

## United States Equal Employment Opportunity Commission



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## EEOC MEDIATION

Your Partner in  
Workplace Solutions

[www.eEOC.gov](http://www.eEOC.gov)

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## Benefits of Mediation

- Fast, Free, Voluntary & Confidential
- Facilitated by Experienced, Professional, Neutral Mediator
- Parties Retain Control of Outcome
- Avoid Time, Headache & Expense Associated with Investigation or Litigation
- More Resolution Options Open at Mediation Stage

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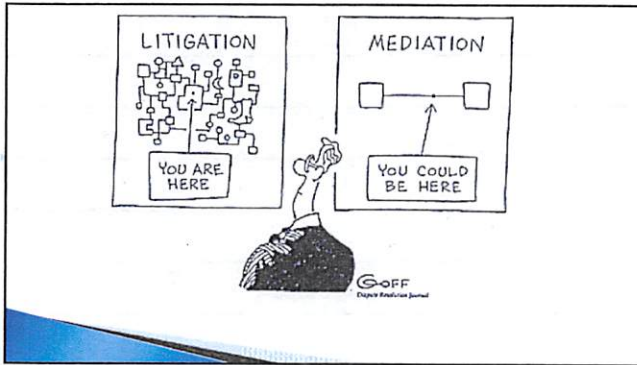
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### Mediation Is

- Informal
- Voluntary
- Confidential
- Neutral

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## Charge Processing

- Intake
- Mediate  
*if no resolution...*
- Investigate
- Litigate

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## CONFIDENTIALITY

- ▶ Confidentiality Agreements
- ▶ Mediator Notes Destroyed
- ▶ Evidentiary Documents Destroyed or Returned to Owner
- ▶ Not Subject to FREEDOM OF INFORMATION ACT (FOIA)

# CONFIDENTIALITY – EEOC

|                |   |             |
|----------------|---|-------------|
| ▶ THE FIREWALL |  |             |
| MEDIATION      |   | ENFORCEMENT |

- ▶ Isolated Mediation Unit
- ▶ Mediators do not Investigate and Vice Versa, Investigators do not Mediate
- ▶ Data Does Not Flow Between Units
- ▶ Separate, Isolated Files

## WHO MEDIATES CHARGES

- Staff mediators
- Contract Mediators
- Pro Bono Mediators
- ALL MEDIATORS ARE FULLY TRAINED AND QUALIFIED TO RESOLVE ISSUES

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I haven't done anything wrong.  
Why should I mediate?



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## Potential Expenses

- Responding to a RFI: \$2,500.00 to \$7,500.00
- Motion for Summary Judgment: \$45,000 - \$50,000
- Litigation: \$100,000.00 to \$120,000.00

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### Myth vs. Reality

- "I'll have to bring my checkbook." » All resolutions do not include monetary relief
- "It's expensive." » Least costly process available and parties have control

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### Myth vs. Reality

- "We'll have to settle each issue or claim filed separately." » All issues and claims may be resolved if the parties agree.

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### More Myths vs. Realities

- "It won't settle." » 76% of cases mediated successfully resolved
- "It's an admission of guilt." » No admission
- "Must conduct a full internal investigation first." » Minimal investigation needed to mediate
- "I'll have to pay an attorney to represent me." » Attorney representation is optional

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### More Myths vs. Realities

- "EEOC will dismiss the charge, and all my problems will be over." » Charging party receives Right to Sue notice and workplace problem still exists
- "Settling one charge leads to another." » Employers report fewer charges filed due to mediation

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### One-Stop Shopping

Participants resolve "whatever they want"



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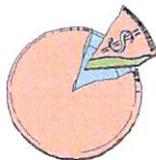
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### Expanding the Pie

#### Global Settlements

- Union grievances
- ERISA issues
- FMLA issues
- Common law claims
- State statutory claims
- ... any other claims



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## Agree to Mediate

- Decide who will attend:
  - ☐ Individual with settlement authority
  - ☐ Individual with knowledge of the issue
  - ☐ Legal representative?
  - ☐ Don't stack the deck.
- Come with realistic options.
- Come prepared and ready to learn new facts.
- Be flexible and open. Don't get entrenched.



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## Participant Tips

- Discuss Sensitive Issues or Concerns with the Mediator in Advance
- Choose Mediation Participants Wisely
- Keep an Open Mind
- Consider Resolution Options Beyond Traditional Legal Remedies
- Consider Your Best, Worst and Most Likely Outcomes If No Resolution Reached
- Know What You Need Out of an Agreement

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## The Mediation Session

- Is conducted face-to-face
- Representatives allowed (but not necessary)
- Includes private caucuses
- Usually lasts 3 - 5 hours



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## Mediation Environment

- Open and honest communication
- Relaxed and informal
- Active listening
- Focus on resolution
- Mutual ownership of outcome



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## Mediators

### What They Will Do

- Be impartial
- Mediate in good faith
- Maintain confidentiality
- Maintain integrity of the process



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## Mediators

### What They Won't Do

- Force or impose settlements
- Unfairly influence a party
- Give personal or professional advice
- Unnecessarily prolong the process



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## Resolution Process

- Stage I
  - Prior to Mediation Session
    - Build Rapport
    - Identify Issues/Concerns
    - Find Out Who Will Attend
    - Review Background Information
    - Determine Whether Case is a Good Vehicle for Resolution
    - Make Sure Parties Know What to Expect (or Not Expect)
    - Set Meeting Date, Time and Place

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## Tips on What to Do:

- › Keep an open mind
- › Negotiate in Good Faith
- › Listen to the other perspective
- › Consider and offer fair solutions
- › Focus on solutions rather than defending your position
- › Be positive, flexible, patient

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## Tips on What to Do:

- › Bring the person with authority
- › Acknowledge hurt and humiliation
- › Keep in mind the costs of not resolving
- › Ask your Mediator about the process
- › Keep the discussions confidential

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### Tips on What to Do:

- › Plan a full day for mediation (make appropriate travel plans)
- › Be prepared to negotiate an agreement
- › Respondent should enter into the EEOC's National Universal Agreement to Mediate

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### What Not to Do:

- › Coming with nothing to put on table
- › Posture or use adversarial language
- › Try to prove the other side wrong
- › Come unprepared

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### Format of Mediation

- **Joint Session**
  - Introductions
  - Opening Remarks & Ground Rules
  - Each Party Gives Perspective on Issues Surrounding Charge
- **Private Caucus**
  - Private Caucus Discussions with Each Party Kept Confidential
  - Mediator May Relay Settlement Offers and Information a Party Permits Mediator to Relay to the Other Party
  - Allow Parties to Express Emotions
  - Explore Resolution Options with Each Side

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## Focus on the Problem

### Prepare Your Thoughts

- What made this happen?
- What is important that the other side may not understand?
- How can you avoid this in the future?
- Are you looking at the problem from all sides?
- What do you want?
- How would you like to see this resolved?



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## Resolution Process

- Stage II
  - Mediator Facilitates Discussion
  - Mediator Helps Parties Focus on Interest vs. Position
- Parties will:
  - Express Views and Perspectives
  - Identify Areas of Agreement and Disagreement
  - Identify Possible Common Ground for Resolution

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## Opening Doors to Agreement

- Give feedback and ask questions.
- Identify your underlying interests.
- Ask "Why" and "What if" questions.
- Try to see the other party's point of view.
- Brainstorm options.
- Focus on areas of agreement.
- Consider what happens if mediation fails.



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## Resolution Process

- Stage IV
  - Agreement Writing
    - Terms – Clear, Specific, Measurable (Amount and Timing of Payment, etc.)
  - If No Agreement, Conclude Mediation Session
  - If Appropriate, Allow Grace Period and Follow-up

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## Resolution Options

- Money
- Reinstatement
- Not Contest Unemployment
- Neutral Reference/Letter of Recommendation
- Training
- Accommodation – ADA or Religious
- Transfer – Different Position, Supervisor or Schedule
- Release from Non-Compete
- Job Placement Services
- Change Termination to Resignation

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## Resolution Options (continued)

- Stock Options
- Gift Cards
- Removal of Counseling Memo or Discipline
- Tuition Reimbursement
- Separation Package
- Recognition/Retirement Party/Award
- Payment of COBRA Premiums
- Donation to Charity
- Other Options Generated by Parties

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☐ Apology  
☐ Job interview  
☐ Work accommodation  
☐ Return to an available position  
☐ Job placement services  
☐ Neutral reference or letter  
☐ One-on-one career development with HR

**Frequent  
Non-Monetary  
Resolutions**

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☐ Conversion of termination to resignation  
☐ Stock options: buyback or accelerated vesting  
☐ No contest of unemployment benefits  
☐ Removal of counseling memo  
☐ Sensitivity training  
☐ Free tuition  
☐ Transfer/shift change

**Frequent  
Non-Monetary  
Resolutions**

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**Creative Resolutions**

- Transportation
- Child care services
- Training, mentoring, career track
- College fund for children
- Honeymoon vacation package
- Recognition/retirement party
- COBRA premium payments
- Purchase of savings bonds

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## NATIONAL SUCCESS RATE

Approximately 75% of mediations  
are successfully Resolved!



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## Quotes from Customers

"As an employer's attorney, I routinely recommend mediation to my clients. In mediation, you can build a sense of what the issues are, learn the problems, explore possible options for resolution, and make informed decisions. . . It makes both business and economic sense from the employer's perspective."

*Charles C. Warner, Esq.  
Porter Wright Morris & Arthur LLP*

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## Quotes from Customers

"Hopkins is striving to be an employer of choice. We think that participating in EEOC's mediation program moves us that much closer to meeting that goal. . . We learned that settlement is not always about money. Sometimes there are non-economic ways to settle a case that may be important to the charging party and the respondent."

*Laurice Royal, Esq.  
Johns Hopkins Health System Corporation*

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## More Quotes

"In all my years of experience in the field of employment law, I have never come across a program that enjoys such a high level of participant satisfaction as the EEOC Mediation Program. The fact that over 90% of the participants are willing to participate in the program again is a strong testimony to the credibility of the EEOC program."

*E. Patrick McDermott, Ph.D., LL.M., J.D.  
Center for Conflict Resolutions  
Salisbury University*

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## Customer Survey



A study revealed...

Participants would use EEOC mediation again,  
regardless of mediation's outcome

- Employer 96%
- Employee 91%

— See [www.eeoc.gov](http://www.eeoc.gov) for full survey report

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QUESTIONS????

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### Universal Agreement to Mediate (UAM)

- Establishes a company's interest in mediating appropriate charges
- Mediation is still voluntary - Any party may decline to mediate any charge.
- Establishes points of contact for company & EEOC
- Expedites scheduling the mediation conference

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