



# The Role of Mediation in Resolving Workplace Disputes

Workplace disputes arise from time to time, and when they do, you might want to consider whether mediation could be helpful. Whether the dispute arises from misunderstandings, personality clashes, or a total breakdown in the employment relationship, unresolved conflicts can lead to a toxic work environment and decreased productivity. A number of options employers have to address disputes can be perceived as very negative and destructive. Mediation offers what can be a much more positive, constructive and effective way to address these issues, ensuring a fair and amicable process so that hopefully resolution is achieved for all parties involved.

## **What is Mediation?**

Mediation is a voluntary and confidential process where a neutral third party, the mediator, facilitates communication between disputing parties to help them reach a mutually acceptable solution. Unlike arbitration or litigation, mediation is non-binding, meaning that the mediator does not impose a decision, unless requested to do so by the parties. Instead, the parties retain control over the outcome, fostering a sense of ownership and commitment to any agreed-upon resolution.

## **Benefits of Mediation**

### 1. Confidentiality

Mediation sessions are private, and the discussions cannot be used as evidence in future legal proceedings. This encourages open and honest communication. It assists parties to be able to more transparently investigate all of the potential options to resolve matters.

### 2. Cost-Effective

Compared to litigation, mediation is typically less expensive and time-consuming, making it an attractive option for resolving disputes efficiently. There is no cost for a mediation run by a Ministry of Business, Innovation and Employment (MBIE) mediator, although the parties might incur some costs, in terms of their time to attend and if they have representation.

### 3. Preserves Relationships

Mediation focuses on collaboration and finding common ground, which helps maintain a professional and positive approach. This can also assist with resolving a dispute in a timelier way too.

### 4. Flexibility

The mediation process is flexible and can be tailored to the specific needs of the parties involved. This includes scheduling sessions at suitable times and allowing for creative solutions. The parties can have support or representation or choose to attend by themselves.

## **The Mediation Process**

### **1. Preparation**

The mediator gathers background information about the dispute and schedules a mediation session. Both parties are encouraged to prepare by identifying their interests, concerns, and possible solutions, as well as provide copies of relevant documentation or information to the mediator.

### **2. Opening Statements**

Each party presents their perspective on the dispute without interruption. This helps the mediator understand the issues and sets the stage for constructive dialogue.

### **3. Joint Discussion**

The mediator facilitates a conversation between the parties, encouraging them to communicate openly and explore potential solutions. The mediator may ask questions, reframe issues, and help clarify misunderstandings.

### **4. Private Sessions**

If necessary, the mediator may hold separate private sessions with each party to discuss sensitive issues or explore settlement options. These sessions are confidential and allow parties to speak more freely.

### **5. Negotiation and Agreement**

The parties work together to negotiate a mutually acceptable resolution. Where agreement is reached, the mediator helps them draft a written agreement that outlines the terms of the

settlement. Agreements reached in a mediation run by a MBIE mediator will be documented in an Employment Relations Act s149 settlement document and the agreement will be full, final and legally binding on the parties once signed off by both parties and the mediator.

## **Conclusion**

Mediation can be a powerful tool for resolving workplace disputes, offering a confidential, cost-effective, and sometimes relationship-preserving approach. Employers and employees alike can benefit from understanding and utilising mediation to address conflicts constructively.

For more information about mediation services offered by MBIE, see their website here:

<https://www.employment.govt.nz/resolving-problems/how-to-resolve-problems/mediation>.

By incorporating mediation into your conflict resolution strategy, you may be able to better ensure a more harmonious workplace and foster a culture of open communication and mutual respect.

Please don't hesitate to let me know if you have any questions about how mediation could assist you and your team.

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