

## WORKFORCE WEST VIRGINIA

### ALTERNATIVE DISPUTE RESOLUTION / MEDIATION PROCEDURES WORKFORCE INNOVATION AND OPPORTUNITY ACT

Discrimination complaints filed under the Workforce Innovation and Opportunity Act (WIOA) of 2014 shall include the option of Alternative Dispute Resolution (ADR) or mediation services as an alternative to resolve complaints. The ADR process involves the intervention of a neutral and impartial third party to help the parties clarify issues, identify underlying causes, and arrive at an agreed-upon resolution. The process is designed to resolve the dispute before parties get involved in the formal complaint process.

1. Discrimination complaints submitted under the Workforce Innovation and Opportunity Act must be filed within 180 days of the alleged discrimination. All requests for ADR under WIOA will be processed through the WFWV's Equal Opportunity (EO) Office.
2. The EO Officer will provide complainant rights under applicable federal and state statutes and guidelines, including the mediation process. The EO Officer also provides the mediation information to the complainant, notifies the respondent, and obtains necessary signature(s) to begin the process. The complainant must return the Mediation Election form to the WFWV EO Office indicating his/her choice of whether to use mediation within five (5) days.
3. The EO Officer will notify the ADR mediator of complainant's wish to use the mediation process and forward to the mediator the complainant's Mediation Election form.
4. After reviewing the background material pertinent to the complaint, the ADR session will begin no later than 15 calendar days after the mediator is assigned the matter. *The mediation process will not exceed 30 days, including case preparation, 2-day mediation session, preparation and distribution of settlement agreement.* The 30-day time limit commences upon receipt of the Mediation Election form by the mediator.
5. The ADR mediator then notifies all parties, in writing, of the date, time and location for the mediation. In most instances, mediation sessions will be held in the complainant's city of residence or employment and *will not exceed two (2) days.* Respondents will be advised that only those persons with the authority to approve/disapprove settlement provisions will be permitted to attend mediation sessions, unless agreed upon by parties to the complaint.

6. At the beginning of the mediation session, the mediator will discuss the ground rules of the process: no interrupting while others speak; no name-calling; no threatening behavior; no electronic record of the session; parties are to treat everyone with respect and courtesy. At any time during the session, the mediator may remind parties of the ground rules in order to maintain order.
7. If parties are represented, they shall be advised that the parties are expected to speak on their own behalf. If representatives wish to confer with or advise the parties, they may do so during break time or during conferences when the parties are separated.
8. Parties will be advised that the mediator may determine that a separate conference or “caucus” will help the process. The caucus is useful in instances where tempers flare or when parties reach an impasse and need to confer privately with the mediator in order to continue.
9. Starting with the complainant, both parties will have the opportunity to give an opening statement to explain their positions without interruption from the other party. Parties will be limited to 15 minutes for opening statements. The mediator will advise both parties that they will have an opportunity to respond to all areas of disagreement. Parties will also be advised that they may take notes if they wish to do so.
10. Some parties are uncomfortable with being direct in describing his/her complaint. In these cases, the mediator will ask open-ended questions that require a full explanation and promote discussion.
11. After both parties have issued their opening statements, the mediator will recap the identified issues or concerns of both parties and ask for verification of the facts contained in the opening statements.
12. The mediator will ask direct questions, if necessary, and encourage the parties to begin to talk directly to one another in a non-threatening manner. The mediator will intervene only if there appears to be an imbalance of power between the two parties or if the atmosphere is becoming hostile.
13. The mediator will point-out similar goals of the parties where possible. Parties will identify possible solutions or alternative solutions. The mediator may make suggestions to the parties to stimulate creative resolutions.
14. No party to the mediation will be coerced or forced into an agreement. All must enter into the settlement voluntarily.

15. If it appears no settlement can be reached, parties will be advised that the complaint will be turned over to the WFWV EO Officer for initiation of the formal complaint process. Parties will be reminded at this time that they may not retaliate against each other based on the mediation or for filing the complaint, and that neither party may talk about the contents of the mediation session. The mediator will issue a written notice outlining the facts or circumstances relevant to the attempt to settle the matter. The Notice will be issued with fifteen (15) calendar days from the conclusion of the mediation session.
16. If the parties agree to a settlement, they will be asked by the mediator to assist in putting the resolution into writing. The mediator will describe the settlement of the issues and the future responsibilities of each party. Settlement agreements must be specific, *NOT* general or vague. Parties will be reminded that the process is confidential, and the terms of the agreement must also be confidential.
17. The mediator will prepare and issue the settlement agreement within fifteen (15) calendar days from the date of the resolution. The written settlement agreement shall describe the settlement of the issues and future responsibilities of both parties. The agreement will also outline the complainant's right to file a complaint with the Department of Labor, Civil Rights Center (CRC) should the agreement be breached. The settlement agreement must be signed by the complainant and respondent and their representatives, the mediator, and the WFWV EO Officer.
18. The WFWV EO Officer will review the settlement agreement on behalf of the WorkForce West Virginia and will receive the original agreement from the mediator once it is finalized. The mediator will provide copies of the settlement agreement to the complainant and respondent.
19. The WFWV EO Officer will monitor the results of the settlement agreement to determine if the parties are complying with the terms and conducts follow-up with the complainant. The WFWV EO Officer maintains each complainant case file.

## MEDIATION ELECTION FORM

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Complainant

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Address

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City, State, Zip

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Contact Telephone Number

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Facility/Organization (Respondent)

I have been advised that I have the option to take my complaint through the Alternative Dispute Resolution (ADR) process to attempt a resolution for my claim(s) of discrimination. Based on the information provided to me, I can select only one (1) of the following two (2) options listed below to continue the processing of my complaint of discrimination.

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(initials)

Continue with the discrimination complaint process.

**OR**

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(initials)

Participate in WorkForce West Virginia's Alternative Dispute Resolution process.

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Signature of Complainant/Representative

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Date