

CPR EMPLOYMENT DISPUTE MEDIATION PROCEDURE

This Employment Dispute Mediation Procedure offers a structure and ground rules for mediation of a discharge or other significant employment dispute between a company and an employee or former employee ("employee") who is not covered by a collectively bargained grievance procedure.

I. Proposing the Mediation Process

If internal dispute resolution procedures or informal negotiations have failed to resolve a dispute, either the employer or the employee may unilaterally propose mediation by contacting the other party, orally or in writing, and suggesting the use of a neutral third party to mediate the parties' efforts to resolve the dispute. Once the parties have agreed to mediate their differences and have selected a mediator, they will enter into a Submission Agreement in the form attached as Appendix 1.

II. Representation

Each party may be represented by another person, of whose identity the other party shall be informed promptly. The representative may, but is not required to, be an attorney. Each party shall be responsible for any fees charged by the party's own representative.

III. Selecting the Mediator

Once the parties or their representatives have agreed in principle to mediation, or at least seriously to consider mediation, they will discuss the selection of the mediator. Unless the parties agree otherwise, the mediator will be selected from the CPR Employment Disputes Panel. The parties shall attempt to agree on a mediator from the list. If they are unable to do so, they may seek the assistance of CPR in selecting one. The parties may inform CPR of their preferences regarding mediator style and locale. CPR will submit to the parties the names of not fewer than three candidates, with resumes and hourly rates. If the parties are unable to agree on a candidate from the list within seven days following receipt of the list, each party will, within 15 days following receipt of the list, send to CPR the list of candidates ranked in descending order of preference. The candidate with the lowest combined score will be appointed the mediator by CPR. At the request of the parties, CPR will break any tie.

Each party will promptly disclose to the other party any circumstances known to that party or the party's representative that would cause reasonable doubt regarding the impartiality of an individual under consideration for appointment as a mediator. That individual will promptly disclose any such circumstances to the parties. Upon such disclosure before or after the individual's appointment, the individual shall not serve, unless both parties and that individual otherwise agree in writing.

The amount and terms of the mediator's compensation will be agreed upon among the parties and the mediator candidate before appointment. Such compensation, together

with any other costs of the process, will be paid in a manner set forth in the Submission Agreement.

IV. Ground Rules of the Mediation Process

Once a mediator has been selected and has agreed to serve, the representatives of the parties will meet jointly with the mediator (in person or by conference call) to discuss the following ground rules and any different or additional ground rules the mediator or a party wishes to propose:

- i. The process is voluntary and non-binding.
- ii. Each party may, by written notice to the mediator and the other party, withdraw at any time after the first session and prior to execution of a written settlement agreement.
- iii. The mediator shall be neutral and impartial.
- iv. The mediator shall control the procedural aspects of the mediation. The parties and their representatives will cooperate with the mediator. Accordingly,
 - (a) The mediator is free to meet and communicate separately with each party.
 - (b) The mediator will decide when to hold separate meetings with the parties and when to hold joint meetings, and whether the meetings will be in person or over the telephone. The mediator will fix the time and place of each such session and the agenda, in consultation with the parties.
 - (c) The mediator will facilitate the exchange of information between the parties in an effort to resolve the dispute.
- v. The mediator may withdraw at any time by written notice to the parties:
 - (a) for overriding personal reasons,
 - (b) if the mediator believes that either party is not acting in good faith, or
 - (c) if the mediator concludes that further mediation efforts would not be useful.
- vi. Each party or party's representative will be authorized to negotiate a settlement of the dispute, and that authorization will be communicated to the mediator.

- vii. The mediation process will be conducted expeditiously. Each party and representative will make every effort to be available for meetings.
- viii. The mediator will not transmit information given by any party or representative to another party, the other party's representative, or any third party, unless authorized to do so by the party transmitting the information. Each party will call the mediator's attention to any matters that it regards as especially sensitive.
- ix. The parties will refrain from pursuing administrative and/or judicial remedies during the mediation process, insofar as they can do so without prejudicing their legal rights. If an administrative action and/or litigation is pending between the parties regarding the subject matter of the mediation, the parties will jointly:
- (a) inform the court or agency of the mediation process and the name of the mediator,
 - (b) request that discovery in any such proceeding be suspended while the mediation is ongoing,
 - (c) consent to and request a stay of such proceeding, and
 - (d) take whatever other steps may be necessary in aid of the mediation process.
- x. The mediator will be disqualified as a witness, consultant, expert, or representative in any pending or future investigation, action, or proceeding relating to the subject matter of the mediation (including any investigation, action, or proceeding that involves persons not party to the mediation). The mediator and any documents and information in his or her possession will not be subpoenaed in any such investigation, action, or proceeding, and both parties will oppose any effort to have the mediator and documents subpoenaed.
- xi. If the dispute goes to arbitration, the mediator shall not serve as an arbitrator.
- xii. Neither the mediator nor CPR shall be liable to any party for any act or omission in connection with the mediation or application of the Employment Dispute Mediation Procedure.
- xiii. The mediator, if a lawyer, will abide by the provisions of the CPR-Georgetown Model Rules for the Lawyer as Neutral.
- xiv. The mediator may obtain assistance and independent expert advice with the agreement and at the expense of the parties.

V. Submission to the Mediator

The mediation process commences upon execution by both parties of the Mediation Submission Agreement (Appendix 1). Once the mediation process has commenced, each party will submit to the mediator such information, which may include brief summaries of or original statements by the employee, the employee's supervisors, or others, as the party deems necessary to familiarize the mediator with the dispute. Submissions may be made in writing or orally. The parties are encouraged to exchange written submissions. The mediator may request either party at any stage of the proceeding to submit clarification and additional information. The mediator may inquire about legal issues and parties' positions in order to evaluate the likely outcome of the dispute were it to be litigated. The parties and their representatives will make reasonable efforts to submit promptly explanations of their positions and arguments on such legal questions. At the conclusion of the mediation process, the mediator will return all written materials and information to the party who had provided them.

VI. Negotiation of Settlement Terms

The mediator may promote settlement in any manner he or she believes appropriate. Once familiar with the case, the mediator will hold discussions with the parties or their representatives or both. The parties are expected to initiate proposals for resolution. Each party should provide a rationale for any terms it proposes. If the parties fail to develop mutually acceptable settlement terms, before terminating the procedure the mediator may, if requested by both parties, submit to the parties a settlement proposal. The parties will carefully consider and discuss such proposal with the mediator.

Efforts to reach a resolution will continue until

- (i) a written settlement agreement is signed, or
- (ii) the mediator concludes and informs the parties that he or she has concluded that further efforts would not be constructive, or
- (iii) one of the parties or the mediator withdraws from the process by written notice.

All settlement proposals will be deemed confidential settlement communications under applicable federal or state rules.

VII. Settlement

If a settlement is reached, the mediator or one of the parties will draft a written term sheet incorporating the basic settlement terms. This document will be executed before adjournment of the session at which settlement is reached. If administrative action, arbitration or litigation is pending, the settlement will provide for the to dismiss the case promptly upon execution of the settlement agreement. The parties may condition any settlement upon that dismissal.

VIII. Confidentiality

The entire mediation process is confidential, except for the fact that the process has taken place. Unless otherwise agreed among the parties or required by law, the parties and the mediator shall not disclose to any person who did not participate in the mediation (including any judicial officer) any information regarding the process (including pre-process exchanges and agreements) or the contents (including written and oral information) of the proceeding; settlement terms; or the outcome of the proceeding. Notwithstanding the foregoing, settlement terms may be disclosed (i) in an action to enforce compliance therewith; (ii) pursuant to any court order; (iii) by the employee to his or her spouse or partner, attorney, accountant, and financial advisor; and (iv) by the employer for purposes of approving or processing any paying any settlement amount and to members of senior management.

The entire mediation process is a compromise negotiation subject to Federal Rule of Evidence 408 and all state counterparts, together with any applicable statute protecting the confidentiality of mediation. All offers, promises, conduct and statements (whether oral or written) made in the course of the proceeding by any of the parties, by their agents, employees, experts, or attorneys, or by the mediator are confidential. Such offers, promises, conduct, and statements are privileged under any applicable mediation privilege and are inadmissible and not discoverable for any purpose, including impeachment, in litigation or arbitration between the parties. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable solely as a result of its presentation or use during the mediation. The exchange of any tangible materials shall be without prejudice to any claim that such material is privileged or protected as work-product within the meaning of Federal Rules of Civil Procedure 26 and all state and local counterparts. The mediator and any documents and information in the mediator's possession will not be subpoenaed in any investigation, action, or proceeding, and all parties will oppose any effort to have the mediator or documents subpoenaed. The mediator will promptly advise the parties of any attempt to compel production of information received in mediation.

.APPENDIX 1

MEDIATION SUBMISSION AGREEMENT

AGREEMENT made _____, 20__ by and between
_____ of _____
_____ (“Employee”), represented by _____
_____ ; and
_____ of _____
_____ (“Company”), represented by
_____.

In brief, the employee’s claim is as follows _____

_____.

The employee seeks _____

_____.

The Company’s response _____

_____.

The employee and the Company both wish to dispose expeditiously of their differences. The parties hereby agree to private and confidential mediation of their dispute pursuant to the CPR Employment Dispute Mediation Procedure (the “Procedure”), a copy of which is attached to this Agreement. Both parties and their representatives (if any) have read and understand the Procedure. The parties hereby agree to all provisions of the Procedure, except as expressly modified in an exhibit appended to this Submission Agreement and initialed by the parties.

The procedure shall be conducted before _____, who shall serve as Mediator and who has agreed to so serve. The Mediator shall be compensated at the rate of \$ _____ per hour, plus out-of-pocket expenses. The parties have agreed to be responsible for the fees as follows:

_____. Neither party knows of any circumstances that would cause reasonable doubt regarding the impartiality of the person named as Mediator.

The Employee hereby affirms that he/she is entering into this Submission Agreement voluntarily, knowingly, and after the opportunity for full consultation with a representative or counsel of his/her own choosing.

Signed by: _____
Employee
Date

Signed by: _____
Representative of or Counsel for Employee
Date

(if applicable):
Signed by: _____
For Company
Date

Signed by: _____
Representative of or Counsel for Company
Date