

Alternative Dispute Resolution (ADR)

The Equal Employment Opportunity Commission (EEOC) 29 C.F.R.1614.102(b)(2) and its implementing guidelines set forth in Management Directive 110, mandate that agencies have an ADR program process and permit agencies on a case-by-case basis whether to offer ADR during the pre-complaint and formal complaint phases of the EEO administrative complaint process. An ADR program must incorporate the principles of confidentiality, neutrality, voluntariness and enforceability. The Department of Army regulation AR 690-600, EEO Discrimination Complaints, dated 09 Feb 2004, states that the preferred method of ADR throughout Army is facilitated mediation with a qualified ADR neutral.

The ADR process has proven successful in reducing formal complaints, employee grievances and employment litigation. It is characterized by full and open communication in a non-adversarial environment wherein benefits include rapid resolution, improved working relationships, cooperative problem solving and substantial cost savings.

The WSMR Commander greatly encourages all employees and their management teams to work well with one another. Pleasant working relationships produce the best managers and employees. When problems arise, it is best to try to immediately resolve the differences involved and reach the best possible solution(s). The Alternative Dispute Resolution (ADR) program, administered by the Equal Employment Opportunity (EEO) office, is designed to do just that.

What is ADR?

Alternative Dispute Resolution consists of a variety of approaches to early intervention and dispute resolution. One of the most effective and efficient means of resolving disputes informally and promptly is to involve a third party, often called the "Third Party Neutral," as a mediator.

Alternative Dispute Resolution was established as an effort to reduce processing time and costs for EEO complaints and to provide an alternative means of resolving other workplace problems that were not already in established grievance or disciplinary channels.

What is Mediation?

Mediation is an alternative dispute resolution technique designed to resolve disputes without resorting to litigation. The goal is to resolve disputes at the earliest stage feasible, by the most expeditious and least expensive methods, and at the lowest organizational level. A third party neutral, the mediator, facilitates and directs communications between the adverse parties in an effort to aid the parties in resolving the conflict. The mediator is a trained, certified facilitator knowledgeable in conflict resolution techniques.

Mediation is the intervention in a dispute or negotiation of an impartial and neutral third party who has no decision-making authority. A mediator may make suggestions in order to facilitate a mutually acceptable resolution of differences between the parties, but the true focus by the parties is on the parties resolving their differences themselves.

Mediators are neutral third party individuals who must be certified and skilled in conflict resolution and have no official, financial or personal interest in the issue at controversy or in the outcome of the dispute. The mediator will facilitate the mediation process to assist the parties in developing solutions.

How the ADR Process Works

The use of ADR may not be appropriate for every EEO complaint. The EEO office will decide on a case-by-case basis whether it is appropriate to offer ADR. If the EEO office determines that ADR is appropriate, an offer of ADR is made. Mediation can be attempted at any time during the pre-complaint or formal phase of an EEO complaint.

If ADR is offered and accepted by the aggrieved/complainant then the EEO office will request assignment of a mediator. The Civilian Personnel Management Service, Investigations and Resolutions (IRD) provide mediation services for a nominal fee.

Both the aggrieved and the management official have a right to personal representation during the complaint process. The mediator will decide to what extent personal and agency representatives will actively participate in the process.

The first goal of mediation is improving communications between parties. In the EEO context this is between the complainant and the Agency. Most importantly, mediation is cost effective and provides a binding agreement. Mediation has a greater chance of success during the early stages of a complaint.

If mediation is unsuccessful during the pre-complaint phase the EEO office will issue the aggrieved a Notice of Right to File a Formal Complaint of Discrimination immediately after ADR. If the dispute is not resolved under the ADR program, or the matter has not been resolved within 90 calendar days from the initial contact with the EEO office the aggrieved person has the right to file a formal EEO complaint, providing the issues raised are EEO related.

If the mediation is unsuccessful during the formal complaint phase the EEO office will prepare a memorandum for record (MFR) stating that mediation was attempted and was unsuccessful. The formal complaint of discrimination will continue to be processed in accordance with regulation.

If mediation is successful, the mediator will provide the EEO office, in writing, with all terms agreed upon so that a negotiated settlement agreement (NSA) can be prepared. The settlement agreement will be prepared in accordance with AR 690-600 and must be signed by the aggrieved/complainant, the complainant's attorney (if applicable), and the management official with settlement authority.

For more information regarding ADR, contact the White Sands EEO Office:

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