

The ABC's of mediation

Alternative dispute resolution can be a cost-effective way to resolve legal issues

By Amy Lieberman

From a business perspective, mediation makes sense as a strategic tool to reduce risk. You receive a great return on your investment of a relatively small amount of both time and money.

For those of you who might be new to legal disputes or serious conflict, here are the ABC's of mediation.

WHAT DO MEDIATORS DO?

Mediators are typically lawyers, ex-judges or in some instances non-lawyers who are trained, skilled and experienced in helping people resolve conflict. The mediator helps each person to explore various aspects of the conflict, to be open to new information, and to consider possible resolutions that may not have been considered before.

The mediator works to reach a resolution that works for all involved. Discussions occur in joint or separate session, or both. What the mediator thinks a reasonable resolution should be may or may not have any bearing on the outcome. His or her opinion is just one of many factors that are considered in evaluating whether, and how, to resolve a dispute.

When the goal is reached of resolving the conflict in a way that works for all parties, the mediator documents the agreement so that it is a binding settlement, or a commitment to future action in the workplace.

WHAT IS THE DIFFERENCE BETWEEN MEDIATION AND ARBITRATION?

Mediation is a structured, confidential process where people in conflict seek to resolve their differences with the help of a neutral third party (the mediator) who facilitates a resolution that both parties agree to. In mediation, the parties make the final decision. Company representatives, including management representatives and/or human resources professionals typically attend on behalf of the business.

The outcome is a written agreement, which becomes a legally binding resolution. It is generally referred to as a "Settlement Agreement," or a "Settlement Agreement and

Release," because it releases all claims against the company. Mediation can typically be completed in a day-long session, although occasionally, some follow-up is needed.

Mediation is voluntary, in the truest sense of the word. That's because no solution is imposed on anyone. It's what the parties believe is fair, or workable, that controls. If the parties to the conflict do not agree, there is no resolution, and they can continue with any other avenues of redress available to them, such as proceeding in court, or pursuing other formal grievance processes.

Arbitration is a more formal, legalistic process. It is just like court, only a hearing (vs. a "trial") is held in a private conference room. The Arbitrator is a typically a lawyer who acts as privately-retained judge.



MEDIATION IS A STRUCTURED, CONFIDENTIAL PROCESS WHERE PEOPLE IN CONFLICT SEEK TO RESOLVE THEIR DIFFERENCES WITH THE HELP OF A NEUTRAL THIRD PARTY (THE MEDIATOR) WHO FACILITATES A RESOLUTION THAT BOTH PARTIES AGREE TO.

Opening and closing statements are given, exhibits are formally introduced, and witnesses give testimony under oath.

After the hearing, which can last anywhere from a few days to a few weeks, the Arbitrator renders a written, binding decision.

WHEN SHOULD YOU USE A MEDIATOR?

Consider using a mediator in three instances:

- Litigation has been filed. You've been sued, and it's going to take years and likely cost well over \$100,000 to get to trial. Funds put towards the fight could be better spent on resolution.
- Litigation has been threatened. If you've tried, but you have been unable to resolve a dispute informally between

yourself and the other party, offer to bring in a mediator, for the same reasons.

- You have serious conflict between valuable employees. If your company's productivity and the bottom line are being seriously impacted by workplace tension, bring in a mediator to help the parties work through the conflict. **AB**

Amy Lieberman is a mediator, arbitrator and the Executive Director of Insight Employment Mediation, based in Scottsdale. Her forthcoming book is titled, "Mediation Success: Get it Out, Get it Over and Get Back to Business."

