



Questions And Answers About Mediation

What is mediation?

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the U.S. Equal Employment Opportunity Commission (EEOC) as an alternative to the traditional investigative and litigation processes. Mediation is an informal process in which a trained mediator assists the parties to reach a negotiated resolution of a charge of discrimination. The mediator does not decide who is right or wrong and has no authority to impose a settlement on the parties. Instead, the mediator helps the parties to jointly explore and reconcile their differences.

Does the EEOC require the parties to participate in mediation?

No. Participation in EEOC's mediation program is strictly voluntary. If either party declines to participate in mediation, the charge will be processed just like any other charge.

Who mediates EEOC charges?

Only mediators who are experienced and trained in mediation and equal employment opportunity law are assigned to mediate EEOC charges. EEOC has a staff of trained mediators. We also contract with professional external mediators to mediate charges filed with EEOC. All EEOC mediators, whether internal staff or external mediators, are neutral unbiased professionals with no stake in the outcome of the mediation process.

At what point in the administrative process will mediation take place?

Mediation will usually take place early in the process prior to an investigation of the charge. Offering mediation to the parties prior to an investigation saves Commission resources by avoiding the investigation of a charge that might be appropriately resolved through mediation. In addition, mediation prior to an investigation prevents the hardening of positions that can occur during a lengthy investigation.

Is mediation available during an investigation or during the conciliation process?

Yes. In order to increase opportunities for mediation, the EEOC expanded the charges eligible for mediation and now mediation is available at the conciliation stage, after a finding of discrimination has been issued, in appropriate cases.

What are the differences if any in mediation that takes place at the conciliation stage?

A. If mediation occurs at the conciliation stage, EEOC sits as a participant-- along with charging party and respondent-- with an independent mediator serving as a neutral.

Can a party request mediation if EEOC does not offer it?

Yes. Either party can request mediation without an offer from EEOC. As long as both parties agree to participate, EEOC will consider the charge for mediation.

Is the Mediation process confidential?

Yes. The EEOC maintains strict confidentiality in its mediation program. The mediator and the parties must sign agreements that they will keep everything that is revealed during the mediation confidential. The mediation sessions are not tape-recorded or transcribed. Notes taken during the mediation by the mediator are destroyed. Furthermore, in order to ensure confidentiality, the mediation program is insulated from the EEOC's investigative and litigation functions. EEOC mediators only mediate charges. They are precluded from performing any other functions related to the investigation or litigation of charges.

Who should attend a mediation session?

The charging party and a representative of the employer should attend the mediation session. The person representing the employer should be familiar with the facts of the charge and have the authority to settle the

charge on behalf of the employer.

Can the parties bring an attorney or other representative to the mediation session?

Yes. While it is not necessary to have an attorney or other representative in order to participate in EEOC's mediation program, either party may choose to do so. The mediator will decide what role the attorney or representative will play during the mediation. The mediator may ask that they provide advice and counsel, but not speak for a party. If a party plans to bring an attorney or other representative to the mediation session, he or she can discuss this with the mediator prior to the mediation session.

How long does the mediation process take?

Mediation is a very efficient process that saves time and money. According to a study conducted by the EEOC, mediations usually last for approximately 3-4 hours. However, this may vary depending on the facts of each case. Successful mediations avoid a time consuming investigation and achieve a prompt resolution of the charge.

Are all charges eligible for mediation?

No. The EEOC evaluates each charge to determine whether it is appropriate for mediation considering such factors as the nature of the case, the relationship of the parties, the size and complexity of the case, and the relief sought by the charging party. Charges that the EEOC has determined to be without merit are not eligible for mediation.

What happens to a charge if it is not resolved in mediation?

If a charge is not resolved during the mediation process, the charge is returned to an investigative unit, and is processed just like any other charge.

Are the parties required to pay for the mediation?

No. There is no fee for the mediation.

What happens if a party does not comply with an agreement reached in mediation?

An agreement reached during mediation is enforceable in court just like any other settlement agreement resolving a charge of discrimination filed with the EEOC. If either party believes that the other party has failed to comply with a mediated settlement agreement, he or she should contact the ADR Coordinator.

Does mediation work?

Yes. Participants in the EEOC's mediation program indicate a high degree of satisfaction with the program. It is a fair and efficient process that can avoid a lengthy investigation and the possibility of unnecessary litigation.

Are most charges resolved in mediation?

In fiscal year 2008, the mediation program achieved a 72.1% settlement rate.

Can information revealed during a mediation session be used during an investigation if the charge is not resolved during mediation session?

No. Since the entire mediation process is strictly confidential, information revealed during the mediation session cannot be disclosed to anyone including other EEOC personnel. Therefore, it cannot be used during any subsequent investigation.

Do charges ever settle for nonmonetary benefits?

Yes, in almost half of the cases that are mediated, the settlement involves a non-monetary benefit. Since the program's inception, in approximately 13.5% of cases, the only benefit involved in settlement is non-monetary.

What are the benefits of mediation?

One of the biggest benefits of mediation is that it allows the parties to resolve the matters in dispute in a way that is mutually satisfactory to them and meets their needs. In addition, mediation is faster than the traditional investigative process. For instance, in fiscal year 2008, mediated cases were resolved in an average of 97 days in comparison to the over 200 days it took for a cases to go through the traditional investigative process. The process may also allow the parties to preserve or repair the employment relationship. The parties have nothing to lose by participating in mediation. If a resolution is not reached, the charge will be investigated like any other

charge.

As an employer, if I believe the charge has no merit, why should I participate in mediation?

Mediation provides a neutral and confidential setting where both parties can openly discuss information about the underlying dispute. Through enhanced communication, mediation can foster improved working relationships and a better understanding of factors which may be affecting the overall workplace.

How can I learn more about EEOC's mediation program?

For additional information about the mediation program at EEOC, you may contact EEOC's ADR coordinators or by calling our toll free numbers 1-800-669-4000 (Voice) or 1-800-669-6820 (TTY).