Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Click the "X" in the upper right corner to close this page.

Overview

Introduction

Traditional dispute resolution usually involves litigation, which has limitations. In this module, you will learn about a different approach to handling disputes—Alternative Dispute Resolution (ADR) with specific emphasis on mediation—and its many benefits. You can expect to spend about 30 minutes completing the material.

Objectives

Upon completion of this module, you will be familiar with ADR, DLA's policy on ADR, and DLA's ADR program for Equal Employment Opportunity (EEO) disputes.

In this module

The following topics are included in this module:

- Alternative Dispute Resolution (ADR)
- Mediation
- DLA and ADR
- Frequently Asked Questions

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

What is ADR?

ADR refers to dispute resolution processes and techniques that are alternatives to formal adversarial processes. ADR is considered to be an alternative to litigation and has gained widespread acceptance among both the general public and the legal profession. ADR involves processes that all parties agree to, and usually involves using a third party to help resolve disputes. In DLA, it is used in all areas of disputes, including but not limited to personnel, contracts, and labor/management matters.

Limitations of litigation

Litigation involves going to court, which means an investment of money, time, and energy. In addition, litigation is complicated because courts follow formal procedural and evidentiary rules. Other limitations to litigation include the following:

- The rules may not allow certain information to be heard.
- Each side opposes the other in an adversarial context.
- It may take a long time to get a decision.
- The court could dismiss the case for a procedural reason or rule against you.
- If you win, your relief is limited to what the court has authority to give.
- The other side can keep you in litigation by appealing.
- You lose control because someone else makes the final decision for you.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Types of ADR

There are many different types of ADR processes. The following are several common types:

- Ombudsperson
- Arbitration
- Negotiation
- Mediation

Ombudsperson

An ombudsperson is a neutral third party who investigates complaints and helps the parties work through the conflicts.

Arbitration

In arbitration, a neutral third party provides a binding or a nonbinding resolution.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Negotiation

Negotiation involves two or more parties trying to settle their differences on their own. In negotiation, participation is voluntary, and there is no third party who facilitates the resolution process or imposes a resolution. Some problems associated with negotiation include the following:

- Parties typically do not communicate openly with each other; they “keep their cards close to their chests,” worried about giving away their position.
- One party does not trust the opposing side, which often results in “posturing,” or taking a particular position because of anticipated litigation.
- Time passes as each side reviews proposals. It may take weeks or months to make a counteroffer, leading to more reviews and more lapsed time.

Mediation

Dispute resolution with mediation

Traditional dispute resolution usually involves litigation, which has limitations. In this module, you will learn about a different approach to handling disputes—Alternative Dispute Resolution (ADR) with specific emphasis on mediation—and its many benefits. You can expect to spend about 30 minutes completing the material.

With mediation, the parties meet with a neutral third party (the mediator) in a non-adversarial, informal setting to try to resolve the dispute. The mediator helps the parties craft their own solutions to the problem. If successful, the mediation results in a written agreement resolving the dispute.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Steps of mediation

The following is an outline of a typical mediation process:

Step	Action
1	The mediator explains the process to both parties.
2	Each party provides his or her perspective of the situation uninterrupted by the other party.
3	The mediator leads a joint discussion between the parties, helping them communicate with each other, explore issues, and look for areas of common ground.
4	The mediator holds a caucus (meets separately) with each party, so open discussions can be held without the presence of the other side.
5	Sometimes, several caucuses are held throughout the mediation. The parties may convene for joint sessions between caucuses.
6	Ultimately, the parties will either reach a resolution or conclude that their differences cannot be resolved.

Time period for mediation

There is no set time period for how long a mediation session lasts, but most sessions last 4 to 8 hours. The mediator or any party can terminate the mediation at any time.

When to use mediation

Mediation should be considered

- in disagreements with supervisors, employees, or your co-workers, and/or
- to avoid formal conflict resolution processes.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Advantages of mediation

Mediation has numerous advantages. Mediation

- saves money, time, and resources
- focuses on the parties' interests, not their positions
- builds better relationships between the parties
- arrives at solutions acceptable to all parties
- provides parties more options than in other forums
- helps the parties address the real issues in dispute
- helps the parties avoid an unfavorable precedent, and
- allows the parties to work directly with each other.

Proposing mediation

Anyone can propose mediation. There is no need to wait until someone else mentions it first.

For example:

- An employee with a complaint can propose mediation.

- Supervisors can request mediation when complaints are made against them, or when they observe a problem beginning to surface.

If one side says no to mediation, the other side should ask again or talk to the ADR Specialist.

Failed mediation

Mediation success rates are around 80 percent. If mediation does not resolve the matter, the involved parties simply return to whatever options they had before they tried mediation. No rights are lost, and even a failed mediation can have benefits. Oftentimes, issues are narrowed and relationships between parties are improved.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

Mediation, MSPB, and EEO

Mediation is often used to resolve EEO disputes. Similar to the EEO Commission rules which extend time periods with the use of ADR, the Merit System Protection Board (MSPB) also encourages the use of ADR. The MSPB gives an automatic extension (from 30 to 60 days) to file an MSPB appeal when the Agency and employee agree in writing to use any ADR process to try to settle the issue.

MSPB appeals apply to certain Agency actions such as removal, reduction in pay or grade, suspension for more than 14 days, and other designated actions.

DLA policy

DLA mandates that ADR must be considered if unassisted negotiations do not resolve an issue in controversy. Moreover, special consideration should be given to the use of mediation.

In DLA, a management decision not to use ADR can only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions must take place between the deciding official and the Activity ADR Specialist. A decision not to use ADR must be documented in writing by an official within the Activity who is at least one level above the deciding official.

DLA and the AFGE, AFL-CIO and its agent, AFGE Council 169 of the DLA Locals, have agreed in the April 2007 Master Labor Agreement that ADR is the preferred means of resolving disputes.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

RESOLVE (Reach Equitable Solutions Voluntarily and Easily)

RESOLVE is DLA's mediation ADR program for EEO complaints. RESOLVE provides a means to resolve EEO workplace disputes quickly, informally, and amicably.

DLA EEO Managers determine if the RESOLVE program is suitable for the dispute. If determined to be suitable, the RESOLVE program is made available to the aggrieved person. If the aggrieved person elects to use RESOLVE, the affected supervisor(s) and management official(s) are expected to participate in a mediation process with the aggrieved person, except in limited circumstances.

RESOLVE and employees

Any DLA civilian employee who contacts the EEO Office with an informal complaint of discrimination can ask that the matter be mediated under the RESOLVE program. Although employees are not required to use the RESOLVE mediation process, it has a great success rate and many benefits. Mediation is also available to an employee during the formal stage of an EEO complaint.

Employees must contact the EEO Office within 45 days of the date of the matter they think is discriminatory. At this time, mediation should be considered. Although mediation can be requested later, the general rule is: The earlier, the better.

RESOLVE and managers

DLA policy states that managers should participate in the RESOLVE program. If you do not want to participate in the program, you will have to consult with the ADR Specialist, explain why you do not want to participate, and receive written approval—including the reason for declination—from a higher authority.

Alternative Dispute Resolution

[printable version]

Lesson Content
Alternative Dispute Resolution

If a complaint has been made against a manager, the manager should ask for mediation under the RESOLVE program. It is the complainant's choice whether to participate; however, RESOLVE may and should be suggested. Sometimes the suggestion reminds the complainant that the program is available, or the complainant may be more willing to participate upon the manager's suggestion.

Additional information

The following questions and answers are included to provide additional information and clarification on ADR and mediation in DLA.

1. Why is mediation preferred over other types of ADR?
Mediation provides the benefits of a structured process while still being flexible and allowing the parties to control the result. The opportunity for private caucuses with the mediator builds trust and helps temper the parties' expectations, thus increasing the likelihood for agreement.

2. How do I choose a qualified mediator?
DLA maintains lists of qualified and trained mediators. Some mediators are DLA employees and some are not. DLA has ADR Specialists who can help the parties choose a qualified mediator. In EEO cases, the EEO Manager selects the mediator from an approved list of qualified sources.

3. Is there a cost to use a mediator, and if so, who pays?
No fees are involved when using a Government mediator. The DLA activity pays any per diem or travel costs of a Government mediator.

4. Should a mediator be a subject matter expert?
The answer depends upon the nature of the dispute, the complexity of the facts, the amount in dispute, and the needs of the parties. Although subject matter expertise is not always necessary, it can be a plus. The parties may listen more to a mediator with knowledge in the field than to a mediator who is a generalist. However, it is usually just as important to have a mediator who is skilled in mediation techniques.

5. Should the parties have their attorneys or representatives at the mediation?
The answer depends on the nature and complexity of the case. Each party must answer that question for himself or herself. Having a lawyer or representative at the mediation can be beneficial; however, the process is designed so that the parties do not have to have anyone with them during the mediation. If a party would like to consult a lawyer or other representative during the mediation, arrangements can be made to have the person available by phone.

6. Are the mediation proceedings private?
Yes. Only the parties and their representatives may attend the mediation. The parties agree in advance as to who will be present. Others may attend only if the parties and the mediator agree.

7. Where will the mediation be held?
The parties usually agree on the site of the mediation with the help of the mediator. Usually the mediation is held at either party's location, in a neutral setting.

8. Will the mediation proceedings be kept confidential?
Yes. The mediator is bound not to disclose any information concerning the mediation unless the parties agree to the disclosure. (There are some limited exceptions to this rule. For example, threats of violence against either the mediator or one of the parties are not protected by confidentiality.) The mediator solicits a promise from the parties that they will not call the mediator as a witness in any further proceeding related to the dispute being mediated. The written mediation settlement agreement itself is usually not confidential, unless the parties agree to make it so or some specific legal protection applies.

9. Who can I talk to for more information?
The ADR Specialist in your Office of Counsel, personnel in your EEO office, or the DLA ADR Counsel can give you more information.

- End -