



Workplace and Employment Mediation – What to expect if you are the **employer**

What is mediation?

Mediation is a process in which parties in conflict are empowered to resolve their dispute themselves, with the assistance of an independent, unbiased mediator skilled in the art of dispute resolution.

What is mediation not?

Mediation is not a judicial process. It is not about blame or culpability. A mediator does not arbitrate a dispute, or decide who is right or wrong. Whereas court and tribunal processes are about looking backwards, mediation is about looking forwards. That is not to say that important events that have occurred in the past are ignored – far from it – but the focus is on reaching a practical, workable resolution.

What is the difference between workplace and employment mediation?

Generally speaking, workplace mediation involves two or more workers who cannot get along or who are otherwise in conflict with each other. It may involve whole teams of people, or just two individuals. It may be a Board room dispute.

Employment mediation generally involves a worker, or group of workers, (or former worker or workers) who are in conflict with their employer.

Is an employer involved in a workplace mediation, or is it left to the individual workers?

The employer is absolutely involved – it's their business. However, the level of involvement of the employer may differ depending on the nature and extent of the dispute. Generally, we encourage workplace mediations to be tripartite: involving the two workers, or teams of workers, and the employer.

Who should I send to the mediation?

As the employer, that is down to you, but whoever attends (and it may be more than one person, provided that everyone is upfront about it) must have authority to agree to a legally binding agreement on behalf of the business in the event that resolution is reached.

Should I lawyer up?

Again, generally speaking, in workplace mediation, there is no obvious necessity for any party to have legal representation unless the matter in hand is particularly sensitive or has obvious legal ramifications (such as, for example, where there are allegations of sexual misconduct).



It is less unusual for parties to be represented by lawyers at employment mediations, especially where there have been employment tribunal proceedings initiated or intimated.

Should the worker be entitled to bring somebody?

Mediation can be a long and sometimes stressful situation. We would always encourage employers to permit workers to be accompanied by somebody trustworthy at a mediation. This may include a work colleague, or Trade Union representative, or a lawyer in certain cases. In rarer circumstances, the employer may wish to permit the employee to bring somebody other than a formal representative from outside the organisation, such as a family member. This is especially the case if the employer is required to make reasonable adjustments for a disabled worker under the Equality Act 2010.

I'm worried about confidentiality

Naturally, so are we. Confidentiality is a key aspect of mediation. The parties have to be free to speak to each other candidly without fear of reprisal and the employer must also be confident that the personal data it controls under the GDPR, and its legitimate business information, is protected.

We have prepared a series of template documents which include robust provisions protecting confidentiality. This includes a mediation agreement between the parties and an NDA for use with any non-party who is also attending, such as a witness or representative. Your IHL mediator will also emphasise repeatedly the importance of confidentiality during the process. Nobody should attend a mediation unless they are comfortable with committing to the principles of confidentiality.

Is the process 'without prejudice'?

Yes. We think that most employers are familiar with this concept, but essentially this means that the content of the mediation, and what is or is not agreed, is privileged, and may not be disclosed to a court or tribunal in the event of subsequent legal proceedings. This includes any offers and concessions made.

Can I be told what the workers says to the mediator?

No. What the worker says to the mediator as part of a private discussion during the mediation is also confidential, even from the employer. The mediator will only relay information with the express permission of the parties, but that also goes for the employer.

How long will the mediation last?

Mediations can last for as long as necessary, but often a full day is set aside. This is because the road to reaching a resolution is often a bumpy one. A large part of the process involves the mediator establishing a rapport with the parties. Mediators that have established trust are far more likely to facilitate a resolution, but this takes time.



Can we arrange the mediation for less than a day?

We do consider half day mediations for simpler disputes but always encourage employers to set aside appropriate time and resources into what can be a very unpredictable process.

Can we mediate via Zoom/Teams?

IHL do undertake mediations via Zoom or Teams, but would encourage you to consider a face-to-face process if at all possible as our experience is that this is far more conducive to constructive dialogue.

We've tried mediation internally before and it didn't achieve much – it is worth it?

We suggest a neutral venue, with at least three separate rooms (one for each party and one for the mediator), but understand that there may be a cost to this. Mediations can take place on the employer's premises, but this is often not seen as a neutral by the workers. Alternatively, we can make a suggestion.

We've tried mediation internally before and it didn't achieve much – it is worth it?

We are often familiar with parties starting by saying that mediation has been tried before without success. Digging deeper, we tend to find that this means that someone has tried to facilitate a round table meeting between two parties in dispute. This is not mediation. With IHL, your mediator is trained and accredited by CEDR (see www.cedr.com) to conduct a carefully planned and creative process.

What happens before the mediation?

Your IHL mediator will spend time with both you as the employer and the parties to the mediation, or the main parties where there are teams involved, in order to begin to establish a rapport and explain the process. Often, workers are reluctant to engage in mediation; they can have anxieties and uncertainty about the process. That can take time to break down. It isn't unusual for a mediator to spend several hours with the worker, either on the phone, face-to-face or via Zoom/Teams, before the mediation even takes place. This is an important part of the process of managing expectations and getting the parties into the right mindset.

What happens on the day?

Again, your IHL mediator will spend time with the parties separately to re-emphasise the process, go over the principle of confidentiality and establish a calm and practical environment conducive of resolution. The mediator will then start to explore the issues with the parties – this background exploration is about establishing common ground, building trust and identifying issues that need to be resolved before parties can move to a bargaining stage – the stage in the process where they are encouraged to put forward and consider proposals for resolution, facilitated and marshalled by the mediator.



Do the parties meet face-to-face?

We always encourage it, but they do not have to. Sometimes, animosity has built to such a level that parties are unwilling to sit in the same room as each other. Nobody will be forced to deal directly with another party, but your IHL mediator will always explore the reasons for this and consider possible alternatives.

Is resolution guaranteed?

No, and nor should it be. Your IHL mediator will be conscious that reaching no agreement is probably better than reaching an agreement that is impractical or unworkable or likely to be breached before the ink is dry.

We just can't see any of the parties reaching an agreement – is there a point?

Absolutely. All disputes are capable of resolution. A mediation may not reach an agreement on the day, but may lead to further discussions that may, given time, lead to an ultimate solution. Your IHL mediator is experienced in dispute resolution and employment relations and will be creative. Often, parties struggle to see a clear resolution through the fog of a preconceived notion of what a resolution might look like. The point is that a totally different resolution, even a radical one, might present itself during the process.

I have two employees who simply don't get on. If they can't work together, could we explore an exit strategy with one or more of them?

This is certainly a possibility, and its not unusual for a workplace mediation to evolve from a discussion about two parties working together to a discussion with the employer about redeployment, voluntary redundancy, settlement agreements or relocation, hence why it is important that the person attending to represent the employer has the authority to reach a binding agreement, or at least can contact somebody who can.

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