

# THE MEDIATION ALTERNATIVE

What can an employee who has a disability, as defined by the ADA, do if he or she is denied a reasonable accommodation in the workplace? If that employee feels their civil rights have been violated, they can choose to file a lawsuit. Another option is to ask that **mediation** be used to solve the conflict. Mediation is often an effective and efficient method of resolving workplace disputes. As opposed to litigation where issues can take several months, or even years to resolve, mediation can occur much closer to the precipitating event. In addition to timeliness, both parties can benefit from meeting face-to-face to discuss their disputes in order to hammer out a mutually satisfying agreement.

## The Process

Example: A man with a severe hearing impairment is experiencing a conflict with his employer because they would not provide an interpreter to aid in explaining a new work procedure. The procedure is critical to his work performance and not learning the new method could be hazardous to his health and the safety of his co-workers. The man believes his rights have been violated and files a complaint with the Equal Employment Opportunity Commission (EEOC).

1. An EEOC complaint is filed by the employee with the hearing impairment.
2. An EEOC representative contacts the employee and the employer to ask them if they would consider mediation to resolve the dispute. Since the process is voluntary for both parties, both must agree to participate.
3. If both parties have agreed to participate, and the case is deemed appropriate for mediation, then it is assigned to a qualified mediator.
4. The mediator has confidential pre-meetings with each party.
5. The mediator brings both parties together to discuss the issue.
6. If the issue is resolved then an agreement is drafted.
7. If no agreement can be reached, the EEOC will investigate the allegations and possibly file a civil suit.

Note: Mediation can also be initiated prior to, or instead of, a formal complaint to the EEOC. Employees should be aware, however, that they must file a complaint within 180 days of the alleged discrimination. In addition, the mediator selected should be familiar with the ADA and the formal complaint process.

## **Key Factors**

- The mediator “sets the stage” - rules of common courtesy and a genuine desire to resolve the dispute are necessary to begin.
- Mediation is voluntary - either the employee or the employer can decide to terminate the session at any time.
- Mediation takes less time than litigation - approximately one to five hours per session.
- Mediation is confidential - notes are destroyed and nothing is taped or transcribed.
- The agreement is determined by the parties, in their best interests. The mediator does not decide the outcome.
- The agreement must be specific, attainable, and measurable.
- Representation by an attorney is permitted, but not required, for both parties. Mediators may not give legal advice or interpret the law, but they will refer parties to impartial outside experts within the disability and legal communities when questions or issues needing clarification arise.