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Employment Standards Mediation

This Employment Standards Factsheet is also available in a [printable pdf format](#)

In an Employment Standards dispute, mediation creates an opportunity for the complainant and the employer to talk about each other's concerns and voluntarily come to an agreement to resolve the complaint.

This Factsheet will answer the most common questions about mediation sessions.

1. What is the difference between mediation and other kinds of dispute resolution?

Mediation is a fair, reasonable and timely process that allows people to resolve a dispute with the help of a neutral third party.

Mediation brings the parties in a dispute together with a neutral third party called a mediator. The mediator's goal is to guide the complainant and the employer to a resolution they create themselves.

The mediator does not decide who is right and who is wrong in a dispute. The mediator helps the parties understand each other's point of view and explore possible opportunities for resolution.

The parties ultimately decide how to solve the problem. The mediator can help write a formal agreement but, as a neutral party, cannot make a ruling on the issue(s).

At the very least, a mediator can help the parties narrow the issues in dispute and come to an agreement on the facts of the dispute.

2. What are the benefits of mediation?

Mediation saves time. A mediation session can be set up quickly and normally only takes two to four hours. This gives the parties the opportunity to deal with their issues quickly and get back to their normal activities.

Mediation gives the parties to a dispute an opportunity to express their point of view in a neutral environment. Mediators are trained to bring out the sometimes hidden facts and concerns of the parties. In doing so both parties gain a better understanding that can lead to the possibility of a quicker resolution.

3. Who mediates an employment standards dispute?

The Director of Employment Standards will appoint an Officer from the Employment Standards Branch to lead the mediation session. To encourage open discussion among the parties, mediators consider everything said within the mediation to be confidential. Mediators do not decide the case. They do not represent any of the parties in the case, nor do they act as advisors to any of the parties in the case.

During mediation, the mediator may bring relevant case information to the attention of the parties. This is done to help the parties assess their positions. The mediator cannot provide legal advice to the parties.

4. Is there any preliminary work that I will need to do before a mediation session?

The Employment Standards Branch may demand that you produce records to be used in the mediation session. These records must be delivered to the Branch as set out in the demand, whether or not you choose to participate in mediation.

Both parties should review their records or documents that they wish to present at the mediation session. They should ensure that they have all of the documents that they wish to rely on at the session.

5. What should I bring to the mediation session?

Whether you are the employer or the complainant, this is your opportunity to tell your story. You should bring any and all documents that will help you present your case.

You can bring someone else like a friend, spouse or legal counsel for support. Please keep in mind that the mediation is between you and the other party and your guest's participation will be limited.

It is important that the parties who attend the mediation session come with the authority to resolve the matter if a resolution is possible. If the parties to the dispute do not have the authority to resolve the issues then the mediation session is pointless.

6. Do I have to attend a mediation session?

Mediation is a service the Employment Standards Branch offers to help employees and employers resolve disputes. You are very strongly encouraged to make yourself available for a mediation session.

If the parties do not attend the mediation session, the matter will be referred to an officer of the Branch for a formal hearing and decision. This is called adjudication. Please refer to question #8 for further information on Branch adjudication

7. What happens if the parties reach an agreement through mediation?

If the parties agree to resolve their dispute, the mediator will write up a "settlement agreement" with the input of the parties.

Both parties to the dispute will receive a copy of the settlement agreement. Once the parties have signed the agreement it becomes a legal document.

If the parties fail to comply with the terms of the agreement, the settlement agreement can be filed in the Supreme Court as a judgment under the Employment Standards Act.

8. What happens if the parties can't agree at the mediation session?

If the parties can't reach an agreement, the Director of Employment Standards will appoint an Industrial Relations Officer to adjudicate the dispute. The mediator will work with the parties to narrow the issues in dispute. This may include helping the parties draft an agreed statement of fact and identify witnesses the parties will bring to the branch adjudication.

The officer conducting the adjudication may require the parties to attend a formal hearing where the evidence of both parties, as well as, their witnesses will be heard. This process is separate from mediation and the parties must understand that the officer conducting the adjudication would have no prior knowledge of the case.

Other than records demanded by the Employment Standards Branch, only information about the facts agreed to by the parties will be forwarded to the officer appointed to adjudicate the dispute. To ensure confidentiality of the mediation session the mediator will not provide any notes or comments on the mediation session or merits of the parties' positions to the officer who will adjudicate the dispute.