



## Mediation in Employment

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We've all heard the saying that a happy workplace is a productive workplace. Employers cannot afford contention in their midst, especially during these economically challenging times with the advent of COVID-19. In a highly competitive environment, businesses must maintain effective communication in order to foster a harmonious work environment. Too often disgruntled employees and lackadaisical management results in substandard product, poor customer service and losses for the business.

In a situation where there is no process for eliminating conflict other than disciplinary action, resentments build up and productivity plummets. Currently, we are seeing a trend toward solving conflict in the workplace through mediation rather than other more traditional methods of dispute resolution. The mediation process is one in which parties negotiate and resolve their conflict using the help of a skilled neutral third party.

Mediation in the workplace can be used for a variety of purposes such as negotiating or re-negotiating contracts, collective bargaining, creating a new business, dismantling an existing business or resolving personnel disputes.

Mediation can be used to resolve both internal and external conflict. More often than not, the source of the conflict stems from parties feeling they are not heard, appreciated, or understood. The mediator is a neutral observer who is not emotionally invested and can get through to the heart of the matter to open up discussions as to how to resolve the dispute. In mediation, the parties are voluntarily participating in the process and, as a result, fear and anxiety are greatly reduced once the process is executed correctly. The neutral and safe environment that the mediator provides opens the door to effective communication between the parties.

### Why mediate?

Mediation is beneficial because:

- it allows for early intervention that enables the participants to address issues between them before matters escalate or deteriorate.

- it is confidential and private and can be done within a relatively short time-frame.
- participants have a voice and a safe forum to vent, clear the air and express their perspectives.
- past actions are explored, and participants have the opportunity to understand the source of the conflict while learning to manage future interactions.
- it is an empowering process in which the participants are given the responsibility for their own outcomes.
- the organisation sends a clear message that it takes the matter seriously and wants to invest in assisting the participants to navigate a way forward or restore their damaged relationships.

### **When is mediation the right approach to workplace conflict?**

Mediation is but one of a range of interventions and approaches available when responding to workplace conflict or managing complaints. For it to be the right approach/ tool, the following factors should be evident:

- the level of conflict is moderate.
- there are clearly identified issues that can have tangible resolutions.
- the participants are participating on a voluntary basis.
- there is no significant disparity in the bargaining power between the participants.
- the participants are capable of freely expressing themselves and representing their positions.
- the participants agree to confidentiality and accept that it is a private process.
- there is a community of interest between the participants, i.e., they are both invested in the matter being resolved.
- the organisation is prepared to provide ongoing support to the participants moving forward and agrees to and is willing to facilitate the resolutions reached.

### **What are the ingredients of a successful mediation?**

A mediation is most likely to result in a successful outcome when participants believe that the dispute can be resolved in a fair and concise manner. This can only be achieved if the participants are willing to attempt to resolve it and have an openness to the possibilities of the process. This would entail having the capacity and willingness to listen to the other's perspective and be ready to move beyond the dispute.

### **When is mediation not necessarily the best option?**

There are situations when mediation is not necessarily the best approach to resolve workplace conflict. This is particularly true when:

- the issues raised by the complainant involve serious allegations, which require a more formal response from the organisation such as a workplace investigation which may potentially trigger disciplinary action.
- the issue relates to the conduct of others organisational issues, which may be more appropriately addressed by another process, such as a workplace review.
- participants see the mediation process as merely "ticking the boxes". Example: where it is a step required by a Code of Discipline process before a more formal process can commence.
- participants are disengaged, insensitive and not committed to understanding the other person's perspective.
- there would be a risk of further harm to the participants' well-being.
- the participants have a deeply personal animosity towards each other.
- a participant is using the process to make their case and doesn't understand it's not a determinative process or about convincing the mediator.

When the circumstances are conducive, mediation can be an empowering and transformative process that can assist participants to move forward with more positive working relationships. It can also avoid the time, cost and disruptiveness of more formal processes and lead to greater understanding and collaboration in the future.