

Alternative Dispute Resolution (ADR) Equal Employment Opportunity (EEO) Process Guide

The Equal Employment Opportunity Commission (EEOC) requires, (under 29 Code of Federal Regulations (CFR) 1614) to make available to all agencies an Alternative Dispute Resolution (ADR) program. The ADR program must be available during both the pre-complaint process and the formal complaint process. The ADR process offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. Litigation or further administrative adjudication generally costs more than ADR and is usually less flexible. In most instances, ADR costs less and uses fewer resources than traditional administrative or adjudicative processes, particularly processes that include a hearing or litigation. The agency can avoid costs such as court reporters. In addition, employee morale can be enhanced when agency management is viewed as open-minded and cooperative in seeking to resolve disputes through ADR. Once a complaint goes to other forums, the outcome is decided by a third person, not by the parties, while in the ADR process, the parties maintain considerable control over the process and decide their own outcome.

There are a number of different ADR techniques, such as mediation, facilitation, fact-finding, early neutral evaluation, ombudsmen, settlement conferences, mini-trials. **The Department of Army uses mediation as its preferred technique.**

The ADR Process

An aggrieved is offered ADR when she/he is first interviewed by an EEO official during the informal stage of the EEO process. Should the aggrieved invoke her/his right to the ADR process, the agency has **90 days** to attempt resolution. If the dispute is not resolved in 90 days, the aggrieved has the right to file a formal complaint.

Aggrieved individuals have the right to representation throughout the complaint process. While the purpose of ADR is to allow the parties to fashion their own resolution to a dispute, it is important that any agency dispute resolution procedure provide all parties the opportunity to bring a representative to the ADR forum if they desire to do so. An agency representative represents the agency and cannot serve as a representative of the responsible agency official. If legal counsel represents an aggrieved during ADR proceedings, then the agency representative (labor counselor) will be there to represent the agency.

The Department of Army mandates that management partake in the ADR process. However, the EEO office has the discretion to determine whether ADR is the appropriate venue. Nothing said or done during attempts to resolve the complaint through ADR can be made the subject of an EEO complaint.

Successful Resolution

All terms of an agreement must be in writing and signed by the aggrieved person (or attorney if applicable), the responsible agency official - and coordinated with the Civilian Personnel Advisory Center (CPAC) and the legal representative (labor counselor). Copies of the Negotiated Settlement Agreement

(NSA) are made and provided to the parties. The original NSA is filed with the EEO office. Resolutions are binding to all parties.

Unsuccessful Resolution

If not resolved within 90 days, the EEO Officer/Specialist will provide the aggrieved person with a final interview and the right to file a formal complaint. The counselor's report completed by EEO staff will indicate that ADR failed. No other information regarding the ADR session is provided.

Certified Mediators

A certified mediator is defined as an objective, impartial third-party who has been trained in ADR techniques and EEO law. The mediator has no power to decide the dispute. The mediator has no official, financial, or personal conflict of interest with respect to the issues in controversy and may come from other DOD agencies.

A mediator's duty to the parties is to be neutral, honest and to act in good faith to:

1. Ensure that ADR proceedings are conducted consistent with EEO law and 29 CFR 1614 regulations;
2. Ensure that proceedings are fair, consistent with the core principles of the program (fairness, voluntariness, neutrality, confidentiality, enforceability), particularly providing the parties the opportunity to be represented by any person of her/his choosing throughout the proceeding;
3. Ensure that the responsible agency official participating in the ADR proceeding has the authority and responsibility to negotiate in good faith and is a person with authority to approve or enter into a settlement agreement.
4. Ensure preparation of the written settlement agreement if the parties reach resolution and ensure the agreement includes the signatures of all the appropriate parties.
5. Ensure confidentiality, including destroying all written notes taken during the ADR proceeding or in preparation for the proceedings.
6. Ensure neutrality, including having no conflict of interest with respect to the proceeding (e.g., material or financial interest in the outcome, personal friend or coworker of a party, supervisory official over a party) unless such interest is fully disclosed in writing to all parties and all parties agree that the mediator may serve.

Additional Information

USAG Wiesbaden EEO office – DSN 337-5913/5610; EEO website at:
<http://www.wiesbaden.army.mil/sites/installation/eoo.asp>