
WORKPLACE MEDIATION

Key issues:

- Instructions from the employer
- Background documents
- Pre-mediation discussions
- Private sessions
- Joint sessions
- Concluding the mediation

A. Instructions from the employer (client)

The workplace mediation process usually starts with a background briefing by the employer, during which the employer will provide the mediator with:

- a broad summary of the dispute to date;
- any background documents which the employees have permitted the employer to share; and
- the contact details of each of the employees.

B. Background documents

If there are documents which would help the mediator to understand the key issues (such as grievance letters, investigation reports etc), these should be agreed between the employees and sent to the mediator. It is important to remember that this is not a tribunal hearing and the mediator will only need to see those documents which the employees consider to be essential to enable the mediator to understand the dispute. It may be the case that there are very few key documents.

C. Pre-mediation discussions

We want to ensure that there are no surprises on the day of the mediation and that the employees are comfortable with the process. Therefore, wherever possible, the mediator will telephone each employee in the week before the mediation to:

- Introduce herself to the employees
- Ensure that all arrangements are in place for the mediation
- Explain the process to the employees
- Answer any questions from the employees
- Ask any questions arising from the mediation papers

As with the mediation itself, these pre-mediation discussions are private and confidential and are covered by the terms of the mediation agreement.

D. Private sessions

Workplace mediations typically involve a series of private meetings between the mediator and each employee. Each employee has their own meeting room and the mediator moves between the two rooms as the mediation progresses.

In some mediations, the employees may remain in private sessions throughout the first day. In other cases, the employees are ready to move to joint sessions more quickly. It is important to understand that the process is tailored to the employees' needs and the mediator will move at the pace required by the employees.

Before leaving a private session to move to work with the other employee, the mediator will always ask:

- What information they can convey to the other employee
- Whether the employee has any questions which she should put to the other employee; and
- Whether there are any concessions which they should try and encourage from the other employee

If the employee wishes to make an offer or a proposal, the mediator will ask that employee to put the offer in writing for the mediator to pass to the other employee.

E. Joint Sessions

When both employees are ready to do so, the mediator will bring them into a joint session to enable them to discuss the dispute and how they might resolve it. Whilst the joint session may be a frightening prospect, it is an important part of the process, particularly in cases where employees are to continue working together closely.

The mediator will encourage the employees to share their perceptions of the dispute and to try find creative ways of resolving their differences so that they can move forward constructively. During this period, the mediator may encourage the employees to write down an agreed strategy for moving forward, thereby giving them a structure with which to work when they return to the workplace.

In some cases, employees are able to find solutions quickly and bring the mediation to an end. In other cases, they will move back into private sessions to either reflect on ideas brought out during the joint session or to continue working on particularly tricky issues.

F. Concluding the Mediation

Workplace mediation is a staged process. In order to resolve their dispute, employees will often have to find ways of 'moving on' from the cause of the dispute. This can be difficult and may take time and it is for this reason that workplace mediations can require several meetings before they can be properly resolved.

If the employees have resolved their dispute, the mediator will contact the employees a few weeks after the mediation to see how their strategy is working and to see whether any 'tweaking' is needed. If so, a further (and usually shorter) session may be arranged.

In cases where further work is needed, the mediator will liaise with the employees and the employer to work out how best to move forward.

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