

THE ROLE OF PARTIES IN MEDIATION

Mediation is a form of Alternative Dispute Resolution (ADR) used by agencies in employment related disputes

A. Introduction

1. Mediator – Introduces the parties and the process

Ensures that:

- a. All parties understand the process
- b. The Mediator does not exhibit evidence of bias, or misunderstanding of the process or the nature or scope of issues to be resolved.

2. Mediator – Explains the mediator 's role

- a. No power to decide case.
- b. Help parties to reach their own agreement.
- c. Party – Analyzes mediator's approach.
- d. Does the mediator focus primarily on interests or rights?
- e. What does the mediator expect from parties?

3. Mediator – Explains the process.

- a. Joint and separate sessions.
- b. Confidentiality.

4. Party- Ensures that all important areas are addressed:

- a. Makes certain than confidentiality is sufficiently protected.
- b. Determines whether confidentiality in private sessions requires specific request.
- c. Raises any questions about the process.

B. Initial Joint Session(s)

1. Purpose

- a. Gather information
 - 1) General Facts
 - 2) Positions: What parties want
- b. Mediator continues to attempt to gain trust and set tone

2. Mediator's (Neutral) role
 - a. Asks parties to tell about their situation.
 - b. Listens actively.
 - c. Asks open-ended questions.
 - d. Asks what parties would like to have happen.
 - e. Manager's interaction.
 - (1) Role of venting.
 - (2) Role of silence.

C. Initial Caucus Sessions (Same Non-EEO and EEO Processes)

1. Purpose
 - a. Gather information
 - (1) Elicit sensitive facts
 - (2) Identify interests: what parties need
 - b. Develop options
 - c.
2. Mediator's role
 - a. Starts with issues important to that party
 - b. Asks open-ended questions
 - c. Shows empathy
 - d. Translates and clarifies
 - e. Checks positions

3. Party's role

Helps the mediator understand the client's interests.

- a. Assists in developing options that further both clients' interests.
- b. Ensures that the mediator understands which information is to be kept confidential.

D. Subsequent Private Sessions

1. Purposes
 - a. Move parties towards agreement.
 - (1) Narrow
 - (2) Consider alternatives to agreement.

2. Mediator's role

- a. Takes more active role.
- b. Transmits information
- c. Uses hypothetical questions to communicate possible settlements (“What if?” “Would it be possible ...?”)
- d. Asks questions about parties' positions; may make predictions of legal success or failure.
- e. Uses subtle persuasion.

3. Party's role

- a. Evaluates feasibility of options.
- b. Reassesses negotiation strategy in light of new information.
- c. Avoids unwarranted compromise legal interests
- d. Continues to protect confidentiality.

E. Final Joint Session

1. Mediator

- a. If an agreement is requested by the parties, clarifies agreement;
- b. Acknowledges no agreement; or
- c. States agreement and clarify remaining issues in dispute.

2. Party

- a. If and agreement is developed, ensures that agreement is reduced to legally enforceable language, which accurately reflects all agreements reached.
- b. Monitors implementation and, or required, enforcement of agreement.

NOTE: All other steps are same for non-EEO and EEO with exception of the following:

ADR in EEO Process:

Resolving Official: In an EEO complaint, the official who is designated and assigned the authority to make, change, accept and approve proposals for resolution. On the Resolving Official may bind the Agency.

Responsible Management Official: The official who according to the complainant's allegations, is responsible for the action(s) or made the decision(s) that harmed the complainant.

Complainant: The person initiating allegations of discrimination.

- a. Presents general outline of case, with interest in working together to find resolution
- b. Permits constructive communication without allowing client to compromise interests.
- c. Analyzes statements of other parties to identify the interests that appear to underlie their positions.
- d. Listens for demands or hints of alternative proposals for resolution.
- e. Assesses opposing parties and counsel.