

A-Z Guide

MEDIATION



Mediation has been used to resolve employment disputes since the late 1800s. The Industrial Conciliation and Arbitration Act 1894 was amended in 1908 to introduce a process similar to the modern model.

The present specialist mediation service is provided by the Ministry of Business, Innovation and Employment (the Ministry) pursuant to the Employment Relations Act 2000 (ERA). One of the objects of the ERA is to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and employment relationships by promoting mediation as the primary problem-solving mechanism.

Mediation is a dispute resolution tool, and the Mediator is not a judge but a facilitator of the mediation process. It involves the use of a neutral person, who encourages the parties to identify and isolate the areas in dispute, to look at both sides of the problem and identify all the options and alternatives, in order to reach a settlement between them.

Mediation is promoted as the primary problem-solving mechanism under the ERA because it is an informal process which is seen as having the potential to preserve the employment relationship. The process allows the parties to a problem to think laterally when considering options for resolving the matter. They are not confined to the remedies stated in the ERA. A further advantage is that the service is free of charge.

The ERA stipulates that the Ministry will provide a Mediation Service. Employment relationship problems may be assisted by recourse to this Service, or any other service not provided by the Ministry that the parties agree on. The ERA provides that mediation may be achieved by telephone, fax, e-mail or face to face meetings.

The ERA requires every employment agreement, entered into after 2 October 2000, to include a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised.

In spite of any provision in an employment agreement a person may request the services of the Mediation Services as provided by the ERA. The ERA also enables the Mediation Service to provide dispute resolution services to parties in work-related relationships that are not employment relationships, (e.g. contractors).

Participation in mediation is voluntary; however, if you refuse to attend mediation the matter may progress to the Employment Relations Authority (the Authority). The Authority may direct the parties to an employment relationship problem to attempt mediation and there have been occasions where this direction has occurred more than once. Representation at mediation is not mandatory but may be advisable depending on the complexity of the issues at hand. What is discussed during mediation is confidential and may not be used by either party in any subsequent forum.

Settlements reached during mediation may be brought under the provision of the ERA so that they become full, final and enforceable. Settlement agreements usually contain a confidentiality clause binding either party to secrecy as to the details of the settlement. The parties to an employment problem may agree in writing that the mediator make written recommendations around an issue. On a date specified by the parties these recommendations will become final, unless the parties give notice that they do not accept them. If a party fails to give this notice before the specified timeframe, the recommendations become binding and are enforceable against all parties.

Other **A-Z Guides** to refer to are:

- Disputes
- Employment Relationship Problems
- Employment Relations Authority
- Full and Final Settlements
- Good Faith
- Personal Grievances
- Strikes and Lockouts



Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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