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Workplace Mediation at CMS

Mediation Guidance Notes



2014

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The Acas Code of Practice on Disciplinary and Grievance Procedures endorse mediation as a means of resolving issues which have arisen in the workplace.

What is mediation?

Mediation is an alternative way of resolving disputes where an independent individual, the mediator, actively assists the parties in working towards a negotiated agreement, based on the principles of self-determination. It is about agreeing a way forward which suits all parties.

Mediation is not...

On the other hand mediation is not a fact finding exercise where the mediator will make a decision on whether one party is in the right and other party is in the wrong. The mediator is not involved in judging the parties behaviour, but play a neutral part in the process by helping the parties agree a resolution. It is also not an occasion to confront the other party about past behaviour.

What are the benefits of mediation with workplace disputes?

There are many benefits associated with mediation which do not exist with traditional methods of internal dispute resolution such as formal grievance or disciplinary processes.

- With mediation the parties gain a shared understanding of each other's issues, which can assist with finding solutions to resolve the source of the perceived conflict.
- The process itself is quicker than formal procedures, as the vast majority of mediations take a day to resolve.
- Further, the process has a proven track record with most mediations achieving a successful outcome.
- In mediation the decision as to whether to agree a solution and the terms of any way forward remain squarely with the parties involved in the mediation. Solutions depend on the nature of the workplace issue but can involve a wide variety of options including:
 - a written apology,
 - action plans regarding behaviour,
 - mentoring,
 - relationship agreements,
 - an agreed method of communication,
 - an acknowledgement of achievements, failures or shortcomings,
 - training.

What happens before mediation?

Mediations can start with the mediator speaking to both parties in a pre-mediation telephone call to explain the process, the venue and discuss more procedural matters relating to the mediation day.

Parties should normally sign the mediation agreement before the mediation day and this protects the confidential nature of the discussions.

Mediators normally like the parties to send them an outline of their key issues in advance of the mediation.

What happens on the mediation day?

During the course of the day the mediator will typically use private meetings (effectively shuttle mediation) to explore the issues, feelings and concerns and rebuild relationships (if necessary) using joint problem-solving. This can lead to a greater understanding of the feelings which are at the heart of the dispute. Many people report afterwards that they find it a very helpful process as there is a similar feeling to having a day in court, without the negative elements associated with this.

The parties normally start the day in separate rooms. The mediator will visit each party briefly to meet them, and deal with any immediate queries and concerns.

Most mediators ask the parties to speak to each other directly in a joint meeting where the mediator will set ground rules to manage the process. Individuals often find this very helpful as they are able to explain exactly how they feel and how the dispute has affected them personally. They may read from their statement and explain the key points that have led to the issue and what they hope to achieve.

However if employees are reluctant to attend a joint meeting then the whole mediation can take place by shuttle mediation. As mediation is a voluntary process one party can decline to attend a joint meeting.

In contrast to giving evidence in court, there is nothing similar to cross examination during the whole mediation process.

Because the process is voluntary a party who is unhappy at any stage can walk away from the process. At the end of the joint session, the parties return to their rooms. The mediator then visits each party, exploring the issues and scope for agreement. During the exploration part of the process the mediator may ask questions about what has happened in the past to try and unlock areas where solutions could be suggested. This may lead to further joint sessions or meetings between individuals or representatives.

What is the position regarding admissions made during the process?

Mediation is confidential and 'without prejudice' so nothing said in the mediation is admissible as evidence in legal proceedings. It is standard practice for all parties to sign a mediation agreement before the process starts.

What happens at the end of the mediation?

With internal workplace disputes parties will work towards a solution which is normally put into writing. Alternatively, should agreement not be reached, both parties are not bound and can walk away from discussions. Having signed the mediation agreement they should still keep the discussions confidential.

Can a party be accompanied?

A party can be accompanied at the mediation by a union representative, a colleague or a lawyer, although it is not necessary to have legal representation. Some people prefer not to be accompanied at all.

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