2-5 times	8	12%
more than 5 times	30	45%
Total	66	100%

Please describe your most recent Conventional (Non-Simplified) case.

Answer	Response	%
Disagreement that OSHA violation(s) actually occurred	58	85%
Dispute about the fine amounts	56	82%
Dispute about the abatement period	26	38%
Dispute about OSHA's characterization of the violations as willful, repeat, or serious	54	79%
Other	6	9%

Other

dispute about jurisdiction

Dispute regarding SVEP Designation

Employer believe he was unfairly targeted or treated

About how many times did you communicate orally with the Judge during the litigation process before trial?

Answer	Response	%
Never	14	21%
Only 1	2	3%
2 - 5	44	67%
more than 5	6	9%

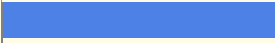

About how many times did you communicate in written form with the Judge during the litigation process before trial?

Answer	Response	%
never	13	20%
only one	13	20%
2-5 times	28	41%
more than 5 times	12	18%
Total	66	100%

At what point was your case resolved? (If you had more than one case over the past year, please focus on your most recent case).

Answer	Response	%
Before a trial on the merits was scheduled	36	55%
After a trial on the merits was scheduled, but before the trial began	24	36%
During the course of trial on the merits	0	0%
After a trial on the merits	6	9%
Total	66	100%

Do you think your case should have resolved sooner than it did?

Answer		Response	%
No		36	53%
Yes		33	47%

Yes

*Comments of Respondents are summarized and redacted to maintain confidentiality.

Comments about OSHA

DOL has gotten very rigid and unreasonable Many settlementsdelayed because extra negotiation has been required.

But it was a matter of process and "getting to 'yes'.....

[Citations] never should have been issued

Reluctance to consult with OSHA..... counsel

OSHA not sympathetic to budgets / fast-paced environment of start-up business.

If had been more responsive in settlement negotiations and had thoroughly reviewed the underlying facts, it would have been resolved sooner.

The OSHA office did not show the depth of knowledge or flexibility that the attorney for OSHA demonstrated.

DOL has become unbending and unreasonable

...Took time for OSHA to come around and realize the error of its ways

OSHA not business-friendly

OSHA delayed.....

Other Comments on Why Case May/Should Have Resolved Sooner

Given major disagreements about characterization of violations, it was unlikely this case would settle at all

Settlement was a long shot since

Part of the process is educational

The case was assigned to the Mandatory Settlement process but..... [not satisfied with the way it was handled].....

Many rescheduled appointments due to

.....and should have resolved at informal conference

It would have been helpful to have a court-mandated mediation.

I thought it should have settled after OSHAmeetings.

Most employers will not seriously talk settlement until a trial has been set and is imminent.

Should have settled at informal conference.

Negotiations were unnecessarily prolonged.

OSHRC delayed

..... took time to become reasonable

Case should not have been assigned to this judge

Mediation or speedy trial would have worked better

should have settled much earlier

....no reason to settle until trial is imminent- a flaw in the process

ALJ allowed negotiations to drag out

....exchange of relevant facts would have led to earlier resolution

In your opinion, does information exchange (discovery) in advance of any trial begin:

Answer	Response	%
too early	0	0%
a little early	4	6%
just right	50	74%
a little late	4	6%
too late	2	3%
not applicable to my experience	8	12%
Total	68	100%

In your opinion, does the information exchange (discovery) in advance of any trial end:

Answer	Response	%
too early	0	0%
a little early	12	18%
just right	36	53%
a little late	8	12%
too late	4	6%
not applicable to my experience	8	12%
Total	68	100%

The following questions focus on your satisfaction with various aspects of OSHRC's Conventional process. If you have more than one previous case before OSHRC, please focus on your most recent case in your responses.

Question	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied		Mean
How satisfied were you with the level of control you had over the process?	14	34	12	2	0	62	2.03
How satisfied were you with the fairness of the process?	24	30	8	4	0	66	1.88
How satisfied were you with the process overall?	18	36	8	2	0	64	1.91

Statistic	How satisfied were you with the level of control you had over the process?	How satisfied were you with the fairness of the process?	How satisfied were you with the process overall?
Min Value	1	1	1
Max Value	4	4	4
Mean	2.03	1.88	1.91
Variance	0.56	0.72	0.53
Standard Deviation	0.75	0.85	0.73
Total Responses	62	66	64

Please indicate your level of satisfaction with the following:

Question	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied		Mean
How satisfied with the level of respect with which you were treated during the Conventional processes?	36	24	2	4	0	66	1.61
How satisfied were you with the fairness of the outcome?	22	36	6	2	0	66	1.82
How satisfied were you with the overall outcome of the case?	22	30	12	2	0	66	1.91

Statistic	How satisfied with the level of respect with which you were treated during the Conventional processes?	How satisfied were you with the fairness of the outcome?	How satisfied were you with the overall outcome of the case?
Min Value	1	1	1
Max Value	4	4	4
Mean	1.61	1.82	1.91
Variance	0.67	0.52	0.64
Standard Deviation	0.82	0.72	0.80
Total Responses	66	66	66

Do you agree or disagree with the following statements?

Question	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree		Mean
OSHRC's rules of procedure are easy to understand.	16	36	10	4	0	66	2.03
I think the scheduling of conferences and other matters was prompt.	22	36	6	2	0	66	1.82
The amount of information exchanged in the case was appropriate given the facts/ nature of the case.	16	46	2	4	0	68	1.91
I was able to adequately present and defend my position.	24	40	2	2	0	68	1.74
This case probably would have settled earlier with the help of the judge.	12	14	24	12	4	66	2.73

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree		Mean
I would have preferred engaging in formal settlement processes before a settlement judge.	10	12	30	14	2	68	2.79

Statistic	OSHRC's rules of procedure are easy to understand.	I think the scheduling of conferences and other matters was prompt.	The amount of information exchanged in the case was appropriate given the facts/nature of the case.	I was able to adequately present and defend my position.	This case probably would have settled earlier with the help of the judge.	I would have preferred engaging in formal settlement processes before a settlement judge.
Min Value	1	1	1	1	1	1
Max Value	4	4	4	4	5	5
Mean	2.03	1.82	1.91	1.74	2.73	2.79
Variance	0.65	0.52	0.50	0.44	1.31	1.06
Standard Deviation	0.80	0.72	0.71	0.66	1.14	1.03
Total Responses	66	66	68	68	66	68