

SIX RIVERS



Six Rivers Dispute Resolution Center

HR Policy Clauses Referencing Mediation

Organizational policies and procedures referencing methods of conflict resolution often include informal conflict management and a formal complaint process and may offer mediation as an option. Effective mediation will generally save costs and resources, reduce hurt and stress, and solve problems through dialogue rather than litigation. Inserting a mediation clause into employment contracts and policies offers several benefits, including:

- prompting the parties to consider a process that may not otherwise necessarily occur to them
- offering an alternative to grievance procedures that might exacerbate problems
- resolving matters between individuals as speedily as possible
- introducing a specific process for exploring resolution in an objective way
- involving a neutral third party trained to facilitate communication
- keeping and/or moving the negotiations out of the public arena
- providing substantial savings in legal and management costs
- achieving a lasting agreement that is created and owned by the parties

Human Resources policies, including employment contracts and guidelines, can indicate how and when to access mediation services. The benefit of using an independent mediation service such as 6 Rivers DRC is that mediators have a more varied experienced in handling difficult disputes across different organizations and are uninvolved and objective in any dispute situation. Some organizations prefer to try and resolve matters 'in house' using internally trained mediators in the first instance and if so this should be explained in organizational policy.

Mediation policy language can include a description of the mediation process and how this is authorized and set up within the organization, including steps and timelines to follow before and after mediation. Organizational policy language should be crafted to consider the specific culture, size, relationships, and procedures of an organization. Below are some examples of policy language referencing mediation that may be useful for your organization. These examples refer to mediation as a way of resolving a dispute between employees at all levels, or between employee and the employer.

General outline of conflict resolution options:

"In order to maintain and promote a fair and productive work environment for all staff, the [Employer] encourages the active resolution of workplace conflicts. Informal conflict management can be initiated at an early stage, in an open manner, by the supervisor or employee or can be facilitated by Employee Relations. If a conflict can't be resolved informally, or if an employee chooses not to resolve it informally, the employee can initiate a formal conflict management process by filing a complaint or grievance. Mediation may also be an option. Resolution options available to employees include the services of either an internal/staff mediator or external mediator arranged through 6 Rivers Dispute Resolution Center."

SIX RIVERS



Six Rivers Dispute Resolution Center

“Any controversy, dispute or claim arising out of or relating to this [contract] or breach thereof shall first be settled through good faith negotiation. If the dispute cannot be settled through negotiation, the parties agree to attempt in good faith to settle the dispute by mediation administered by 6 Rivers Dispute Resolution Center.”

“The resources listed are intended to provide fair, thoughtful, and effective means to manage and/or resolve conflict situations, and thereby promote the work of the [Organization]. These mechanisms can be used independently or in conjunction:

- Human Resource Offices provide information and interventions through HR representatives, including but not limited to disputes over the application of policy, ethics complaints, salary administration, and/or probationary dismissals.
- A Third-Party Mediator provides a confidential, neutral, and independent dispute resolution resource. 6 Rivers Dispute Resolution Center is available to ensure that all parties receive fair and equitable treatment.
- Grievance Procedures provide formal grievance processes for the review and resolution of certain employment issues. Following a series of steps, third-party arbitration may be used to resolve the issue.”

General description of the mediation process:

“If the disputing parties are unable to resolve the dispute through informal process within thirty days of the notification (or such later date as they may mutually agree upon), then either party may request that the outstanding dispute(s) be subject to a non-binding mediation. Either party may apply to 6 Rivers Dispute Resolution Center for the appointment of a mediator. The mediation session(s) shall be attended by the parties or their representatives with full authority to settle the dispute at issue. The parties agree to discuss their differences in good faith and to attempt, with facilitation by the mediator, to reach an amicable resolution of the dispute. Unless agreed otherwise as part of a settlement, the costs of the mediation shall be shared equally by the parties.”

Definition of mediation:

“Mediation is a process in which the parties to a dispute, with the assistance of a mediator, identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement. The mediator has no advisory or determinative role regarding the content of the dispute or the outcome of its resolution but may advise on or determine the process of mediation. Mediation is used to help improve working relationships between individuals, perhaps where there has been a misunderstanding or a disagreement. It is voluntary and completely confidential. One or two fully trained mediators (neutral to the situation) will work with the parties to help them find their own solutions and reach an agreement designed to resolve disagreement or improve the situation. Mediation is conducted on the basis that both parties want to achieve a mutually agreeable

SIX RIVERS



Six Rivers Dispute Resolution Center

outcome and solution. A successful mediation should lead to both parties feeling that the outcome is fair, reasonable and appropriate under the circumstances.”

When to request mediation:

“If any dispute, complaint or disagreement arises in connection with this employment contract, the parties will consider resolving it by mediation before engaging in any adversarial procedure. If any conflict, disagreement or complaint arises between employees during employment, and the parties have not been able to solve it through existing non-adversarial procedures, the parties shall consider resolving it by mediation. An employee and his or her manager should endeavor to resolve the matter of difference between themselves in the first instance; if either the employee or manager considers that the matter might be best resolved through mediation they may request to do so. Unless otherwise agreed between the parties, the mediation service provider, 6 Rivers Dispute Resolution Center, will nominate the mediator. An employee participating in mediation to resolve an issue will not be debarred from either commencing or taking such procedures further through the [Company’s grievance procedure] if the matter is not resolved by mediation.”

Sources:

<http://hrcouncil.ca/hr-toolkit/conflict-resolution.cfm>

http://www.academia.edu/2987441/SAMPLE_POLICY_CONFLICT_RESOLUTION

<https://opsmanual.uiowa.edu/human-resources/conflict-management-resources-university-staff/policy-conflict-management-resources>

https://www2.mmu.ac.uk/media/mmuacuk/content/documents/human-resources/a-z/guidance-procedures-and-handbooks/Mediation_Procedure.pdf

https://www.cedr.com/about_us/modeldocs/?id=19

<https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-Employment-Clauses-Oct-2014.pdf>

https://www.comcare.gov.au/_data/assets/pdf_file/0018/137016/Guidelines_on_resolving_workplace_issues_PDF_153_KB.pdf