

E. INJUNCTIONS

OVERVIEW:

Section [7123](#)(d) of Statute provides for the GC, with Authority approval, to seek appropriate temporary relief from an appropriate United States Federal District Court when specific conditions have been met. **OGC Injunction Policy (Oct. 4, 1996)** ([ATTACHMENT 1E](#)) provides criteria that govern the OGC's decisional analysis with respect to injunctive relief.

OBJECTIVE:

To provide guidance on (1) the applicable criteria used to determine whether to seek injunctive relief; (2) the process used to request permission to seek appropriate relief; and (3) the process used once permission is granted.

1. STATUTORY AUTHORITY--§ [7123](#)(d) OF THE STATUTE:

Sets forth the criteria for a district court of the United States to grant appropriate temporary relief (including temporary restraining orders) in unfair labor practice cases. A court must conclude that:

- a. *Granting such relief is "just and proper";*
- b. *Temporary relief would not "interfere with the ability of the agency to carry out its essential functions"; and*
- c. *There is "probable cause that an unfair labor practice is being committed."*

2. CRITERIA--WHETHER TO SEEK INJUNCTIVE RELIEF:

Facts and circumstances considered in determining whether to seek injunctive relief:

A decision to seek injunctive relief is appropriate only under extraordinary circumstances--"where the status quo must be maintained while the unfair labor practice complaint is processed" to avoid frustrating the purposes of the Statute. OGC Settlement Policy at 1 (Oct. 4, 1996). All facts and circumstances present in a particular case are examined before a decision is made to seek injunctive relief. Some or all of the following factors, among others, are considered in determining whether a particular case meets the criteria set forth in § [7123](#)(d) of the Statute for injunctive relief:

a. *Seriousness of the violation;*

b. *Legal precedent;*

Is the law clear regarding the violation alleged?

c. *Disruption to the essential functions of the agency Respondent;*

Would granting an injunction interfere with the ability of an agency to fulfill an essential function?

d. *Timeliness of the dispute;*

Is the request timely in relationship to the underlying events?

e. *The remedy; and*

Will the failure to maintain the status quo frustrate the remedial purposes of the Statute?

f. *Harm to the statutory right to organize and be represented.*

Does the violation undermine the fundamental right to organize and/or engage in collective bargaining?

3. PROCESSING REQUEST FOR APPROPRIATE TEMPORARY RELIEF:

- a. *Parties may make a request to the RD for appropriate temporary relief at any time during the processing of a charge.*
- b. *RDs may recommend to the GC that Authority permission be requested to seek appropriate temporary relief when the above criteria indicate that such relief meets the statutory criteria.*
- c. *RDs establish internal screening systems to identify those charges which warrant an expedited investigation which may be cases where temporary relief is appropriate.*

4. RD'S OR GC'S DECISION REGARDING TEMPORARY RELIEF IS NOT APPEALABLE:

A decision not to seek appropriate temporary relief is not subject to appeal whether or not it is (1) the RD's decision not to recommend to the GC or (2) the GC's decision not to ask the Authority for permission to seek appropriate temporary relief. See § 2423.10(b) (GC determination not to seek Authority's approval for temporary relief is not appealable).

5. PROCEDURE ONCE DETERMINATION IS MADE TO SEEK TEMPORARY RELIEF:

- a. *Issuance of complaint seeking earliest possible hearing date:*

If the GC decides to request from the Authority to seek appropriate § 7123(d) relief, the OGC instructs the Region to issue complaint and to seek the earliest possible hearing date (usually 25 days from issuance of the complaint) on the ULP complaint. In certain extraordinary circumstances, the Region may request a hearing at an earlier time.

 *The RD does not issue complaint until the OGC informs the Region that the GC has forwarded the Region's recommendation to the Authority.*

- b. *Notification to the parties and settlement attempts:*

The Region notifies the parties that the Region is issuing a complaint and that the GC is requesting permission from the Authority to seek immediate relief. Settlement is discussed thoroughly with each party because seeking injunctive relief is often a catalyst for resolution of disputes. Any settlement sought comports with the GC's Settlement Policy. See Part 1, Chapter H. The RO strives to settle the underlying ULP case in its entirety to avoid the need for seeking temporary relief and litigating the case.

- c. *Denial of GC's request:*

If the Authority denies the GC's request, the RO orally notifies the parties that:

- The request has been denied;
- The Authority's decision cannot be appealed; and
- The ULP case will be tried, absent settlement, as soon as practical.

- d. *Approval of GC's request:*

- If the Authority approves the GC's request, the OGC notifies the Region processing the case, and all other ROs; and
 - The OGC also informs the national level of the Charged Party of the intent to seek temporary relief, as well as urges officials at that level to assist in settling the dispute.
- e. *Seeking temporary relief in district court:*
- The Region telephonically informs the parties of its intent to file for injunctive relief and confirms this in writing to the Respondent's counsel of record;
 - Settlement is vigorously pursued while the preparation of the pleadings continues; and
 - The Region files the appropriate papers in person in the district court having jurisdiction over the matter as soon as possible after the Authority's authorization. Jurisdiction under § [7123\(d\)](#) of the Statute lies in the district court of the United States within which the ULP is alleged to have occurred or in which the party sought to be enjoined resides or transacts business.
- f. *Litigation of the ULP complaint after appropriate temporary relief has been obtained:*
- Whenever appropriate temporary relief has been obtained, the Region continues efforts to settle the ULP complaint and the injunction action.

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[Part 1, Chapter H](#) concerning Post-Complaint/Pre-Hearing Settlements; and
[ULPCHM, Part 2, Chapter E](#) concerning Injunctions.

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