

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 22-06

June 23, 2022

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Update on Efforts to Secure Full Remedies in Settlements

[Memorandum GC 21-07](#) set forth the initiative that Regions seek settlement agreements securing the full panoply of remedies available to ensure that victims of unfair labor practices are made whole for losses they incur from unlawful conduct. The memorandum identified various types of remedies that Regions should seek and discussed my expectation that Regions should include default language and should not include non-admissions language.

Regions have done an excellent job implementing the settlement approach, as articulated in Memorandum GC 21-07. Notably, Regions have secured compensation for derivative economic harm, including reimbursing fees for late car loan payments and late rent, payment of monthly interest on the loan a discriminatee took out to cover living expenses, the cost of baby formula due to the loss of a workplace breast pumping station, and the cost of retrofitting a discriminatee's car to make it usable in a new job. Regions have frequently secured agreement to have the Notice read by senior charged party officials (or by a Board agent in the presence of those officials), and to post the Notice for an extended period of time. Some other examples of settlement terms that Regions have obtained include:

- Posting of the Explanation of Employee Rights poster at the facility
- Letters of apology to reinstated employees
- Training of supervisors and managers on employee rights under the Act
- Training of employees on their rights under the Act
- Mailing of the Notice to all employees employed at any time within the previous year
- Creation of a video recording of the Board agent reading the notice, in the presence of senior charged party official, to be distributed to employees at multiple facilities
- Notification of employees' right to talk about wage rates with coworkers to all those hired during the six months following execution of the agreement
- Requiring that job application forms and recruitment ads include a statement of employee rights
- Permitting union use of employer bulletin boards

- Providing employee contact information to the union
- Bargaining schedules and bargaining progress reports
- Union's bargaining costs during period of employer bad faith bargaining

I also wish to thank you for your excellent work requiring settlement agreements that include default language and exclude non-admission clauses, particularly during this challenging time when our resources are limited.

Regions should continue to secure full remedies in settlements in all appropriate respects as outlined in Memorandum GC 21-07. And, as you know, because the remedies described in settlement agreements are only effective when the charged party complies with its settlement agreement obligations, Regions must be proactive in ensuring compliance with settlement agreements, including enforcing default judgment provisions in the event of non-compliance. In this regard, Regions are reminded of the guidance on enforcing default language relayed in Memoranda [OM 14-48](#), *Additional Guidance Regarding Default Judgments*¹ and [OM 16-19](#), *Attaching Requested Orders to Motions for Default Judgment Filed Pursuant to Noncompliance with Informal Settlement Agreements*. As discussed in Memorandum OM 16-19, issuance of a Board order providing a full remedy for the violations alleged in the complaint will most often be the remedy Regions should seek in the event of default. There may, however, be circumstances where a Board order requiring the charged party to effectuate the unfulfilled obligations terms of the settlement may better effectuate the Act.² In order to make clear that the Regional Director can select the result which best effectuates the Act, the settlement template is being modified as reflected in the attachment. In its motion to the Board for default judgment, each Region will communicate to the Board exactly which remedies it is requesting the Board impose. Typically, this would include any actions the charged party has purportedly accomplished, which the Board may address in its eventual final order.

If you have any questions, please contact your AGC.

/s/
J.A.A.

Attachment

¹ Please note that not all aspects of the guidance relayed in Memorandum OM 14-48 are current. For example, the guidance in Memorandum OM 14-48 relays that Regional Directors may modify or omit default language in certain circumstances, whereas under current guidance Regional Directors are to engage with Operations-Management before omitting default language or modifying it.

² Memorandum OM 16-19 describes the example of a discriminatee who waives reinstatement in exchange for front-pay, which the employee uses to relocate for another job. Compliance with the settlement would better effectuate the purposes of the Act because reinstatement had been rendered impractical due to actions the employee took based on the terms of the settlement. Another example may be where the settlement provides for training of managers and supervisors, a remedy the Board has not yet adopted.

Attachment to Memorandum GC 22-06, Update on Efforts to Secure Full Remedies in Settlements (attachment corrected 06-24-2022)

New Pre-Complaint Settlement Template Performance Paragraph Default Language (revisions identified in track changes)

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Charged Party agrees that the Board may then issue an order providing, as elected by the Regional Director, a full remedy for the violations found as is appropriate to remedy such violations, and/or an order requiring the Charged Party to perform terms of this settlement agreement as specified by the Regional Director. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

New Post-Complaint Settlement Template Performance Paragraph Default Language (revisions identified in track changes)

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on [date], in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Charged Party agrees that the Board may then issue an order providing, as elected by the Regional Director, a full remedy for the violations found as is appropriate to remedy such violations, and/or an order requiring the Charged Party to perform terms of this settlement agreement as specified by the Regional Director. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.