

THE WORKPLACE MEDIATION PROCESS

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/client, during which they will provide the mediator with:

- a broad summary of the dispute;
- confirmation that the participants have both agreed to participate in the mediation; and
- the contact details of each of the participants.

B. Initial contact with participants

Once the employer confirm that the participants have agreed to mediate, the mediator will reach out to each participant by email. The email will:

- enable the mediator to introduce themselves to each participant;
- set out a summary of the mediation process; and
- arrange a time for a private pre-mediation meeting with each participant prior to the mediation day.

The mediator will also attach the Mediation Agreement, which will set out the terms of the mediation process and, in particular, it's confidential nature and the neutrality and independence of the mediator.

C. Pre-mediation discussions

The pre-mediation meeting with each participant is a key part of the mediation process. The pre-mediation meeting usually lasts approximately 45 minutes and ensures that the participants meet the mediator before the mediation day. These meetings ensure that there no surprises on the day of the mediation and reduce any anxiety that a participant may be experiencing.

The mediator will arrange a time to speak to each participant in the days before the mediation (usually by Teams/Zoom). During the pre-mediation meeting, the mediator will:

- properly introduce themselves to the participant;

- go through the Mediation Agreement and explain it's contents;
- ensure that the participant knows all of the arrangements and timings for the mediation;
- explain the process;
- answer any questions; and
- ask any questions arising from the mediation papers

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

D. 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 participants and sent to the mediator. It is important to remember that this is not an investigation or a tribunal hearing and the mediator will only need to see those documents which are essential to enable the mediator to understand the dispute. It may be the case that there are very few (if any) key documents.

E. Mediation Day - Private sessions

Workplace mediations typically involve a series of private meetings between the mediator and each participant. On the day of the mediation, each participant has their own private room and the mediator moves between the two rooms as the mediation progresses.

In some cases, the participants may remain in private sessions throughout the mediation. In other cases, the participants choose to move to joint sessions (see below) more quickly. It is important to understand that the process is tailored to the participants' needs and wishes and the mediator will move at the pace required by the participants. The mediator will never force a participant to do anything that they are uncomfortable doing.

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

- What information they can convey to the other participant; and
- Whether the participant has any questions which they should put to the other participant.

If the participant wishes to make a proposal for a strategy to move forward, the mediator will ask that participant to put it in writing for the mediator to pass to the other participant.

F. Joint Sessions

In many cases, participants decide that they would like to work face-to-face and move into a joint session. This is often a productive route to resolving difficulties because it enables the participants to discuss the dispute directly with one another rather than through the mediator.

At the start of the joint session, the mediator sets out the rules for the session (eg. being respectful, not interrupting, and listening). The mediator will remain in the room throughout and will encourage the participants to share their perceptions of the dispute and to try find creative ways of resolving their differences so that they can move forward constructively.

In some cases, participants 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

G. Strategy Document

Whether the participants conduct the entire mediation from separate rooms or whether they choose to work in a joint session, the mediator will support them as they address the causes of the dispute and then focus on how to move forward constructively. The mediator may encourage the participants to write down an agreed strategy for moving forward, thereby giving them a structure with which to work when they return to the workplace.

H. Concluding the Mediation

Workplace mediation can be a staged process. In order to resolve a dispute, participants 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 over some weeks before they can be properly resolved. If this is the case, the mediator will liaise with the employer (only sharing information which the participants have agreed may be shared) to ensure that they are happy to allow further shorter sessions to take place.

Once the participants have their strategy in place, the mediator will contact them a few weeks after completion of the strategy document to see how their strategy is working and whether any 'tweaking' is needed. If so, a further (and usually shorter) session may be arranged.

Workplace Consensus