

Section III. Model Implementation Tools

C. STEP-BY-STEP GUIDE TO USING MEDIATION WHEN A DISPUTE ARISES

This checklist assumes that the Company mediation program is voluntary for employer and employee. Voluntary programs require the Company to take steps to encourage employee use when disputes do arise. For particulars about each of these steps, consult the *CPR Employment Dispute Mediation Procedure*.

Step 1. Employee or Employer Proposes Mediation

In a voluntary mediation program, either the employee or employer may propose that mediation be used for a dispute.

- employee, orally or in writing, contacts a designated Company representative and requests mediation either to resolve a dispute or to respond to a Company action against the employee
- employer proposes that mediation be used once an employee asserts a claim

Step 2. Company Determines Whether Dispute Is Appropriate for Voluntary Mediation

- Counsel, HR or other appointed person advises whether claim by or against employee should be submitted to mediation
- If so, Company advises employee, specifying:
 - notice that it agrees to use mediation process
 - how to exercise option and whom to contact in the Company for additional information
 - the right to consult with and have a lawyer or other representative participate in the process
 - time limits to exercise any option
 - the need to select a mediator and procedures to do so
 - the need to execute a submission agreement to use mediation
- If not, employee is advised of that determination and no notice of mediation is given

Step 3. Parties Consult Attorneys or Representatives

- employees may represent themselves or use a lawyer or non-lawyer representative

- each side informs other of the chosen representative
- each responsible for own representative's fees.

Step 4. Parties Select Neutral Impartial Mediator

- parties promptly reach agreement on a mediator
- parties request CPR or other organization to assist in mediator selection by submitting names of at least three candidates to both parties
- parties agree on one of the candidates within seven days
- each party ranks the candidates in descending order of preference and the candidate with the lowest combined score is selected

Step 5. Parties Sign Submission Agreement to Use Mediation (See *CPR Mediation Submission Agreement*.)

Step 6. Mediator Consults with Parties Jointly, in Person or by Phone to Discuss Ground Rules or Adaptations (See *CPR Employment Dispute Mediation Procedure*, §2(c))

Discussion topics include:

- place and time to conduct mediation sessions
- confidentiality of process
- need to identify the settlement authorized representatives for each side who will be present at the mediation

Step 7. Parties Submit Information to Mediator

- Parties provide information to mediator
 - brief statements by employee, supervisors, or others deemed relevant by either party
 - mediator may request explanations of party's legal positions and arguments
- Parties encouraged to exchange written submissions but the mediator may not transmit information unless authorized by a party.

Step 8. Mediation Process Occurs

- Mediator fixes time and place of each session, the agenda, when to meet separately and jointly.
- Parties make settlement proposals.

Step 9. If So Requested by Parties, Mediator May Propose Settlement Terms

- Parties advise mediator whether a settlement proposal is acceptable, and if not, why not.

Step 10. If Mediation Succeeds, Parties Formally Execute Settlement Agreement

- in writing after circulation of draft and amendment, if any
- agreeing to dismiss any pending litigation or agency action.

Step 11. Mediation Terminates

- when settlement is reached
- when party withdraws after completing the first session by providing written notice to mediator and opponent
- when mediator declares the process unconstructive
- when mediator withdraws for personal reasons or because either party is not acting in good faith

Step 12. Mediator Returns Party Submissions to the Party Who Submitted Them or Destroys Them

Step 13. Arbitration Option Available, If Agreed To by Parties

If mediation fails, the Company notifies employee of:

- the need to arbitrate if the Company has adopted a mandatory arbitration process. The Company also supplies or refers to any supporting signed agreements by the employee
- the need for each party to decide whether to use arbitration if the Company has adopted a voluntary arbitration process