Chapter 8

SETTLEMENTS

I. **Settlement of Cases by the Iowa OSHA Administrator.**

The Iowa OSHA Administrator is granted settlement authority and shall follow these instructions when negotiating settlement agreements.

A. **General**.

1. Except for egregious cases, or cases that affect other jurisdictions, the Iowa OSHA Administrator or designee may enter into Informal Settlement Agreements with employers prior to the employer filing a written notice of contest.

   NOTE: After the employer has filed a written notice of contest, the Administrator or designee may proceed toward a Settlement Agreement with the concurrence and participation of the legal section.

2. The Administrator or designee may amend abatement dates, reclassify violations (e.g., willful to serious, serious to other-than-serious), and modify or withdraw a penalty, a citation, or a citation item, where evidence establishes during the informal conference that the changes are justified.

3. The Administrator or designee may actively negotiate the amount of proposed penalties, depending on the circumstances of the case and the particular improvements in employee safety and health that can be obtained.

4. Employers shall be informed that they are required by Iowa Code 88.7(2) to post copies of all amendments or changes to citations resulting from informal conferences. Employee representatives must also be provided with copies of any agreements.

5. Cases or issues relating to potential Chapter 88.14 settlements shall be handled in accordance with established agency procedures.

B. **Pre-Contest Settlement (Informal Settlement Agreement)**.

Pre-contest settlement discussions will generally occur during or immediately following the informal conference and prior to the expiration of the 15 working day contest period.

1. In the event that an employer is bringing an attorney to an informal conference, the Administrator or their designees are encouraged to contact the legal section and ask for the assistance of counsel.

2. If a settlement is reached during the informal conference, an Informal Settlement Agreement (ISA) shall be prepared and the employer will be asked to sign it. It will be effective upon signature of both the employer and the Administrator or designee. Both parties will date the documents on the day of actual signature.

3. If the employer is not present to sign the ISA, the document shall be sent to the employer for signature. After signing, the employer must return the agreement to the Administrator or designee within the 15 day contest period.

    a. In every case, the Administrator or designee shall give employers notice in writing that the citation will become final and unreviewable at the end of the contest period, unless the employer signs the proposed agreement or files a written notice of contest.

    b. If an employer wishes to make any changes to the text of the agreement, the Administrator or designee must agree to and authorize the proposed changes prior to the expiration of the contest period.

        - If the changes proposed by the employer are acceptable, the exact language written into the agreement shall be mutually agreed upon. Employers shall be instructed to incorporate the agreed-upon language into the agreement, sign it, and return to the Office within the 15 day contest period.

        - Annotations incorporating the exact language of any changes authorized shall be made to the retained copy of the agreement and signed and dated by the Administrator or designee.

    c. Upon receipt of the ISA signed by the employer, the Administrator or designee will ensure, prior to his/her signature, that any modifications to the agreement are consistent with the notations made in the case file.

        - In these cases, the citation record will then be updated in OIS in accordance with current procedures.

- If an employer's changes substantially alter the original terms, the agreement signed by the employer will be treated as a notice of contest and handled accordingly. The employer will be informed of this as soon as possible.

   d. A reasonable time will be allowed for return of the agreement from the employer.

- If an agreement is not received within the 15 day contest period, the Administrator will presume the employer did not sign the agreement, and the citation will be treated as a final order.

- The employer will be required to certify that the informal settlement agreement was signed prior to the expiration of the contest period.

   4. If settlement efforts are unsuccessful and the employer contests the citation, the Administrator will state the terms of the final settlement offer in the case file.

C. **Procedures for Preparing the Informal Settlement Agreement**.

The ISA shall be prepared and processed in accordance with current IOSHA policies and practices. For guidance in determining final dates of settlement and Employment Appeal Board orders, see Chapter 15, Section XIII, *Citation Final Order Dates*.

D. **Post-Contest Settlement (Formal Settlement Agreement)**.

Post-contest settlements will normally occur before the complaint is filed with the Employment Appeal Board.

   1. Following the filing of a notice of contest, the Administrator shall (unless other procedures have been agreed upon) notify the legal section when it appears that negotiations with the employer may produce a settlement. This notification shall occur at the time the notice of contest transmittal memorandum is sent to the legal section.

   2. If a settlement is later requested by the employer, the Administrator will communicate the proposed terms to the legal section, who will then draft and execute the agreement.

E. **Corporate-Wide Settlement Agreement**
Corporate-wide Settlement Agreements (CSA's), within IOSH's jurisdiction, may be entered into under special circumstances to obtain formal recognition by the employer of cited hazards and formal acceptance of the obligation to seek out and abate those hazards throughout all workplaces under its control. See CPL 02-00-152, *Guidelines for Administering Corporate-Wide Settlement Agreements*, dated June 22, 2011, for additional information.