

Preparing for Workplace Mediation

The aim of every mediation is to find an agreement which is acceptable to all parties and which enables the dispute to be settled.

The mediation involves facilitated discussion of the issues not a presentation of evidence as occurs in a trial. Preparation is therefore much easier as it is not necessary to organise evidence or produce trial bundles and there are no formal preliminaries.

This document is intended as a guide for employers who can assist their employees to prepare for a mediation session. This is not intended to be a definitive guide and some of the information will not be relevant in all circumstances, however, if all points are considered it will ensure the parties get the most out of the mediation session.

1. General Preparation

This document outlines what needs to be considered before the mediation to assist the parties in reaching a positive conclusion. This document will also help the parties prepare a comprehensive Position Statement they can retain and refer to during the mediation.

2. Position Statement

The only pre-written work that needs be carried out by each party is the preparation of a Position Statement. It is usually prepared for the mediator's eyes only although in some cases parties do agree to the mutual exchange of this document. The Position Statement is simply an overview of the facts, issues and interests of the case to enable the mediator to understand the dispute ahead of the mediation. It is certainly not intended to be an all encompassing document and should be kept as short as possible.

If you require advice or assistance in preparing for a mediation please feel free to contact our Mediation Advisors on +44 (0) 117 946 7180 or email:
mediation@adrgroup.co.uk

1. General Preparation

Mediation only works if all parties are willing to reach a settlement and compromise from both parties can be a key feature. Mediation can be a great process for presenting the strength of a case.

The following points are designed to help the parties prepare their case and present it on the day.

Know their case:

Prior to the mediation the parties should have considered the following:

- Do they have all the information necessary to evaluate the case - for example do they have all the necessary evidence to support their claim?
- Identify the key issues.
- List the strengths and weaknesses of their case. This can be a useful tool to help the mediator.

Develop a settlement strategy:

The parties need to develop a strategy to help to resolve the dispute on the day. There are a number of key considerations that they should review to establish what their settlement parameters are and whether they are reasonable.

- Determine what issues or information may cause them to change their mind?
- Develop a plan including how they want to settle the dispute and how they plan to get there.
- Consider the language and terminology they use on the day. For instance, avoiding using inflammatory language which is likely to anger the other party and thus reduce the possibility of reaching a settlement.
- The mediator is not just a messenger. The parties need to allow him/her some leeway in developing possible resolutions. Remember the mediator will know much more about the other parties position than they will.
- Be candid with the mediator. Assist him/her in determining the best method of persuading the other side of their position.
- Determine if there are any facts that they do not want to disclose to the other side but would like to tell the mediator in confidence. There are rarely facts which should be kept from the mediator and telling him/her confidentiality means that he/she has a greater understanding of the true issues and therefore where resolution may be possible.

Mediators role

The mediator is not there to be judge and jury or to say who is right or wrong. He/she will be there to bring about a resolution to the dispute which has been agreed by both parties.

Opening statement

The mediator will commence the session by going over the ground rules for the mediation, explaining the process and timing. The parties will then be given an opportunity to make a short opening statement (usually 10-15 minutes) and explaining their own position. As this will be their opportunity to talk directly to the other side, they need to be prepared and organised. They may want to consider the following:

- Introduce themselves and confirm that it is their wish to work towards a settlement
- An overview of the facts as they see it. If the other person went first then indicate any agreement or disagreement with their statement

During the presentation the parties should be realistic. While they obviously want to present their case in the most favourable way by emphasising their strengths, weaknesses should not be ignored.

Emotive language is to be avoided in the opening statement. Saying something like, "It's all his/her fault" is likely to cause the other party to become very reactive to the process and they are then likely to spend the rest of the session thinking about what has been said rather than actively listening to the facts.

Other points for consideration

- Review the mediation process so the parties know what to expect
- The parties need to take along files and sufficient copies of any documents they may refer to.

2. Preparing the Position Statement

General

- Names of parties
- Names and titles / positions of the parties attending
- Date and location of the mediation

Case Summary

- Describe concisely the background to the case. A list of the issues and/or a chronology of the key events is often helpful to the mediator
- What are the key issues?
- What are the unique features that the mediator ought to be aware of?
- Have any negotiations taken place?
- Have there been any without prejudice offers?
- What do the parties hope to achieve by the end of the mediation?

The other parties position:

- Please provide a short synopsis of what they believe the other parties position to be
- What do they hope to achieve at the end of the mediation?

Documents:

- The mediator requires, prior to the mediation, the Position Statement and sight of documents that will enable him/her to formulate an understanding of the case and the respective issues involved
- If there is a fundamental point which can only be explained by way of a document then please enclose this with the Position Statement
- If a document is to be relied upon at the mediation, please make sure that it is available on the day

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