

UNFAIR LABOR PRACTICES (ULPs)

The Office of the General Counsel (OGC), through the seven Regional Offices, investigates, settles, and prosecutes ULP charges. The [Unfair Labor Practice Case Handling Manual](#) (ULPCHM) provides comprehensive guidance to OGC staff in preventing, resolving, processing and investigating ULP charges. The [Litigation Manual](#) provides comprehensive guidance to OGC Trial Attorneys in prosecuting those cases that the Regional Director has determined have merit. Summarized below are [FAQs](#) pertaining to the ULP process with appropriate links to the two Manuals (requires Adobe Acrobat Reader) and Regulations and Statute. If the answer to your question is not provided, please check the two Manuals on the web site or contact the [Regional Office](#) within your jurisdiction.

FAQs



PRE-CHARGE

- [*Before a charge is filed will the Regional Office provide technical assistance?*](#)
- [*Who may file a charge?*](#)
- [*If you decide to file a charge, what should you file?*](#)
- [*Where should you file your charge?*](#)
- [*Are there any time constraints with respect to when a charge must be filed?*](#)
- [*Are there other reasons why you may be prevented from filing a charge?*](#)
- [*Should you attach supporting evidence and documents to the charge?*](#)
- [*What documents should you prepare or gather to support a charge?*](#)
- [*Can you file a charge by fax?*](#)
- [*What happens if you file a charge in the wrong Region?*](#)
- [*Is it possible for your charge to be transferred to another Region even though you filed in the proper Region?*](#)
- [*Is there a page limitation to the charge?*](#)

PRE-INVESTIGATION

- *After a charge is filed what does the Regional Office look for when it reviews the charge?*
- *When the Region reviews a new charge will it consider whether injunctive relief should be sought even if not requested?*
- *Will a Region consider whether the use of Alternative Dispute Resolution techniques would help to resolve the underlying basis of the charge?*

THE INVESTIGATION

- *What is the purpose of an investigation?*
- *When does the investigatory process begin?*
- *What should you be prepared to discuss during the initial contact with the Regional Office Agent?*
- *What happens during an investigation?*
- *What happens if the charging party fails to cooperate during an investigation?*
- *How does a charged party cooperate during an investigation?*
- *When is an investigation considered complete?*

POST-INVESTIGATION

- *After an investigation has been completed, what happens next?*
- *What options does a Regional Director have with respect to making a merit determination on the charge?*
- *Will the Regional Director explain in a dismissal letter the basis for making the decision to dismiss the charge?*
- *Will you be given an opportunity to withdraw a charge before the Regional Director issues a dismissal letter?*
- *Is it possible that the Regional Director will dismiss your charge even if it has been determined to have merit?*

POST-ISSUANCE OF ULP COMPLAINT

- ***What happens after a Regional Director issues a ULP Complaint and Notice of Hearing?***
 - ***How long after issuance of complaint does a respondent have to file an answer?***
 - ***How long after issuance of complaint will the hearing take place?***
 - ***After issuance of a complaint and notice of hearing, are attempts still made to reach a settlement?***
 - ***What does the Trial Attorney do to prepare for a hearing?***
 - ***Are the parties required to engage in pre-hearing disclosure?***
 - ***What is required under pre-hearing disclosure and when does it occur?***
 - ***Do the parties confer with the Administrative Law Judge before the hearing?***
 - ***Generally, what happens at the trial?***
 - ***What role does the charging party's representative have at the hearing?***
 - ***How many trials are held during the year?***
 - ***After an Administrative Law Judge issues a decision and recommended order, what happens next?***
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PRE-CHARGE

Before a charge is filed will the Regional Office provide technical assistance?

Yes. Each [Region](#) is available to provide various types of technical assistance such as:

- General explanation of the rights and obligations under the Statute;
- Explanation of the ULP procedures under the Regulations;
- Furnishing various [forms](#) and reasonable technical assistance regarding the completion of the forms, including drafting language describing the basis of the charge
- Providing public written materials as well as helping to locate information at the FLRA web site: <http://www.flra.gov/>.

Who may file a charge?

"Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under [5 U.S.C. 7116](#)." [Section 2423.3](#) of the

Regulations. A person can be an individual, labor organization, or agency. [5 U.S.C. 7103](#).

If you decide to file a charge, what should you file?

If you decide to file a ULP charge, you should complete [Form 22](#) if the charge is against an Agency, or [Form 23](#) if against a Labor Organization. The back of these forms provides instructions for completion. You should provide a clear statement of the ULP allegation which includes specific sections of the Statute allegedly violated. Be as succinct as possible, i.e., longer is not necessarily better. See [section 2423.4](#) of the Regulations. Make sure to complete the certificate of service section of the form by indicating the method of service and name, title, location and the date that service is completed. You need only file one copy of the charge.

Where should you file your charge?

A charge should be filed with the Regional Director for the Region in which the alleged ULP has occurred or is occurring. If the alleged ULP is occurring in more than one Region, you may file a charge in any of the Regions where the alleged ULP is occurring. If you are unsure which Region has jurisdiction over the charge, consult the [Regional Map](#).

Are there any time constraints with respect to when a charge must be filed?

Yes. Normally a charge may not be acted upon if the alleged ULP occurred more than six months before the filing of the charge. [5 U.S.C. 7118\(a\)\(4\)\(A\)](#). Consult section [7118](#) of the Statute for exceptions to this rule.

Are there other reasons why you may be prevented from filing a charge?

- An agreement between a union and an activity, which contains a requirement for pre-charge filing, notification, or settlement efforts, is enforceable. Therefore, if your collective bargaining agreement contains a pre-charge notification requirement, you must follow the terms of that agreement and first notify the agency or union before you file a ULP charge. A pre-charge notification is not applicable to individuals who seek to file a charge.
- Under section [7116\(d\)](#) of the Statute, a charge may be barred by a previously-filed grievance if the alleged ULP arose from the same set of factual circumstances as the grievance and the legal theory supporting the charge and the grievance are substantially similar.

Should you attach supporting evidence and documents to the charge?

No. A charge is a stand-alone document. Supporting evidence and documents may be submitted to the Regional Office at the same time. Once a charge has been filed and has been assigned to a Regional Agent, s/he will discuss with you if any additional evidence and documents are needed.

What documents should you prepare or gather to support a charge?

You should prepare a witness list with a brief description as to what each witness will testify to, and include a telephone number for each witness. You should also have available the collective bargaining agreement and other relevant supporting documents and be prepared to discuss what your underlying interest is in filing the charge -- what are you seeking and why.

Can you file a charge by fax?

Yes. However, a charging party assumes responsibility for receipt of the charge, including the risk of a fax machine malfunctioning.

What happens if you file a charge in the wrong Region?

The Region which has received the charge will fax it to the proper Regional Office with jurisdiction over the charge. Incorrect filing may delay the start of any investigation.

Is it possible for your charge to be transferred to another Region even though you filed in the proper Region?

Yes. The OGC implements the concept of "parity" which requires, on occasion, that a Region transfer cases to other Regions to address caseload imbalances among the Regions. The adjustment in a Region's caseload helps the OGC to process cases throughout the country in an expeditious fashion.

Is there a page limitation to the charge?

No, except fax filings have a two-page limitation. In any event, you are encouraged to be succinct.

PRE-INVESTIGATION

After a charge is filed what does the Regional Office look for when it reviews the charge?

- The Region reviews each charge for sufficiency. The charge will be deemed deficient and returned to the person who filed it if any of the following are present: (1) There is no signature; (2) the charging party or charged party is not identified; (3) there is not at least some basis for the charge stated; or (4) the matters in each block of the charge are not addressed in some way.
- If the review does not uncover any deficiencies, the charge is docketed and is given a number.

- The charge is also reviewed to see if any clarification is required which necessitates that an amended charge be filed. For instance, if the charging party identifies a local facility as the charged party but it appears from reading the charge that the Department should have been named as the charged party, it may be necessary to obtain an amended charge. Another example when it may be necessary to file an amended charge is if the underlying basis of the charge is not clear. In these circumstances, the charge is docketed and the Region will give the charging party 10 days to submit an amended charge. If not submitted within the required time frame, the charge will be dismissed.

When the Region reviews a new charge will it consider whether injunctive relief should be sought even if not requested?

Yes. The substance of every charge is reviewed to determine whether the purposes of the Statute would be frustrated if the status quo (existing) is not maintained while the charge is investigated in the normal manner. In those extraordinary circumstances that require that the status quo be maintained, the General Counsel may seek approval of the Authority's Members to seek appropriate temporary relief in a United States District Court. In this regard, the General Counsel first conducts an initial inquiry with the charging party and also determines whether to conduct an expedited investigation. Then the General Counsel determines if the charge has merit, and if so, whether to seek approval of the Authority Members to seek a temporary injunction. Even after an investigation begins, a determination may be made to seek appropriate temporary relief. See [section 7123\(d\)](#) of the Statute which sets forth the criteria for granting appropriate temporary relief and the [ULPCHM, Part 2, Chapter E](#) for a discussion of the criteria evaluated to determine if injunctive relief should be sought.

Will a Region consider whether the use of Alternative Dispute Resolution techniques would help to resolve the underlying basis of the charge?

Yes. From the outset, and throughout the processing of a ULP charge, Regions consider whether the parties would benefit from the use of interest-based techniques to resolve the underlying issues. See [Alternative Dispute Resolution Services](#) for a description of the services offered by the OGC. Also throughout the processing of a ULP charge, the Region will ask the parties to consider settlement options, if appropriate.

THE INVESTIGATION

What is the purpose of an investigation?

A Region determines which, among many methods of investigation, best achieves the objectives of: (1) developing all relevant factual evidence to assist the Regional Director in making a determination on the merits of the charge; and (2) providing fair and consistent application of OGC policies and procedures.

When does the investigatory process begin?

After the Regional Director sends out an opening letter to the parties the case is assigned to an Agent. The Agent becomes familiar with the case file and then contacts both parties' representatives by telephone or in writing to begin the investigatory process.

What should you be prepared to discuss during the initial contact with the Regional Office Agent?

The purpose of this contact is for the Agent to introduce him/herself to you and to explain the ULP process. Among other things, you may be asked to:

- clarify the issues underlying the charge
- send certain documents to the Region
- make available certain documents if there is an on-site investigation
- prepare a witness list with a short description of what information the witness will provide
- complete a questionnaire to be returned to the Region
- provide an assurance or cooperation during the investigation
- discuss, if appropriate, the possibility of using an [Alternative Dispute Resolution](#) technique

What happens during an investigation?

The Region seeks to determine the factual basis underlying each ULP charge. Depending upon the circumstances of the case, the investigation may consist of:

- taking affidavits and documentary evidence in person
- taking a sworn affidavit by telephone
- requesting the completion of sworn interrogatories by mail
- requesting the completion of unsworn questionnaires by mail
- confirming, in writing, information a Regional Agent receives orally

What happens if the charging party fails to cooperate during an investigation?

A charging party is required to cooperate with the investigation of a charge. See [section 2423.8\(b\)](#) of the Regulations. Cooperation includes:

- making charging party witnesses available to give sworn/affirmed testimony

- producing documentary evidence requested

If a charging party fails to cooperate, and the charging party's representative has been duly cautioned, the charge may be dismissed for lack of cooperation.

How does a charged party cooperate during an investigation?

[Section 2423.8\(b\)](#) contemplates that a charged party will cooperate with an investigation so that the Regional Director will have the best evidence to rely upon in making a merits determination. Among other things, a charged party cooperates by:

- arranging for official time for the interview of employee witnesses
- submitting a position statement
- making management witnesses available
- submitting documents upon request
- providing background information

When is an investigation considered complete?

Every case is different in some way. However, the same rule applies with respect to the investigation of each case: **an investigation is considered complete when the record contains sufficient information for a Regional Director to render a determination on the merits of the charge.** Therefore, if it has been determined that the charge is untimely, it is possible that an investigation will be terminated even before the taking of any witness statements. However, there are other cases where it is necessary, in order to complete an investigation, to arrange an on-site investigation to take witness statements and to obtain documentary evidence so that record contains sufficient evidence on all of the elements of proof of each allegation of the charge. See [ULPCHM, ATTACHMENT 2G1](#) for a list of the elements of common violations. It is important to note, in keeping with the General Counsel's neutral posture in each case, that this includes any evidence that may refute the allegations.

POST-INVESTIGATION

After an investigation has been completed, what happens next?

Once the investigation has been completed, the Agent makes either an oral or written presentation to the Regional Director for his/her review. Among other things, this presentation addresses the following matters: jurisdiction; method of the investigation; the allegations; material facts; applicable law; analysis (application of the law to the facts in the case); and recommendations for disposition of the charge.

What options does a Regional Director have with respect to making a merit determination on the charge?

Absent settlement, if the charge has merit, the Regional Director will issue a complaint and notice of hearing before an [Administrative Law Judge](#).

If the Regional Director determines that the charge does not have merit, s/he will issue a dismissal letter, absent withdrawal by the charging party.

It is also possible that the Regional Director may issue a dismissal letter with respect to certain allegations and issue complaint with respect to one or more of the other allegations.

Will the Regional Director explain in a dismissal letter the basis for making the decision to dismiss the charge?

Yes. Each Regional Director's dismissal letter is required to set forth the facts; applicable law with case citations for your reference; application of the law to the facts in the case; conclusion; and a paragraph explaining your appeal rights to the General Counsel. See [Appeals](#) FAQs.

Will you be given an opportunity to withdraw a charge before the Regional Director issues a dismissal letter?

Yes. It is OGC policy to give each charging party an opportunity to withdraw the charge before the Regional Director issues a dismissal letter.

Is it possible that the Regional Director will dismiss your charge even if it has been determined to have merit?

A Regional Director may exercise prosecutorial discretion to dismiss a meritorious charge if s/he determines that litigation would not advance or further the purposes and policies underlying the Statute. If this determination is made the dismissal letter will discuss the criteria which the Regional Director relied upon to make this decision. See [ULPCHM, Part 4, Chapter F](#) for a discussion of Prosecutorial Discretion criteria that guides a Regional Director in making this determination.

POST-ISSUANCE OF ULP COMPLAINT

What happens after a Regional Director issues a ULP Complaint and Notice of Hearing?

The case is assigned to a Trial Attorney in the Regional Office who reviews the case file and begins to prepare the case for a hearing before an [Administrative Law Judge](#). Efforts continue, up until the trial date, to obtain a settlement of the case.

How long after issuance of complaint does a respondent have to file an answer?

A respondent has 20 calendar days after the date of service of a complaint to file an answer to each allegation contained in the complaint.

How long after issuance of complaint will the hearing take place?

Generally, absent settlement, a hearing will be held within two to three months after issuance of a complaint.

After issuance of a complaint and notice of hearing, are attempts still made to reach a settlement?

Yes. This may occur in many ways. As always, the parties are encouraged to reach a settlement on their own, if possible. Often, though, the Agent's involvement in working with the parties is necessary to arrive at a settlement.

Yet another way in which settlement may be pursued is through the Office of Administrative Law Judge's Settlement Judge Program. Either in response to a party's request or on his own discretion, the ALJ may assign another ALJ (who will not preside over the hearing) or other settlement official to conduct settlement negotiations by telephone or in person. Should settlement efforts prove unsuccessful and a hearing occurs, the settlement official is barred from discussing the case with the hearing judge. See section [2423.25\(d\)](#) of the Regulations.

What does the Trial Attorney do to prepare for a hearing?

Among other things, the Trial Attorney does the following things to prepare for a trial:

- reviews the case file to determine what motions, if any, to file. For example, if the respondent does not file an answer to a complaint, the Trial Attorney will file a motion for summary judgment
- prepares witnesses for trial
- requests issuance of subpoenas, as necessary

Are the parties required to engage in pre-hearing disclosure?

Yes. To facilitate earlier resolution of cases and to avert "trial by ambush," the FLRA promulgated a regulation in 1998 to require parties to engage in pre-hearing disclosure. See [section 2423.23](#) of the Regulations.

What is required under pre-hearing disclosure and when does it occur?

The parties are required to disclose to the opposing party the following:

- a witness list with a brief description of expected testimony
- copies of documents to be offered into evidence
- a brief statement of the theory/ies of the case, including the relief sought, and any and all defenses that the charged party intends to rely upon to defend the allegations in the complaint.

Pre-hearing disclosure takes place at least 14 days before the date of the hearing.

Do the parties confer with the Administrative Law Judge before the hearing?

Yes. At least seven days before the date of the hearing, the parties have a pre-hearing conference with the Administrative Law Judge. All parties are required to participate in the conference to:

- Discuss, narrow, and resolve issues set forth in the complaint and answer
- Address any other pre-hearing matters such as outstanding motions
- Discuss settlement
- Agree to stipulations of fact
- Discuss subpoena requests or motions to revoke

See section [2423.24\(d\)](#) of the Regulations.

Generally, what happens at the trial?

Generally, the stages of a trial are as follows:

- The Administrative Law Judge opens the record and makes opening remarks
- The parties appear on the record
- Preliminary matters are considered (including those not ruled on in pre-hearing conference)
- Parties deliver opening statements
- The General Counsel presents his/her case which includes examination of witnesses and introduction of evidence; and the respondent has the opportunity to cross-examine witnesses

- The respondent presents its case including examination of witnesses, introduction of evidence; and the General Counsel has the opportunity to cross-examine witnesses
- Rebuttal evidence is presented by the parties
- Closing argument is presented (may be optional)
- The Administrative Law Judge closes the record which includes a discussion of the post-hearing briefs

What role does the charging party's representative have at the hearing?

The charging party has a right to fully participate in the hearing by:

- Calling witnesses
- Presenting evidence
- Presenting oral argument
- Receiving documentary evidence presented by respondent
- Making objections to testimony and documents offered into evidence
- Submitting a post-hearing brief

How many trials are held during the year?

Through the first ten months of FY '00 there have been 31 trials.

After an Administrative Law Judge issues a decision and recommended order, what happens next?

If a party disagrees with the decision and recommended order exceptions may be [filed with the Authority](#) within 25 days after the date of service of the Judge's decision. See [section 2423.40](#) of the Regulations.

[[Home](#)] [[Decisions](#)] [[Search](#)] [[Site Map](#)]