

Mediation: Conflict Results that Move Business Forward

The goal is a solution that satisfies all parties, in lieu of an adversarial court proceeding

by Amy Lieberman, Esq.

ACCORDING TO ONE source, 30 percent of a manager's time is spent dealing with conflict. If workplace conflict escalates into a lawsuit, it can cost well in excess of \$100,000 to defend a case. Litigation is costly and destructive; mediation is an alternative step a business can take to reduce conflict and save money.

Mediation provides a safe place for employees to voice concerns and explore positions. Set in a conference room, a neutral mediator helps people share information and get past emotional roadblocks to resolution. The goal is for everyone involved to hear and understand not only what the other side wants but why they want it, and to see if there are ways to meet the interests of both parties. The mediator meets both together and separately with employees and company representatives. Agreement is typically reached, or relationships significantly improved, in one to three sessions.

Whereas in court or arbitration there is a "win-lose" outcome, the result of mediation is different. The mediator strives to obtain an agreement that works for all so the outcome can be a "win-win," though, more often, the outcome is a practical "can live with - can live with" solution.

Why does Mediation work so well?

When it comes to strong conflict, we are often our own worst enemies. We say things we don't mean or later regret. For example, an employee in a lawsuit might say, "I will take this all the way!" That statement can cause a company to fight to the end because they think there is no hope for resolution. What the employee is *really* saying is, "If you don't offer me something *reasonable* that allows me to go on with my life, I will be *forced* to take this all the way."

When we are angry, we usually aren't aware of the full extent of what's driving us until we really begin to express our thoughts and frustration in a safe setting. In the case of an employee who, during mediation, expressed, "What really made me mad was that he gave that project to someone else and has no appreciation for what I do here!" the employee's concern was a lack of respect. Once such a concern is identified, it can be validated and addressed. An experienced mediator is mindful of interpersonal dynamics and the psychology of conflict, plus negotiation strategy, and helps employees *not* to work against their own interest.

Employees or partners can sometimes take action against their own interest, such as storming out of meeting out of frustration. That action can have highly negative consequences, such as disciplinary action or even termination, or cause others to want to break the relationship. Certainly, that isn't the end goal! Here, again, the mediator is knowledgeable in negotiation strategy and so takes steps to ensure no one walks away from the process. "Shuttle diplomacy" occurs, after separate private meetings are held with each party where people can

be more candid in exploring positions, goals, barriers, strength, weaknesses and options for resolution.

In one case involving conflict at an insurance company, a manager wanted to have a new executive fired because he created a "hostile environment." After the manager learned in mediation about a personal crisis the executive was dealing with, he viewed the executive's actions differently. They opened up communication and were able to commit to new ways to communicate better and more often.

In my experience, mediation resolves the matter more than 90 percent of the time. Settled, signed, done! Mediation costs a fraction of the expense of defending a trial and relieves the huge stress of conflict.

What kinds of cases are appropriate for mediation?

Virtually any case that is in the court system is appropriate for mediation. In the business setting, these include contract disputes; intellectual property disputes; wage disputes; restrictive covenant claims; franchise disputes; sexual harassment claims; and charges or lawsuits alleging hostile work environment, harassment, discrimination, retaliation and wrongful termination, to name a few.

Often, non-monetary solutions can be included in a settlement, such as restructured agreements in commercial cases; or transfers, promotions or letters of reference in an employment dispute. Importantly, apologies can be made confidentially in mediation, providing a huge opportunity for repairing relations and achieving a more cost-effective resolution.

Mediation works for employee relations issues, partnership and organizational conflict as well. When conflict generates dysfunction in the workplace, it negatively impacts productivity and growth. Mediation enables the parties to air grievances, explore issues, commit to new ways of behaving and improve work relationships. ■

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