

MEDIATING EMPLOYMENT CASES

How can parties in employment cases improve their success at mediation? Statistics have shown that only about 50% of employment cases settle at the first mediation session. This number is not representative of settlements at mediation in general. Other types of lawsuits, including personal injury cases and commercial disputes, have much higher resolution rates at the first mediation session. This article discusses how parties to employment cases can improve their chance of settling at mediation.

Choose a mediator like Ms. Tweedy who can bring peace to the emotionally charged litigants' dispute. Choose a mediator who has good listening skills and empathy. In employment cases, the parties want to tell their stories. Choose a mediator who is patient, sincere, optimistic, while at the same time is persuasive, persistent and creative. Choose a mediator who will not simply accept everything each party says in each room. Choose a mediator who will challenge the advocates' positions. Choose a mediator who will actively involve the litigants in the making of the settlement agreement.

Come to the mediation after fully briefing the mediator and the other side. Prior to the mediation, let the other side know your position on the key issues in the case and your feelings regarding the value of the case.

While at the mediation, discuss the facts and your position on the facts in a non-threatening, non-abusive manner. Save vitriol for the private caucuses with the mediator. Before the mediation, educate the client about the purpose of the mediation and encourage the client to become actively involved in the settlement process.

Remain patient and experience the process as though it is your first even if you have attended many mediations. Be mindful of the fact that for the employee mediation is likely the first "hearing" he has experienced since termination.

Allow the parties to tell their complete side of the story (in a manner that is productive of mediation). The mediation may be the first time since the employment relationship terminated that the employer is able to express his feelings.

For additional information on achieving settlement at mediation, click on "Mediation Services."