

SFA TEXAS LAW CONFERENCE

Mediating Conflicts in the Workplace

Mediation

- Mediation is a forum in which an impartial person, the mediator, *facilitates communication between parties* to promote reconciliation, settlement or understanding among them. (Tex. Civ. Prac. & Rem. Code Ann. Sec. 154.023 (a) Vernon Supp. 1996)

Purpose of Mediation

- “The promise of mediation is to *transform conflict into resolution* at its very core, rather than merely providing an answer to the superficial dispute.” (Richard C. Reuben, J.D., ABA Journal, August 1992)

Conflict Resolution Programs

- Conflict is natural and normal
- Differences can be acknowledged as a solution building opportunity, which can lead to positive change.
- When the conflicting parties build on one another’s strengths to find solutions, they create a climate *supporting self-worth* and opportunities to fulfill individual needs.

The Mediation Process

- Preliminary Work
- Mediator's Introductory Statement
- Disputant's Initial Statement
- The 2-Way Exchange
- Issues Clarification

Mediation Process Continued

- Agenda Setting
- Options Generation
- Negotiation & Settlement
- Agreement Writing
- Closure

Problem Solving Principles

(Fisher & Ury: *Getting to Yes*)

- Separate the people from the problem.
- Acknowledge perceptions – focus on interests.
- Invent options for mutual gain.
- Use objective criteria as the basis for decision making.

Negotiating Steps

- Agreeing to Solve the Problem
 - Ground Rules (Verbal or Non-Verbal)
 - No Interrupting
 - No Name Calling
 - No Put-Downs
 - Tell the Truth
- “I want to solve this problem with you – do you?”

Negotiating Steps

- Telling Your Stories
 - Use I Messages
 - Be Specific About What Happened
 - State How You Feel
 - Listen to the Other Person

Negotiation Steps

- Clarifying Needs
 - State Your Needs
 - Find Out About the Other Person's Needs
 - Discover Any Common Interests
 - Separate Facts from Feelings
 - “It's not fair” vs. “I need to be treated fairly.”

Negotiating Steps

- Exploring Win-Win Solutions and Reaching an Agreement
 - “What if we....”
 - “We could....”
 - “Maybe we should try to....”

De-Escalators

- Stay Cool, Calm and On Center
- Give the Other Person Some Space
- Listen to the Other Person
- Set Your Limits with Non-blaming Statements
- Lighten Things Up
- Admit Your Part

Forbidden Phrases

- “I don’t know.”
- “We can’t do that.”
- “You’ll have to...”
- “You should...”
- “Hang on a second, I’ll be right back.”
- “No” at the beginning of a sentence.

Factors to Consider in Planning an In-House Mediation Program

- What type of support is necessary from senior management?
- Where does mediation fit into existing dispute resolution procedures?
- What existing documents (contracts, grievance procedures) need to be revised?
- Where should the program be housed in order to reflect neutrality as well as credibility?

Communicating a New Program

- How can employees be informed about the benefits of mediation?
- How can mediation be a benefit rather than a threat to those who would otherwise be the sole decision maker? (How would a manager see a mediation with her employee as a benefit rather than a threat to her authority?)

Referrals

- What cases may or may not be appropriate for mediation or other collaborative processes?
- Should mediation be mandatory or voluntary?
- Who will screen requests for mediation?

Confidentiality

- What is the confidentiality of mediated agreements?
- What exceptions to confidentiality will the mediators need to consider?
- How does the open records act apply to mediations?

Mediator Effectiveness

- When should the agency use internal vs. external mediators?
- What qualifications should your mediators be required to have?

Employee / Employer Mediation Interests of Each Party:

Employee

- Material Outcome (\$ as a token)
- Have their say
- Keep problems confidential
- Get another chance
- Maintain good relations at work
- Future employability
- Revenge

Employer

- Minimize cost
- Keep it confidential
- Protect details of settlement to prevent setting precedent
- Maintain consistency in discipline
- Back up supervisors
- Maintain workplace productivity

Examples of Uses for Mediation in Organizational Decision-Making

- Co-Worker Disputes
- Conflicts between two organizational units
- Appeals of personnel decisions
- EEOC complaints
- Worker Compensation claims

Dos and Don'ts for Managers

Do:

- *Encourage* employees to resolve the conflicts themselves.
- *Address* the problem early.
- *Meet individually* and in private with each employee.
- *Bring the employees together for a meeting.*
- *Address the issue* as a performance problem.

Dos and Don'ts for Managers

Don't:

- *Ignore the conflict.*
- *Overreact.*
- *Assume more responsibility than necessary.*
- *Tolerate name calling or back stabbing.*

Constructive Confrontation

- Analyze what is going on before intervening
- Stay out of it – stay objective
- State the reason for the intervention
- Lay out the ground rules for discussion
- Don't offer judgments, but do explore feelings
- Encourage open communication
- Have the parties suggest alternatives
- Present problem-solving challenges
- Have parties develop a course of action
- Obtain a specific agreement. Set date for follow-up.

Behavior Modification

- Describe the unsuitable behavior.
- Identify the divisive issues.
- Listen actively.
- Restate and acknowledge points of view.
- Discover similarities and differences in viewpoints.
- Ask for suggestions for remedial action.
- Agree to remedial steps.
- Summarize the agreement and schedule a follow-up.

Examples

- Faculty vs. Faculty
- Supervisor vs. Employee
- Employee vs. Employee
- Parent vs. School District/Teacher
- Peer Mediation with Students

Primary Resource

- Texas Association of Mediators (TAM)
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<http://www.txmediator.org/>