



Mediators & Counsellors

Listening, Exploring & Resolving

A Brief Overview of Mediation

Mediation is an opportunity to respectfully communicate your needs and concerns to a person or persons with whom you are in dispute

At the same time it also an opportunity to listen.

A skilled mediator will assist you with all aspects of communicating and listening.

A skilled mediator will create a safe place to discuss difficult things.

You will be asked to sign a pre-mediation agreement with the mediator before we can start the mediation process proper. This is attached to this document.

We will not rush to problem solve and it is important you understand why.

Conflicts that affect working relationships can be just as painful as a conflict that affects an intimate relationship. In some cases you will see more of the person you work with than the person you live with.

Think about this. A rush to problem solve in a situation where you may work with each other for years to come on a daily basis – just does not make sense.

What this means right now is simply that we will not start until you are ready.

What this also means is that we wont wait forever either.

This is an opportunity – that is all and that is everything.

Please read all the attachments

Please don't hesitate to ask for clarification on any point you do not understand on something that may not be included here.

Frequently Asked Questions

Q. The pre-mediation agreement looks like it might be involving me in a process for which I could be judged to be at fault?

A. This agreement is with the mediator only. It is not a legal document or a human resources document. It simply describes what commitment you are prepared to give to the mediation process so that you can be safe. Remember whatever commitment you give - the other party also has to give. You are also free to leave the mediation process at any time if your needs are not being met.

Q. I have been feeling triangulated and constantly undermined. What is likely to change in this process?

A. This will be a completely transparent process. If the other party has an issue with you, then the mediator's expectation is that you will be directly informed by them, before your supervisor or any other person in authority can take any action – as long as you remain in the mediation process and unless you have committed a serious breach of discipline.

Q. I haven't done anything wrong. This feels like a punishment so why I am I here?

A. We are not looking to apportion any blame. This process encourages you to say what you need and for the other party to listen

Q. This person has been getting away with things for years. My organisation has done nothing in the past. Why should I expect things to change now?

A. You always have a choice. Doing nothing is a choice. If you have not attempted mediation before then you really have nothing to lose. Remember you are free to leave the mediation process at any time if your needs are not being met.

Q. I just don't feel safe. How do I know that I won't be personally attacked?

A. Personal attacks will not be tolerated in this process. If things get heated we will simply stop and we won't start again until the situation cools down. If a party continues to attack or demean another party we will stop altogether.

**If you have any further questions please do not hesitate to call
1800 650 204
And ask to speak directly with a mediator**

Who is commissioning the mediation?

You have decided a conflict exists which requires mediation. From this point onwards someone in the workplace needs to accept overall responsibility for the mediating parties. This person shall be referred to as the workplace mediation supervisor (WMS). It is usually a supervisor. It can be a HR representative. It can be both.

Duties of the workplace mediation supervisor (WMS)

1. The WMS will inform all key parties that a mediation process is being considered to resolve current differences between the identified parties. S/he will stress that at this stage mediation is just an option and:

- No decision will be made until all parties have been interviewed by the mediator.
- You may take a support person with you.
- Parties may choose not to opt for mediation - but only after being interviewed.
- The mediator may opt not to proceed after all interviews have been conducted.
- All rights held prior to the mediation will remain intact but cannot be acted upon whilst the mediation is in progress e.g. a right to pursue a formal complaint

2. The WMS will arrange appointments with the mediator for all key parties

3. The WMS will inform all key parties that s/he (the WMS) is a signatory to the pre-mediation agreement. This means that s/he will be responsible for over-seeing the counter-signing of any agreement when the mediator hands the completed process back to the workplace.

4. The WMS will also inform all parties that once pre-mediation agreements are signed the confidentiality and courtesy clauses included in the pre-mediation agreement must be strictly adhered to.

5. Now that a workplace conflict has been formally identified the WMS is duty bound to inform all parties of all their options besides mediation should mediation either fail or not proceed. This may include a formal investigation should a conflict remain ongoing and be deemed to be affecting productivity, customers, clients and colleagues.

6. Should a participant agree to mediate but refuse to sign a pre-mediation agreement this will become the responsibility of the WMS. Refusal to sign a pre-mediation agreement will be deemed as understanding that other options will now be put in place.

Closure notes for workplace mediation supervisors.

1. The signed mediation agreement has come back to me. What do I do now?

Your primary responsibility is to preside over the counter-signing of the agreement.

All parties must be contacted and discreetly invited to a confidential meeting.

You are entitled to read the agreement.

You must not make a copy or keep the agreement in any form.

Once the counter-signing is complete the mediation is over.

2. What happens if further problems arise?

You may, at any time, should further conflict between the participants arise and you are involved, or you need to be involved, ask to see the mediation agreement.

If the participants have not honoured their agreement you can instruct them to do so before any further involvement from you will take place.

The primary object of mediation is to enable disputants to be able to resolve their own differences.

Sometimes this concept needs to be reinforced.

3. What if the mediation breaks down irretrievably?

You've done your best.

Another process will have to be employed for you to get your needs met.

4. What if there are outstanding issues from the mediation that need to be addressed by management?

The mediator will provide you with a final report.

If there are outstanding issues these should be discussed with the mediator before any further action is taken.

5. What if management do not want to address these issues?

Mediation often reveals more about a conflict than any other process.

Mediators are skilled at working towards solutions in which all parties accept responsibility.

If a mediation has helped to reveal management practices, which could be improved, it is invariably sound advice.

And that's all it is - advice.

At the end of the day final resolution to any conflict rests with those who have the power to make things happen.

Key Third Parties

Key third parties such as unions and support persons may access the mediation process provided they are prepared to sign a pre-mediation agreement.

Generally speaking the following principles will apply:

Support persons are welcome but cannot advocate
Frivolous objections to support persons will be discouraged

It is important that you discuss this process with someone you trust and show them all parts of this document.

For many participants this will be your first experience of mediation and you need to feel safe and to understand how the process works.

Some of you will have experienced mediation previously. If it was a positive experience – good. If not you need to relay your concerns to the mediator before proceeding.

Mediation works best when everyone takes responsibility for participating in the process. Even if you are reluctant but can see that it is the best choice among a list of choices you would rather not make – that is significant and it is enough.

We will not mediate with anyone who does not accept some responsibility for moving forward.

Key points to consider in assessing the pros and cons of mediation for your client

1. My client is distressed and does not feel responsible for this conflict.

We mediate on the basis of helping your client to express their needs and hopefully to facilitate getting their needs met. If your client is unable to express their needs we will not recommend mediation. If your client is able to express their needs we will encourage mediation as the best opportunity for them to regain some control over their situation.

2. The workplace really is to blame – they should fix it.

Most workplaces have a traditional grievance process. This requires those who are claiming to have been treated unjustly to prove their case. It requires those who are accused - to defend themselves. Unfortunately this generally results in people adopting well defended positions. The process becomes one of attrition. The bottom line for many victims is that they continue to feel invalidated and may suffer permanent or chronic damage as a consequence. There has to be a better way.

3. Mediation is just letting them get away with it.

Where we are satisfied an action has taken place that requires disciplinary intervention we will always insist upon disciplinary action being taken first. If the parties will still be working together then we recommend mediation follow disciplinary intervention.

4. My client just does not want to mediate.

We can't make anyone mediate who does not want to. Indeed the intention of the mediation overview and the pre-mediation process is to give participants as much information as possible, including meeting with the mediator, before they decide. The one thing that we believe the mediator and other professionals and support persons have in common is to be able to provide clear choices. Now that mediation is an option we believe it is essential for your client to understand what other choices they have – and what the consequences might be.

5. I think mediation is too risky for my client.

Nothing is risk free. Nothing.

We believe the greatest risk many clients take is to avoid conflict and stay powerless.

We have seen mediations fail to reach agreement.

We have also seen clients face their adversaries, express their concerns, express their needs, regain some control - and grow and benefit from the process.

Pre-Mediation Agreement

This is an agreement between the mediator and those participating in the mediation

1. All who sign this document, agree to keep all details and the proceedings of any mediated agreement confidential.
Confidentiality in this respect means that all aspects of the mediation process including issues raised, needs expressed and points of agreement reached bind all signed participants including stakeholders, mediation supervisors, support persons and the mediator to limit their discussion exclusively to themselves and to no other parties.
Confidentiality in this respect does not bind the parties to refrain from discussing issues and needs raised in the process which were public knowledge prior to the commencement of the mediation process.
2. I understand this is not a process about proving one party guilty and the other party innocent.
3. As a participating stakeholder in this mediation I accept that:
 - I cannot be engaged in any other formal process to resolve this conflict at the same time as I am engaged in this mediation
 - I am responsible for ensuring all my needs are to be met.
 - If at any time I cannot get met a need that is essential for the mediation to be successful I will not continue with the process.
 - I can at any time return to the process once I am satisfied that my needs will be met.
4. If I choose not to return to the process I must inform the mediator, in writing, of my intent.
5. Should I be representing other persons including myself in mediation then I agree that all parties represented must also sign this agreement.*
6. Should a written agreement be reached I am committed to making it work.
7. Should a written agreement require the support of a third party such as a supervisor or manager then I agree that he or she:
 - must sign a pre-mediation agreement before the mediation commences
 - must oversight the final exchange or signing of an agreement but not keep a copy of any agreement*
 - can ask to see my agreement if upon completion of the mediation I bring concerns in relation to the agreement to their attention.

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8. Should this mediation process cease or a signed agreement fail to resolve the issues it was intended to resolve then I understand:

- The confidentiality clause agreed to in the part one of this pre-mediation agreement is still binding.
- Should a participating stakeholder wish to have previous attempts to resolve issues acknowledged in another forum such as a tribunal or court of law then they must seek application through the recognised authority of such a forum and instruct such authority to formally request in writing from the professional independent mediator - and no other party - the records kept by the mediator and to formally notify all other stakeholders of this request.

Once pre-mediation agreements have been signed I undertake to conduct myself in a professional and courteous manner at all times both inside the mediation process, at work and at recreation whenever I come into contact or communicate with any other party to this mediation process. I accept that behaviour to the contrary is an indicator that I am not committed to honouring the basic respect towards each other that is crucial to the ultimate success of the mediation process.

This mediation will commence once pre-mediation agreements have been signed by all and returned to the mediator.

Please print your name: _____

Please sign your name : _____ Date: _____

Counter-signed by the mediator: _____ Date: _____

* Please strike out and initial clauses that are not applicable

*To be heard. To be validated. To move on.
To be courteous - To be committed to a resolution
Is to mediate in good faith - We can ask no more or no less.*

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