



Virginia Department of Employment Dispute Resolution

INFORMATION ABOUT THE MEDIATION PROCESS

Mediation Process. Mediation is a voluntary process by which participants, together with the assistance of a neutral person or persons, share perspectives and isolate disputed issues in order to develop options, consider alternatives, and reach a mutually acceptable resolution to their dispute. Participants in mediation make informed and deliberate decisions to resolve past problems and discuss future relationships directly and confidentially. The mediation process is used for two participants as well as group disputes. The mediators assist participants in exploring alternatives that may resolve their concerns and reaching an agreement on the best alternatives for them. Mediation intends to enhance communication and understanding. Mediations often conclude with the participants creating a formal agreement to resolve their issues.

Time Expectations. While there is no time limit on the length of the mediation process, sessions typically last 3-8 hours. The time spent in mediation is governed by the complexity of the issues, the participants' willingness to communicate openly and fully discuss the identified issues, and the commitment to reach a mutually satisfactory resolution with the other party. We strongly recommend that participants do not schedule appointments on the day of the mediation.

Mediator's Role. The mediator is a facilitator of the communications process, not an advocate, judge, jury, counselor, or therapist. The mediator does not give legal advice, solve the dispute, express an opinion on who is right or wrong, or make decisions for the participants. The mediator will help the participants generate possible solutions and choose a solution acceptable to each of them. At times, the mediator may meet separately with the participants during mediation to further the communication process.

Participant's Role. The participants must be voluntary participants, be sincerely interested in resolving their differences, have a certain trust in the mediation process, and be willing to talk openly and honestly about their concerns and issues. For mediation to be effective, participants must listen and be respectful in order for the process to be successful. These discussions may become the basis of a resolution.

Confidentiality. Pursuant to Virginia Code § 8.01-581.22, all memoranda, work product, and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties agree in writing. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except: (a) when all participants agree in writing to waive the confidentiality; (b) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation; (c) where a threat to inflict bodily injury is made; (d) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (e) where an ethics complaint is made against the mediator by a participant to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint; (f) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a participant's legal representative based on conduct occurring during a mediation; (g) where communications are sought or offered to prove or disprove any of the grounds listed in Virginia Code § 8.01-581.26 in a proceeding to vacate a mediated agreement; or (h) as provided by law or rule.

Notes or other material generated during the mediation process must be destroyed at the conclusion of the mediation session. The only written material that becomes a record is the agreement that the participants reached. The terms of the agreement are shared only with EDR's Workplace Mediation Team Leader and the Agency Workplace Mediation Coordinator. The agreement is not shared with nonparty supervisors or other management personnel within the agency, unless all mediation participants mutually agree to such a disclosure.

Prior to the beginning of each mediation session, the mediators will ask participants to sign a "Consent to Mediate" form.