



Office of Resolution Management

Department of Veterans Affairs



Alternative Dispute Resolution Program

A Forum to Address Workplace Disputes

THE OFFICE OF RESOLUTION MANAGEMENT ALTERNATIVE DISPUTE RESOLUTION PROGRAM

PURPOSE

To describe the Office of Resolution Management (ORM) Alternative Dispute Resolution Program (ADR) as a process that will be used to resolve workplace disputes in a timely and cost efficient manner.

BACKGROUND

The Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584, encourages Departments and Agencies to use Alternative Dispute Resolution (ADR) methods to resolve controversies relating to workplace disputes at the lowest organizational level.

ADR is a collaborative, voluntary dispute prevention and resolution approach. It describes a variety of problem-solving processes available to parties who are ready, willing, and able to try them in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR techniques include mediation, facilitation, conciliation, fact-finding, and the use of ombudsmen, and other processes that usually involve a neutral third party who assists the parties in minimizing the escalation of and resolving their dispute. A widely used form of ADR is mediation.

VA Directive 5978, Alternative Dispute Resolution (February 12, 2002), established a Department-wide policy supporting the use of mediation for resolving workplace disputes and emphasizes VA's commitment to using mediation as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. The Directive requires VA Administrations and staff offices to develop plans for ensuring that the option of mediation is available to VA employees to help resolve workplace disputes.

To implement this Directive, ORM has established the ORM Mediation Program. This program will further ORM's mission of providing timely and high quality complaint processing while fostering a discrimination-free work environment through education, training, prevention, and early resolution. Mediation will complement current systems in operation by facilitating early resolution of workplace disputes thereby freeing up valuable resources for other important initiatives in ORM.

POLICY

ORM encourages the use of alternative dispute resolution (ADR) to promote principles and practices that will help improve communications and working relationships. ORM is committed to assisting employees in finding creative, acceptable solutions to disputes and encourages the use of mediation as an alternative approach to resolving disputes. ORM is also committed to using mediation to resolve workplace disputes and controversial issues in a more timely, less costly and less adversarial manner than litigation or administrative adjudication. Mediation will be considered at the earliest possible time and at all levels of the organization when any workplace dispute arises. Using mediation to resolve differences demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. The majority of mediations are completed in one session that lasts from one to eight hours.

ORM's policy is to:

1. Encourage the appropriate use of mediation as an alternative approach to resolve workplace disputes and issues in controversy at the lowest organizational level.
2. Establish collaborative efforts with VACO Early Mediation Program (VA-EMP) and Federal Shared Neutrals Programs to provide mediators.
3. Reduce costs, delays and animosity when disputes arise.
4. Require ORM managers and supervisors to mediate workplace disputes if an aggrieved employee requests mediation.
5. Conduct mediation at a site away from the parties' immediate workplace.
6. Protect the privacy of all parties associated with the mediation process.

SCOPE

The ORM Mediation Program will be available to all ORM employees. This program can be used to help resolve disputes, including but not limited to those claims involving discrimination, reprisal, and other workplace issues. Electing mediation under this or any other mediation program does not suspend statutory deadlines when EEO issues are involved.

RIGHTS

- Mediation is available to ORM employees for any workplace dispute that is deemed appropriate for mediation.

- Participants in the mediation process retain their right to have a claim adjudicated in another forum i.e., grievance or EEO complaint, if a mutually acceptable resolution is not achieved. They must have initiated their claim in the other forum according to applicable regulations.
- The employee has the final decision as to whether he/she will mediate any matter affecting him or her.
- All parties to a dispute in the mediation process have a right to be represented and all agreements will be executed in accordance with relevant statutes and regulations.
- Participants in the mediation process do not have a right to reject the use of a specific mediator unless factors deem that other mediators need to be considered.

PROCESS FOR REQUESTING MEDIATION

ORM's ADR Program Manager (OAPM) manages mediation services for ORM employees who request mediation involving workplace disputes. Upon request, the OAPM will arrange and schedule mediation and locate mediators and/or shared neutrals when needed. The process for ORM employees to schedule mediation services is as follows:

1. Call the OAPM to request mediation services.
2. The OAPM will ensure that the parties have signed ORM's Agreement To Mediate and Confidentiality Agreement.
3. The OAPM will make every effort to ensure that all parties are aware of the issues to be mediated.
4. The OAPM will contact sources to conduct mediation i.e., VA Early Mediation Program and Federal Executive Board Shared Neutral Programs within 5 workdays of contact.
5. Once selected, the mediator(s) will contact the parties to arrange mediation within 5 workdays of the request to mediate or provide mediation consultation services.
6. The mediator(s) will meet with the disputants and representatives, if representation is requested, to assist in opening communication lines between the parties and help them develop an acceptable resolution of the issue(s). The goal is to conduct the mediation within 30 calendar days of the initial request to the OAPM.

7. If settlement is reached, the mediator(s) will provide copies of the settlement agreement to the OAPM within two (2) workdays after mediation is completed. Settlements related to monetary compensation, promotions, etc. must be approved by ORM's Chief Operating Officer.
8. If no settlement is reached, the mediator(s) will inform the OAPM within two (2) workdays after the mediation is completed.

CONCLUSION OF MEDIATION

At the conclusion of the mediation, all participants will complete a short evaluation form and send it to ORM's ADR Program Manager (OAPM). The form is designed to help the OAPM assess strengths and weaknesses of the process and assure high quality service. As appropriate, the OAPM will provide feedback to the Federal Shared Neutral Programs or the VA-Early Mediation Program located at VA headquarters.

If an individual believes a breach of a settlement agreement has occurred involving an EEO related issue, the individual may contact ORM's Office of Policy and Compliance within 30 days of the date that the alleged breach occurred.

If an individual believes a breach of a settlement agreement has occurred on a non EEO related issue, the individual may contact the Deputy Assistant Secretary for Resolution Management office within 30 days of the date that the alleged breach occurred.

MEDIATION DURING THE EEO COMPLAINT PROCESS

- When an aggrieved individual contacts an ORM EEO Counselor, 29 C.F.R. §1614.105(b)(5) requires that the Counselor advise the aggrieved that his/her concerns may be addressed either through the traditional EEO counseling procedures or through ORM's Mediation Program. Before the aggrieved person makes a choice between traditional counseling and mediation, the counselor must fully inform the person about the ORM Mediation Program, and how it differs from the traditional EEO counseling process.
- To preserve his or her statutory rights to file an EEO complaint, an aggrieved individual must contact an ORM EEO Counselor within the forty-five (45) day statutory time limit.
- If the aggrieved wishes mediation, steps 1-8 in the Process For Requesting Mediation section of this document will apply.

- If the aggrieved elects mediation, the pre-complaint processing period shall be extended up to 90 days. If the matter has not been resolved before the 90th day, the Notice of Right to File a formal complaint shall be issued.
- If a settlement is not reached, the aggrieved does not lose his/her rights to continue processing the complaint under the EEO complaint process. The EEO process resumes at the point it was suspended.

ISSUES NOT APPROPRIATE FOR MEDIATION

In rare circumstances, indicators can exist that may make the matter inappropriate for mediation. A case-by-case determination will be made when the following indicators are present:

- an indication that fraud, waste or abuse has been committed;
- an allegation of sustained, continuing sexual harassment; and
- a removal for cause, e.g., removal based upon the commission of a felony.

PROFESSIONAL GUIDELINES FOR MEDIATORS

Mediators must follow professional guidelines for the practice of mediation. In addition to having personal principles and values that assist the mediator to act with integrity, mediators under the ORM Mediation Program are expected to:

- Maintain confidentiality.
- Not coerce parties into a settlement.
- Give no legal advice or counsel to either party.
- Be impartial and not let bias for or against either side affect the conduct of the mediation.
- Disclose acquaintances and material past relationships to the parties before mediation commences.
- Facilitate parties' communications to the extent possible without jeopardizing possible future litigation.
- Not act as judges or as arbitrators of the fairness of a particular settlement if the settlement satisfies both parties and each party is represented by counsel. Where one or both parties are not represented

by counsel, and a mediator suspects a possible illegality in the settlement, the mediator should suggest that parties obtain legal review of the settlement.

CONCLUSION

Mediation is a positive forum to address workplace disputes and help build productive working relationships. For additional information, please call MaryEllen Garcia, ORM ADR Program Manager, at (650) 537-3218.

Confidential



Gets to the Root
Cause



Opens Lines of
Communication



Strengthens Work
Relationships



Mediation – Check it out