

# 7 Benefits of Using Mediation when Involved in an EEO Dispute



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## Dispute Intervention Services (DIS)

DIS is a mediation practice whose primary mandate is to aid parties in dispute collaboratively explore ways to reconcile their differences. It additionally provides services that include arbitration, fact finding, and facilitation. DIS can also assist in the development of alternative dispute resolution (ADR) processes and institutional procedures essential to resolving disputes.

I began this journey as an advocate for self-directed outcomes while an Administrative Judge (AJ) with the Equal Employment Opportunity Commission (EEOC) in Washington, D.C. That legal experience has been enhanced by my background in the field of mental health counseling that has helped me understand social behavior in the context of dispute resolution.

As an AJ, I realized that imposed outcomes often left the parties in emotional limbo. A plaintiff with a favorable outcome, would often feel that they deserved more than what the legal remedy provided and defendants who were successful in defending the charges against them often felt that the costs associated with litigation, came at too high of a price. The parties would often feel that the path to justice was full of too many legal pitfalls. The road to victory was full of potholes that came after a too rugged journey. Vindication, for both sides, also lacked emotional relief.

During case conferences with the parties, I would often see how the dispute could be reconciled if they had an opportunity to explore the possibility of resolution through dialog. But the legal process did not foster an atmosphere of trust that was necessary for the parties' ability to venture into a collaborative process to resolve their differences.

I found my calling as a mediator with the United States Department of Agriculture (USDA), Dispute Resolution Board engaging in a process that, through co-mediation, focused on the facilitative approach to resolving complaints of discrimination. I eventually took a position with the highly regarded Federal Mediation and Conciliation Service (FMCS) under the Executive Branch of the federal government as a Commissioner of Mediation where I was trained in the interest-based approach to resolving labor disputes. And as I ventured forward on my own, I became a contract mediator with the United States Postal Service (USPS) REDRESS Program mediating Equal Employment Opportunity (EEO) complaints using the transformative mediation model. I now also serve as a contract mediator with the EEOC in multiple district offices throughout the country mediating employment disputes between private sector employers and their applicants, current and former employees.

Mediation has truly been the road less traveled. And I encouraged you to consider this avenue in resolving your employment issues. It works, because You work it, with my assistance.

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Equal Employment Opportunity (EEO) complaints can be some of the toughest that arise in the business world and in the workplace. Not only do they create strife within a company, they can damage the public reputation of the business. They can also interfere with the recruitment process in acquiring the best qualified applicant for a vacant position. And when the complaint involves a current employee, the entire work environment can be disrupted. This is especially true for EEO matters because they must be settled either during the administrative process or in the courtroom. The sooner a dispute can be resolved and the less attention it attracts from those outside of the company, the better. This is why mediation is such an effective tool.

Mediation of civil disputes, such as an EEO complaint, is a voluntary process that allows disputing parties to resolve their legal issues outside of the courtroom. More and more frequently, courts are requiring those involved in disputes to attempt mediation prior to litigation. They still have the option of pursuing litigation if a resolution is not reached during mediation, but further efforts are seldom necessary. A skilled mediator is able to bring together disputing parties and assist them in seeing the benefits of settling outside of the courtroom. Mediation is one of the few resources available that makes it possible for everyone to walk away from a dispute satisfied with the outcome.

**What are the benefits of using mediation to resolve an EEO Dispute?**



## Mediation is Informal

1

Mediation is informal, so those involved have more control not only of the outcome, but also of the process. Mediation sessions are typically held in a neutral location, or at a mutually agreed upon space, which could be a local attorney's

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office. In addition, the mediation session can be held at a location provided by the local EEO agency in the area. Those involved in the dispute have some say over when and where the mediation takes place, as opposed to litigation when all scheduling decisions are made by the court.

The proceedings are also less formal than those found in the legal process involving the court, which can make it easier to reach a resolution. A skilled mediator has the ability to put everyone at ease during the process, which opens the door to honest, effective communication. The emotions of those involved are addressed, instead of just facts, and that makes it easier for many to be more open minded about resolving an issue.

2

## Mediation is Confidential

Mediation is a confidential process, which is especially important during disputes related to the workplace. The assurance of confidentiality allows the parties to have a more open discussion without the fear that what is said during the process will be used against them in a later proceeding if the parties are unable to resolve their differences in mediation. Topics discussed during EEO mediation can involve sensitive matters, but the process ensures nobody is embarrassed during attempts to resolve the dispute. It can also be helpful in keeping the discussions held during mediation private if sensitive proprietary information is involved.



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3

## Mediation Avoids the Expense of Litigation

Building a court case is expensive. It takes a great deal of time and requires a variety of resources. The services of an attorney must be obtained and there are fees and other costs associated with the process. Mediation is much less expensive than litigation, which is a benefit to everyone involved. Attorney services are often necessary in EEO cases, but their fees are much less because less time is spent in attempting to resolve the issue.

4

## Mediation Makes it Possible to Resolve Disputes Faster

Mediation can resolve an EEO matter in a relatively short period of time, while the average time to resolve a matter through litigation is six months or more. There are even instances in which disputes are settled within a single mediation session taking only a few hours depending upon the issues in the complaint. Moreover, the average processing time for an EEO complaint at the administrative level is close to eighteen months. And the parties must exhaust this remedy prior to litigation. Mediation is fair and efficient, allowing everyone to return to their “normal” life. This adds to the financial benefit of mediation, saving not only the



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money that would go towards the expense of building a court case, but also what is lost when employees and others involved are focused on a trial instead of the advancement of both the company's and employee's interests.

5

## Mediation Avoids Further Damage to a Relationship and Can Eliminate Future Problems

No matter who wins or loses in court, those involved see one another differently once the matter is resolved. It can be difficult to view an employee or applicant the same after a lengthy court battle. Most employees also have no desire to return to work for an employer following EEO litigation. A mutually beneficial relationship can end when litigation is involved.

Mediation focuses on resolving an issue in a fair manner through communication, as opposed to picking a winner or loser. This makes it possible for mutually beneficial relationships to continue once mediation is over. Nobody is the enemy and nobody feels slighted after mediation, and the lessons learned during the process can be used to avoid future problems.



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6

## Mediation Is Voluntary and Increases the Odds the Resolution will be Willingly Honored

When disputing parties play a role in creating a resolution, the odds they will abide by that resolution are higher. When a matter is settled in court, appeals can be made that can extend the process for years.

7

## Mediation Provides an Enforceable Agreement that is Satisfactory to Everyone Involved

Since everyone plays a role in creating the resolution and both parties must agree to the settlement for mediation to be successful, everyone walks away satisfied. Skilled mediators are able to assist parties in seeing the benefits of compromise and in reaching a decision that works for both of them.

*Are you involved in an EEO dispute? John Scott can help.*

*Mr. Scott worked for twelve years as a mental health specialist/counselor before attending graduate and law schools. He is a member of the District of Columbia Bar and has served as an Administrative Judge with the Equal Employment Opportunity Commission (EEOC) in Washington, D.C. He has also served with distinction as a Commissioner of Mediation with the Federal Mediation & Conciliation Service (FMCS) in Oakland, California.*

*To learn more about mediation or to schedule a consultation, contact Mr. Scott at 707.747.0839 or by email at [jscottesq@dismedarb.com](mailto:jscottesq@dismedarb.com).*

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