



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

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To: EOPSS Legal Department and EOPSS HR Department Staff

From: Suleyken Walker, General Counsel

Date: June 2, 2025

Re: Settlement Policy of the Executive Office of Public Safety and Security

It is the policy of the Executive Office of Public Safety and Security (EOPSS) to encourage the amicable settlement of litigation or disputes and to promote settlement processes and procedures that are consistent, transparent, and fair. EOPSS recognizes that the resolution of litigation or disputes by mutual agreement, and in accordance with regular procedures, ensures the efficient use of taxpayer funds, promotes confidence in government, and avoids disruption in public services.

To further these goals, EOPSS's Settlement Policy establishes requirements for obtaining authority to settle, settling, and tracking settlements of actual or threatened litigation or disputes involving EOPSS. In addition, this Settlement Policy sets forth settlement reporting requirements for agencies and departments within the EOPSS Secretariat.

1. Applicability of the Office of the Comptroller's Regulations and Settlements & Judgments Policy.

The Office of the Comptroller's Settlements and Judgments regulations, 815 CMR 5.00 *et seq.*, and the Comptroller's Settlements and Judgments Policy, are applicable to all monetary settlements within the scope of 815 CMR 5.00 *et seq.*, whether the settlement occurs prior to or after the institution of litigation, and whether the settlement is paid using secretariat funds or the Settlements and Judgments Reserve. The requirements set forth in this Settlement Policy serve as a supplement and do not supersede the requirements prescribed by the Office of the Comptroller.

2. Required Approvals for Settlement.

Settlements of \$20,000 or less. Prior to the settlement of any dispute for less than \$20,000, the General Counsel for EOPSS must approve the settlement amount.

Settlements of \$20,000 or more. Settlement of any dispute over \$20,000, other than a workers compensation settlement, may only be negotiated after receiving approval from the agency's counsel, EOPSS General Counsel, and the Executive Office for Administration and Finance (ANF).

Settlements of workers compensation claims before the Department of Industrial Accidents. Settlement of any workers compensation case for an amount below \$100,000 requires the approval of EOPSS's General Counsel and, if applicable, the agency head or their designee, and the Director of the Human Resources Division's (HRD) Workers Compensation Litigation unit.

EOPSS may agree to a settlement of a workers compensation claim of \$100,000 or more only with the advance approval of: (i) the General Counsel of HRD; (ii) the General Counsel of EOPSS; and (iii) ANF. After approval is received by the General Counsel of HRD and the General Counsel of the Executive Office, the General Counsel for ANF shall be provided with a written request that supports a recommendation of settlement.

Settlements in cases involving the Attorney General's Office. If EOPSS is represented by the Attorney General's Office or by a Special Assistant Attorney General, EOPSS may agree to settle litigation only with the approval of the Attorney General's Office. In addition, settlements over \$2,500 and arising under G. L. c. 258 require the approval of the Attorney General's Office regardless of representation.

3. Settlement Agreements are Public Records.

Under established case law, settlement agreements are public records but may be subject to limited redactions for information of a highly personal nature under G. L. c. 4, § 7, cl. 26(c). Absent unusual privacy concerns, settlement agreements should include language providing that the agreement will be considered a public record in its entirety. Agencies may consider settlement language agreeing to limited redactions only when: (i) required by statute; or (ii) the language is requested by a claimant to address a significant privacy or safety concern, the language is approved by both the General Counsel of the Agency and the General Counsel of the Executive Office, and the claimant's preference for the language is memorialized in the settlement agreement.

If such language is included in a settlement subject to 815 CMR 5.00 et seq., EOPSS counsel must (i) note the required redactions on the Comptroller's Non-Tort Settlement/Judgment Payment Authorization Form; and (ii) consult with the Comptroller's Office prior to the submission of required paperwork.

4. Nondisclosure Agreements are Prohibited.

Non-disclosure agreements erode public trust and, by their terms, are largely inconsistent with the transparency requirements of the public records law. Accordingly, nondisclosure agreements (NDAs) in settlement agreements are prohibited and shall not appear in settlement agreements.

For purposes of this Executive Department Settlement Policy, a "nondisclosure agreement" is a term or condition in a settlement agreement that would prevent a claimant from disclosing or discussing the underlying facts and circumstances of their claim or the existence of a settlement.

5. Office of the Comptroller's Procedure for Payment of Settlements and Judgement after Initiation of Litigation

When there has been a settlement of a lawsuit for damages, the Office of the Comptroller's settlements and judgments regulations, 815 CMR 5.00 *et seq.*, require that EOPSS:

- A. Prepare a report indicating:
 - a. The amount of the settlement or judgment;
 - b. The amount of any attorney's fee award;
 - c. The amount of any interest awarded or accrued, and whether the interest continues to accrue post-judgment;
 - d. A request for payment of the amount;
 - e. A description of the basis for the request, (e.g., court order or settlement agreement); and
 - f. Whether EOPSS desires to award the payment check to the claimant.
- B. Forward the report with a copy of the settlement or judgment to General Counsel for the Comptroller within the following time frames:
 - a. If based on a settlement agreement, within 15 days of signing of the final settlement papers;
 - b. If based on a judgment against EOPSS or the Commonwealth, within 15 days of a decision not to appeal the judgment; or
 - c. If based on a judgment against EOPSS or the Commonwealth, where a decision is made to appeal from the judgment, within 15 days of any final order on appeal or in remand proceedings if applicable.
- C. Keep the litigation file open until the Comptroller notifies EOPSS that the payment has been made.

6. Required Record Keeping and Tracking for Settlements.

The Secretary of State's Statewide Records Retention Schedule applies to the retention of settlements and relevant supporting documentation. See Schedule at D01-01(c): Primary copies of payment support documentation and transaction Postings; E05-01: Employee Complaint/Investigation/ Disciplinary Records; B05-01: Landmark Cases; E05-02(c): All other records.¹

For any matter that is settled, other than settlements of labor grievances or affirmative litigation, EOPSS, and each agency and department within the secretariat, shall, subject to the applicable records retention period, maintain a complete file consisting of: (i) the underlying

¹ While the Records Retention Schedule should always be consulted, most settlement documentation, including settlement payment support documentation and complaints associated with settlements, have a records retention period of 6 years.

claim or complaint; (ii) the settlement agreement; (iii) any settlement recommendation; (d) all documentation submitted or received from the Office of the Comptroller under 815 CMR 5.00 et seq., and the Comptroller's Settlements and Judgments Policy; (iv) documentation of all required approvals; and (v) documentation of payment of the claim.

EOPSS shall maintain a log of its settlements, and the settlements entered into by an EOPSS agency and its departments, other than settlements of labor grievances and affirmative litigation. The log shall include:

- Employee ID
- Union? (Y/N)
- Claimant Name
- Current Employee? (Y/N)
- Former Employee? (Y/N)
- Date of Separation
- Type of Claim
- Date of Settlement
- Settlement Total (\$)
- Legal Fees (\$)
- Funding Source (Agency Code - MMARS Code)
- AGO Representation? (Y/N)
- Received Confirmation Email from CTR? (Y/N)