

Facts About Mediation

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the U.S. Equal Employment Opportunity Commission (EEOC) as an alternative to the traditional investigative or litigation process. Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. The decision to mediate is completely voluntary for the charging party and the employer. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not resolve the charge or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is strictly confidential. Information disclosed during mediation will not be revealed to anyone, including other EEOC employees.

How Mediation Works

An EEOC representative will contact the employee and employer concerning their participation in the program. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate in EEOC's Mediation Program, either party may choose to do so. It is important that persons attending the mediation session have the authority to resolve the dispute. If mediation is unsuccessful, the charge is investigated like any other charge.

Advantages of Mediation

- Mediation is an efficient process that saves time and money. Successful mediation avoids a time consuming investigation and achieves a prompt resolution of the charge. The majority of mediations are completed in one session, which usually lasts for one to five hours.
- Mediation is fair. Mediators are neutral third parties who have no interest in the outcome. Their role is to help the parties resolve the charge.

- Mediation is a confidential process. The sessions are not tape-recorded or transcribed. Notes taken during the mediation are discarded.
- Settlement agreements secured during mediation do not constitute an admission by the employer of any violation of laws enforced by the EEOC.
- Mediation avoids lengthy and unnecessary litigation.

Executive Summary(from the Evaluation of the Equal Employment Opportunity Commission Mediation Program)

Pursuant to a contract with the Equal Employment Opportunity Commission (EEOC), the authors surveyed the participants of the EEOC mediation program regarding their opinions of the performance of the program. This report presents our findings.

The participant evaluation of the EEOC mediation program shows a high degree of participant satisfaction with the EEOC mediation program. Both the participant groups—charging parties and respondents—gave high marks to the various elements of the EEOC mediation program. A summary of our conclusions and their implications are the following:

- An overwhelming majority of the participants (91% of charging parties and 96% of respondents) indicated that they would be willing to participate in the mediation program again if they were a party to an EEOC charge. Participants, regardless of their satisfaction with the outcome of mediation, overwhelmingly indicated their willingness to return to mediation. This is a strong indication of their satisfaction with the EEOC mediation program. The fact that willingness to return was high, even among participants who did not receive what they wanted, indicates that a fair and neutral process that provides participants with an opportunity to present their views may be even more important than the obtained outcome.

- The participants expressed strong satisfaction with the information they received about mediation from the EEOC prior to their attendance at the mediation session. They also felt very strongly that they understood the process after the mediator's introduction of the process. One of the EEOC goals of mediation is to provide adequate information about mediation to the parties. The results show that the EEOC was very successful in fulfilling this goal.
- The vast majority of the participants agreed that their mediation was scheduled promptly. The EEOC's prompt scheduling of mediation sessions is indicative of effective program management. It also increases the chances of dispute resolution since parties get together in a timely fashion before they hardened their positions.
- An overwhelming majority of the participants felt that they had a full opportunity to present their views during mediation. Thus, the "voice factor," an essential element of procedural justice, was present in the EEOC mediation process.
- The participants were very satisfied with the role and conduct of the mediators. They felt strongly that the mediators understood their needs, helped to clarify their needs, and assisted them to develop options for resolving the charge. They felt even more strongly that the procedures used by the mediators were fair. The questions regarding the neutrality of the mediators elicited some of the strongest responses from the participants, who felt that the mediators were neutral not only in the beginning of the process, but also remained neutral throughout the process. One of the EEOC goals of mediation is neutrality. As the participant responses indicate, the EEOC was successful in achieving this goal.
- Participant satisfaction with the distributive elements of mediation was more tempered than their satisfaction with the procedural elements. This is indicative of the fact that mediation is a facilitated negotiation process where parties do not usually obtain what they wanted going into the negotiations. This result is also consistent with the dispute resolution literature on distributive justice. Among the distributive elements, the participants were most satisfied with the fairness of the mediation session.

They also agreed that most of the options developed during mediation were realistic solutions to resolving the charge. The majority of the participants were also satisfied with the results of mediation.

- Participant satisfaction with the EEOC mediation program remained high even when the participant responses differed, at times, based on the nature of the charges, such as the statute, basis, and issue, and the characteristics of the mediation session, such as representation, mediator type, and mediation status.
- Overall, participant feedback regarding the EEOC mediation program indicates that the program is, by any measure, clearly acceptable to the charging parties and respondents who participated in it.

**Taken from the website on EEOC Mediation at:
www.eeoc.gov/mediate/index.html**
