

# **Mediation: An Early Dispute Resolution Procedure for the Workplace**

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Dispute resolution is an integral part of management. Almost seventy-five percent of job-related stress is generated by internal disputes, and more than eighty-five percent of people leaving their jobs do so because of some perceived internal conflict. Festering disputes are time-consuming and can result in feelings of alienation, reduced productivity, loss of production quality, and strained relationships. All too frequently, employees in conflict 'win the battle but lose the war' because they confuse long- and short-term conflict resolution goals and objectives. If employees are likely to work together in the future, dispute resolution procedures should be designed to encourage the development and the maintenance of healthy long-term relationships. Mediation is becoming a popular early dispute resolution procedure in many companies and provincial organizations.

## **What is mediation?**

Mediation is a collaborative process where employees in dispute work out their own agreements with the assistance of a trained, neutral mediator. Mediation, in particular, enables managers and employees at all levels to strengthen and maintain professional productive relationships.

In mediation, the employees develop their own agreements and the mediator facilitates the decision-making process. Mediators are neutral and impartial. They are impartial in that they deliberately set aside biased opinions and preferences which might favour one or more of the employees. Mediators are neutral in that they have no previous relationship with the employees which could influence their behaviour toward them before, during and after the mediation. Neutrality also means that the mediator does not expect to gain or benefit from one of the employees or from the solution reached through mediation. The need for impartiality and neutrality does not mean that a mediator may not have personal opinions; rather, it requires that the mediator separate his or her views from the desires of the disputants. The appearance or perception of impartiality and neutrality is as important as the actual behaviour or attitude of the mediator. Therefore, companies who are considering using internal mediators need to carefully assess who in the organization will be viewed as neutral and impartial.

A mediator does not exercise decision-making power over the agreement or settlement; the mediator has decision-making authority over the process itself. The mediator assists the parties by opening up channels of communication, providing a process for an orderly discussion of the issues, helping disputants to identify the 'real' needs that must be met in order to be satisfied with an agreement, serving as an agent of reality, stimulating the generation of ideas, and identifying agreements as they occur.

## **When is mediation appropriate?**

Mediation is appropriate when employees are highly polarized and /or not able to resolve disputes themselves. Employees may lack the skills to solve conflict; they may have very poor working relationships with one another, and/or emotions may be running so high that they simply cannot hear each other's concerns.

Mediation is appropriate when it is important to pre-serve a professional relationship among employees who are in dispute. Similarly, mediation, if done well, enables employees to preserve self-respect and personal dignity. Mediation works when the employees have ownership in the solution and when they are willing and able to determine what kinds of solutions are workable. Mediation is appropriate when a creative agreement is preferred to one which arises out of a traditional legal or administrative process.

In all likelihood, mediation will be successful if: the employees have or will need to have an ongoing relationship; the employees' desire to settle the dispute is high; the employees are provided with a clear description of the mediation process and agree to try it; the parties accept the mediator as credible and trustworthy; there is external pressure to settle (time, diminishing benefits, unpredictable outcomes).

## **Why use mediation?**

**Faster and more satisfying outcomes.** Mediation is usually faster and less stressful than the formal procedures which may lead to administrative hearings, arbitration, and litigation. In mediation, decision-making authority is retained by the employees involved in the dispute; they have more control and predictability over the solution. Decisions are placed in the hands of the disputants who are in the best position to determine what short- and long-term agreements will truly meet their needs and solve their conflicts.

**Confidentiality.** Mediation provides a confidential process where employees can clarify intentions, explore options, and still protect their right to participate in formal procedures if mediation does not produce the desired outcome.

**Greater flexibility.** Mediation provides greater flexibility to the scope of the issues under discussion and to the possible settlements. Disputants can 'expand the pie'; they can develop more comprehensive solutions that address the genuine causes of the dispute. This way, they will not be constrained by a procedure which is limited to making decisions based on narrow parameters or narrow points of law.

**Savings in time and energy.** Companies want their employees to focus on 'getting the work done'. Unresolved disputes are costly in both time and money. Preparation and attendance at administrative or arbitration hearings utilizes substantial employee and manager time. Both the complainant and the company might have to spend more on the case than they can win.

**Protection and maintenance of the relationship.** Mediation offers a safe opportunity to clarify 'what really happened' and 'what people were really thinking and feeling'. This helps parties come to grips with negative past experiences and begin to focus on the future. Future working relationships are best preserved when employees can make their own agreements rather than experience a win/lose process. Besides, grievances, complaints, and lawsuits are often the subject of gossip and unhealthy speculation on the shop floor or in the office, and, sometimes, among the company's competitors.

**Agreements that hold over time.** Employees who reach their own agreements are far more likely to follow through than when an agreement has been imposed by an outside decision maker. Mediated agreements are generally more satisfactory than compromised decisions where disputants share gains and losses. Mediation enables employees to look for solutions which create gains for everyone while minimizing losses. Finally, if employees are successful in resolving their issues in mediation, they will be more likely to use this process in the future; they are more likely to promote mediation among their fellow employees as well.

Mediation is not a panacea. It is not for everyone and it is not appropriate in every case. Disputes involving merit pay, company-wide reclassification of positions, and downsizing activity are among the categories of issues which are not generally mediated.

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