

manager, legal counsel, human resources expert, financial officer, etc.). Take into consideration that an employee may feel outnumbered and at a disadvantage if too many management officials are present at the session.

- Generate realistic options for resolving the situation. Consider whether there are any objective standards (e.g., DOT policy) that both you and the employee can turn to as controlling some of the issues.
- Prepare a brief opening statement using a positive tone/language.
- Review relevant documents; bring them to the mediation.
- Discuss settlement options and negotiation strategy with appropriate officials; think creatively.
- Consider the alternative if the complaint is not settled in mediation.
- Schedule sufficient time for the mediation session (generally 4-8 hours).
- Give the mediator flexibility to develop possible new solutions during the mediation session.
- Consider whether there are any special needs or ground rules that should be established at the outset of the process.
- Discuss the mediation process with program officials, legal counsel, civil rights or human resource professionals; review the mediation video available at <http://www.dotcr.ost.dot.gov/video/index.html>; or go to any other resource, such as those listed under References, to further assist you.

MAXIMIZING THE BENEFITS OF MEDIATION

During the mediation session, management officials can maximize the potential for a successful outcome

by observing the following guidelines:

- Listen respectfully.
- Refrain from making assumptions about what the other person is thinking; seek clarification when needed.
- Give the benefit of the doubt that the employee is acting in good faith.
- Focus your comments on the issues, rather than on the person.
- Try to refrain from getting angry (recognizing that emotions may surface).
- Avoid remarks that may be provocative. You can ask the mediator for a “caucus” (separate meeting without the employee) to have a confidential discussion or to “vent.” It may be more appropriate to discuss sensitive matters in private with the mediator before raising them with the employee.
- Be open-minded and prepared to learn new information during the mediation session.

DECIDING WHETHER TO ACCEPT AN OFFER/SETTLE THE COMPLAINT

As noted, preparation for the mediation process includes considering a range of acceptable outcomes. Enter mediation with an open mind. You may be able to develop options with the mediator’s help that neither you nor the aggrieved individual might have developed on your own.

The mediator will help you consider options by focusing on your interests and the alternatives. If stumbling blocks remain, consider whether a partial settlement is acceptable, or whether returning to mediation after a period of time to reflect or explore other options might be beneficial. Finally, even if no settlement is reached, mediation often results in a better understanding of the other party’s interests, and improved lines of communication.

REFERENCES

If you have any questions regarding mediation and the EEO process, you may visit the following websites, and also contact any of the individuals listed in them:

- DOT ADR Policy: <http://www.dot.gov/adr/docs/dotadrfinalpolicyfr2.doc>
- ONEDOT Sharing Neutrals EEO ADR Program (DOCR): <http://www.dotcr.ost.dot.gov/asp/adr.asp>
- DOCR Mediation Video: <http://www.dotcr.ost.dot.gov/video/index.html>
- FAA ADR Program: <http://www.faa.gov/acr/ocr/adr.htm>

For further information, please contact the Departmental Office of Civil Rights at 202-366-4648.

TTY/TDD: Federal Relay Service:

TDD/TTY	(800) 877-8339
Voice	(800) 877-8339
VCO	(800) 877-6280
Speech-to-Speech	(877) 877-8982



IT IS THE POLICY OF THE U.S. DEPARTMENT OF TRANSPORTATION TO PROHIBIT DISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, AGE, DISABILITY, REPRISAL OR SEXUAL ORIENTATION.



PARTICIPATING EFFECTIVELY IN MEDIATION: A Guide for DOT Managers in EEO Cases



INTRODUCTION

The U.S. Department of Transportation's (DOT) policy is to use Alternative Dispute Resolution (ADR) methods to resolve disputes at the lowest level possible. The use of ADR helps to resolve disputes in an expeditious and cost-effective manner. ADR processes include, but are not limited to: negotiation, facilitation, conciliation, mediation, early neutral evaluation, fact finding, mini-trials, and arbitration.

It is recognized that a positive work environment is essential to promote productivity and effectively carry out DOT's mission. When conflict in the workplace does arise, it is important to resolve it as quickly as possible in order to lessen the impact on accomplishing the Agency's mission.

Often, workplace disputes fall in the Equal Employment Opportunity (EEO) arena. An individual may believe that an employment-related decision has been based, in whole or in part, on unlawful discrimination. To address such issues at the earliest possible stage, DOT has established the ONEDOT Sharing Neutrals EEO ADR Program (Program). The Program is administered by the Departmental Office of Civil Rights (DOCR), and utilizes mediation as the ADR process by which to address and resolve such matters. With an emphasis on dialogue and problem-solving, this approach helps achieve creative and lasting solutions to challenging workplace situations.

The mediation process under this Program addresses matters covered by Title VII of the Civil Rights Act of 1964, as amended (discrimination based on race, color, religion, sex, national origin, and reprisal), the Age Discrimination in Employment Act (discrimination on the basis of age, when the employee is at least 40 years old), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (discrimination on the basis of payment of wages based on sex), and complaints of discrimination based on sexual orientation.

Federal agencies are increasingly using mediation to address EEO issues in a non-adversarial way. This Guide was developed as a tool to assist DOT

managers, supervisors and team leaders (hereinafter referred to as managers) understand the benefits of early resolution and how to effectively prepare for a successful mediation.

WHAT IS MEDIATION?

When asked to participate in mediation for the first time, questions naturally arise about its value, and what "participation" entails. In mediation, a neutral third party (mediator) meets with the individuals who are experiencing conflict, facilitates discussions about the situation and, very often, helps them resolve their differences – in a manner that is mutually beneficial. Mediation offers individuals an opportunity to be heard, to improve communication and to expedite finding solutions to workplace issues.

Mediation provides for open communication between the parties to jointly explore and reconcile differences. Each participant can provide input regarding potential solution(s). Mediation is a confidential process that contributes to an atmosphere of openness that, in turn, increases the likelihood of resolution.

WHAT ARE THE BENEFITS OF MEDIATION?

Mediation costs less and uses fewer resources than traditional administrative or adjudicative processes, particularly processes that include preparation of witnesses and formal decisions. This will allow agency resources to be available for mission-related programs and activities. In addition, employee morale can be enhanced when agency management is viewed as open-minded and cooperative in seeking to resolve disputes through ADR. Thus, the savings in productivity and costs of litigation will be significant.

As stated in the DOT Order establishing the ONEDOT Sharing Neutrals EEO ADR Program (DOT Order 1010.1A), managers are urged to participate in mediation when an EEO matter arises. Likewise, guidance issued by the Equal Employment Opportunity Commission (EEOC) in Management Directive 110 (MD 110) provides that managers have a duty to cooperate in the ADR process established

for EEO matters once the agency has determined that a matter is appropriate for ADR. In addition, the EEOC emphasizes the use of ADR as one of the key factors which will enable an Agency to become a model EEO program.

Because mediation emphasizes communication and seeks to satisfy the interests of all individuals in the dispute, it is a sensible option when management wants to:

- Resolve an EEO complaint quickly, before the opportunity is lost and costs escalate
- Decrease workplace stress
- Repair and strengthen a relationship with an employee
- Clear up misunderstandings
- Achieve a lasting solution to a problem
- Restore/enhance productivity in the workplace
- Exercise some control over the solution to the problem
- Develop a "win-win" solution for both sides

Even when a manager or supervisor believes that managerial discretion was correctly exercised in a situation and that the EEO process should not have been initiated, mediation may *still* be the best option. Mediation will help the participants find common ground and may satisfy both parties' interests. However, if a management official cannot participate in mediation in good faith, the agency may designate another official with settlement authority to participate in the mediation. If either party finds that mediation is not working, the session may be ended.

HOW DOES MEDIATION RELATE TO THE EEO COMPLAINT PROCESS?

During the initial EEO counseling stage, or at any subsequent stage of the EEO complaint process, an aggrieved individual is offered the opportunity to request mediation. If it is determined to be the type of matter appropriate for mediation, the Operating Administration's (OA's) civil rights office

will approach management to see if there is a willingness to participate. Once everyone agrees to mediate, the matter is referred to the Departmental Mediation Coordinator, Departmental Office of Civil Rights, which manages the ONEDOT Sharing Neutrals EEO ADR Program. An aggrieved individual may also elect to utilize the OA's own ADR/mediation program should one exist. For example, the Federal Aviation Administration has a mediation program for EEO matters. In that situation, the FAA mediation coordinator will identify a mediator. In either case, mediators for EEO complaints can be DOT employees, other Federal employees, or outside contractors. Program administrators ensure that all mediators are trained, experienced, and have no conflict of interest in any particular case.

HOW CAN YOU BEST PREPARE FOR A MEDIATION SESSION?

To have the most productive mediation possible, management officials should take time to fully prepare for the mediation process, treating it as a serious opportunity to resolve the situation. Managers are encouraged to explore their expectations of the mediation process, and whether they might differ from the agency's expectations. If there is a potential for differing expectations or interests, a full discussion with the appropriate officials should occur, and differences should be resolved prior to entering into mediation.

Here are some specific tips:

- Think about the issues, your interests, and what you would like to see as an outcome.
- Prepare for a problem-solving process, not an adversarial one.
- Determine who is needed at the mediation (or should be available, although not necessarily at the session). Generally this will be someone with the most knowledge about the problem *and* someone who has settlement authority (such as a higher level