

37.01 DISPUTE RESOLUTION

The Commission's decision makers are responsible to facilitate the efforts of the workplace parties in the return to work of the worker. Such efforts involve discussing the issue with both parties, either jointly or individually, outlining the Commission's legislation, policy and procedures on the issue, and/or advising the parties of any third party resources or evaluations that may assist them in resolving the issue.

37.02 MEDIATION

Mediation is a workplace-centered conflict resolution process in which an impartial third party assists the participants in negotiating a consensual and informed resolution to the matter in dispute within the parameters of the return to work provisions of the *Workplace Health, Safety and Compensation Act*, and Commission policies and procedures. In mediation, decision-making authority rests with the parties. The role of the Mediator includes reducing the obstacles to communication, maximizing the exploration of alternatives, and addressing the needs of those it is agreed are involved or affected. Mediation is based on principles of problem solving that focus on the needs and interests of the participants, fairness, privacy, self-determination, and the best interest of all workplace parties.

Referral to Mediation

Mediation services are only offered to address disputes between the workplace parties on the issue of a injured worker's return to work. Mediation is not offered to resolve disputes between the Commission and one or both of the workplace parties, or to resolve disputes between the employer and union, the employer and the worker's representative, the worker and health care provider or the employer and health care provider.

In the first instance, the decision maker will take all reasonable steps to find resolution to the issue in dispute. Following an unsuccessful attempt to resolve a dispute between the workplace parties, the decision maker must offer mediation to the parties as a way to resolve the issue under dispute. In such cases, both parties must agree to participate in mediation before a referral is made.

Where one or both of the workplace parties request mediation to resolve a dispute regarding the injured worker's return to work, the decision maker shall offer mediation services. If both parties agree, the issue is referred to a Mediator.

Referrals to mediation must be signed by the workplace parties and include:

1. a clear outline of the matter(s) in dispute, and
2. contact information for the workplace parties.

Fundamental Principles of Mediation

Impartiality. The Mediator is obligated to maintain impartiality toward all participants. Impartiality means freedom from favoritism or bias, either in word or action. Impartiality implies a commitment to aid all participants, as opposed to a single individual, in reaching a mutually satisfactory agreement. Impartiality means that the Mediator will not play an adversarial role. The Mediator has a responsibility to maintain impartiality while raising questions for the parties to consider as to the fairness, equity, and feasibility of proposed options for resolution. The Mediator does not make the decision on the matter(s) in dispute. In a successful mediation process, the workplace parties reach a consensual decision.

Neutrality. Neutrality refers to the relationship that the Mediator has with the disputing parties. If the Mediator feels, or any one of the participants states, that the Mediator's background or personal experiences would prejudice the Mediator's performance, the Mediator should withdraw from mediation unless all agree to proceed.

Prior Relationships. The Mediator's actual or perceived impartiality may be compromised by social or professional relationships with one of the participants at any point in time. In such cases, the Mediator should either remove himself/herself from the mediation or disclose the prior relationship to the other party before starting the mediation intervention. The other party may agree to continue with the mediation or may wish to discontinue the process.

Conflict of Interest. Before starting the mediation intervention the Mediator should disclose any circumstance to the participants that might cause a conflict of interest.

Where the Mediator is unable to provide mediation services for any of the above-referenced reasons, the Commission will arrange appropriate mediation services and/or extend the time frame for the dispute resolution process.

The Process of Mediation

At mediation, the Mediator will typically conduct introductions, explain the mediation process, provide assurances of confidentiality, and give each party an opportunity to explain the dispute and the reasons behind the party's position. The Mediator will then meet privately with each party, and provide an evaluation of the dispute, pointing out the strengths and weaknesses of each party's position. The Mediator may then, again in private, assist each party to determine both party's genuine interests, and encourage each party to identify potential resolutions.

The dispute resolution must be within the provisions of *the Workplace Health, Safety and Compensation Act* and Commission Policies and Procedures.

Confidentiality. Confidentiality relates to the full and open disclosure necessary for the mediation process. The Mediator shall foster the confidentiality of the process. As per Section 89 (6) of *the Workplace Health, Safety and Compensation Act*, the Mediator shall not appear at a Workers' Compensation Review Division hearing or other proceedings regarding the subject of the mediation without the written consent of both workplace parties. Further, the Mediator shall not disclose the mediation proceedings to other Commission employees. In the event of an unresolved mediation, the Mediator will report "Unresolved" to the referring decision maker. Where a dispute is resolved, the Mediator will provide a written outline of the decision agreed upon by the workplace parties. Information pertaining to the proceedings leading up to the resolution will only be disclosed to the referring decision maker should both parties agree to such disclosure. Only the final result of the mediation process shall be placed on the worker's claim file.

Self-determination. The primary responsibility for the resolution of a dispute rests with the workplace parties. The Mediator's obligation is to assist the workplace parties in reaching an informed and voluntary resolution. At no time will a Mediator coerce a participant into agreement or make a substantive decision for any participant.

Professional Advice. The Mediator will encourage and assist the workplace parties to obtain independent expert information and advice (see procedure 36.00 "Resources and Evaluations") when such information or evaluation is needed to reach an informed agreement or to protect the rights of a participant.

Party's Ability to Negotiate. The Mediator must ensure that each participant has had an opportunity to understand the implications and ramifications of available options. The Mediator has a duty to ensure balanced negotiations and should not permit manipulative or intimidating negotiation techniques.

Concluding Mediation. Where the workplace parties reach full agreement the Mediator shall discuss the process for implementation of the agreement with the participants, if required. The Mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.

Termination by Mediator. If the Mediator believes that participants are unable or unwilling to participate meaningfully in the process or that a reasonable agreement is unlikely, the Mediator may suspend or terminate mediation. In such cases, the matter in dispute is referred to the Commission's decision maker for a final determination.

Unresolved Mediation. If the workplace parties reach a final impasse, the Mediator should not prolong unproductive discussions. In such cases, the matter in dispute is referred to the Commission's decision maker for a final determination.

Mediator as Decision Maker

At the conclusion of an unresolved mediation, the Mediator must ask both parties individually if they agree to the Mediator becoming the Commission's decision maker on the issue of co-operation should that decision be required. The Mediator shall advise the parties that in such instances, the contents of the mediation process required to make a decision on co-operation will

be disclosed on the worker's claim file. In cases where the Mediator makes a decision on the issue of co-operation, the Case Manager is still responsible for making a determination on the original matter in dispute.

Where both parties do not agree on the Mediator making a decision on co-operation, the Case Manager will decide the original matter in dispute and, if warranted, will make a decision on co-operation. It is important to note that an unresolved mediation process does not always mean that one or both parties was non-co-operative. Similarly, refusing to participate in the mediation process, in and of itself, does not constitute non-co-operation.

37.03 TIME FRAME FOR THE DISPUTE RESOLUTION PROCESS

The Workplace Health, Safety and Compensation Act specifies a 60 day time frame for the completion of the dispute resolution process. This process begins when the Commission is notified of the dispute in writing and mediation is requested by either of the workplace parties, or when both parties agree to participate in mediation initiated by the Commission. The process is ended when the matter in dispute is resolved either by the workplace parties through the mediation process or by the decision maker in the event of an unsuccessful mediation.

Within the 60-day dispute resolution period, the Mediator has 40 calendar days from the date of referral to mediation to submit his/her final report on the mediation, in writing, to the referring decision maker.

Extending the Dispute Resolution Process

It is critical to the return to work process that disputed matters are resolved in a timely manner. Therefore, most disputes should be resolved within the 60 day time frame. However, in exceptional circumstances, the process can be extended by up to an additional 30 days, by the Client Services Manager or Director of Corporate Policy and research, upon the request of either the decision maker or the Mediator, as appropriate.

Worker Benefits During Mediation

The worker's appropriate wage loss, medical aid and other benefits shall continue during the dispute resolution process, provided the worker is continuing to participate in appropriate medical rehabilitation and return to work initiatives.

	<i>Effective Date</i>	<i>Approved</i>
<i>Original Procedure</i>	2002 01 01	2002 01 01