



## Mediation – What to Expect

### THE MEDIATION PROCESS:

- provides parties with an opportunity to find an acceptable resolution to problems
- allows parties to reach their own settlement
- is voluntary
- is confidential; what is discussed and agreed cannot be shared outside the room unless those present agree otherwise
- is carried out by an impartial mediator.

## The mediation process

### HOW DOES IT HAPPEN?

When parties agree to mediate they will each have the chance to speak and be listened to, to ask questions and state their point of view.

The mediator will:

- provide a process for parties to safely discuss their concerns
- assist parties to understand each other's point of view
- keep the meeting focused
- help parties work out a resolution they can both agree on
- write up the agreement as a binding record of settlement if the parties want that.

### WHO ATTENDS AN EMPLOYMENT MEDIATION EVENT?

The people attending mediations are those who want to resolve the employment relationship problem and a mediator. This usually means the employer, the employee and the mediator. Advocates, representatives and support people may also attend.

### HOW LONG DOES THE PROCESS TAKE?

The Ministry of Business, Innovation and Employment schedules dates and time for mediation as soon as all the parties and a mediator are available. The meetings usually last around three or four hours but some can last all day. A confirmation letter with date and time of mediation will be sent to all parties.

[employment.govt.nz](https://employment.govt.nz) | 0800 20 90 20 | [mediation.enquiries@mbie.govt.nz](mailto:mediation.enquiries@mbie.govt.nz)





The mediator may contact you before the mediation date to discuss options for the best process to meet your and the other party's needs.

### **IS ATTENDING MEDIATION LIKE GOING TO COURT?**

No. The mediation process is nothing like a court process. Usually mediation occurs in a meeting where the parties and the mediator talk around a table about the issues and options for resolution.

### **DO I NEED REPRESENTATION?**

No. People can represent themselves at mediation; however, advocates (e.g. Unions and employer organisations) and lawyers can be very helpful in assisting parties to present their case – particularly in gathering the facts, and setting out the law. Be aware that you will have to pay for your representation.

### **WHO DOES THE TALKING?**

You, the other party and the mediator do the talking. Support people do not usually speak at mediation. Representatives often speak, but the most important contributions are from the parties themselves.

## **How do I prepare for mediation?**

### **WHAT SHOULD I DO BEFORE A MEDIATION EVENT?**

However mediation occurs; make sure you have all the important papers with you (e.g. employment agreements, time and wage records, letters and emails). Think about how to describe the problem and what you want to say. Writing it down will help you to remember everything.

### **WHAT IS THE BEST WAY TO GET THE MOST OUT OF MEDIATION?**

Be prepared to:

- listen to the other person's point of view and accept that this is how they see the world, even if you do not agree with what they say
- explain your point of view and why you hold it
- acknowledge anything you might have done differently or better
- acknowledge mistakes
- bend a little to reach agreement
- be honest and open about what has happened
- put yourself in the other person's shoes



- have an open mind about options for resolution.

## What might come out of mediation?

### **IF AGREEMENT IS REACHED**

Usually the mediator writes up your agreement as a Record of Settlement. These become legally final, binding and enforceable through the courts when signed by the parties and the mediator. Sometimes, however, the mediator simply records what you have agreed to in an informal way. You will be given a copy of the agreement to take away with you.

### **IF I CHANGE MY MIND**

A Record of Settlement is final; once it is signed you cannot go to court if you do not like what you have agreed to. Be clear about what you agree to and make sure it is acceptable to you.

### **IF THIS AGREEMENT IS NOT KEPT**

If one party does not do what is required under the Record of Settlement, for instance make a payment, the other party may apply to the Employment Relations Authority (ERA) or the Employment Court for enforcement of the agreement. It is a good idea to contact the mediator to see if they are able to assist with encouraging parties to comply with the agreement before applying to the ERA.

### **IF WE CANNOT REACH AN AGREEMENT**

Where agreement is not reached after a mediation process a party may file an application to the ERA for a determination (a decision) on the issues. There is a fee for this, currently \$71.56.

### **RECOMMENDATIONS**

If parties cannot reach agreement, they may both agree that the mediator should make a recommendation. If the recommendation is not rejected by either party before the specified time limit it will become final and binding and enforceable.

### **DECISIONS**

If the parties are unable to reach an agreement they may agree that the mediator make a decision. That decision would be final and binding and enforceable.