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November 2016

Mediation

Employment Standards Mediation

Part of the mandate of the Employment Standards Branch is to encourage open communication between employers and employees and to provide fair and efficient resolution of disputes. One of the ways the Branch does this is through mediation.

What is mediation?

Mediation is a meeting between the complainant and the employer together with a neutral third party called the mediator. It may be a face-to-face meeting or it may be held by way of a teleconference. In order to encourage settlement, the mediation session is conducted on a “without prejudice” basis. This means that nothing that is said or proposed during mediation forms part of the record if the parties fail to agree and the matter has to proceed to a complaint hearing.

The benefits of mediation

Mediation is an efficient way to resolve disputes, as it can be set up quickly and usually only lasts for a few hours. It gives the parties the opportunity to talk to each other in a neutral environment, and to resolve their issues in a way that is acceptable to both of them.

Because the discussions are conducted on a “without prejudice” basis, the parties can feel free to propose different solutions in order to resolve the complaint.

The mediator

An officer of the Employment Standards Branch

will be appointed as the mediator and is responsible for leading the mediation session.

The role of the mediator

The mediator helps the parties to explore possible ways of resolving their dispute by helping them to:

- Identify what matters are in dispute and what result they want;
- Establish what facts are agreed upon and which are in dispute; and
- Clearly state their position and understand the other’s position.

The mediator will explain how the Act applies to the matters in dispute.

The mediator does not represent either party, act as an adviser, or provide legal advice. The mediator has no decision-making authority, and cannot make a ruling on any of the issues.

Attendance at the mediation session

Mediation is an important step in the complaint resolution process, and the parties are expected to make themselves available.

If one or both of the parties does not attend the mediation session, the matter may be referred to a different officer of the Branch for a more formal complaint hearing and decision. This is also called adjudication. Matters not referred to a hearing are referred to another officer for investigation.

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Preparing for the mediation session

The parties should review the information they have that relates to the dispute and make sure they have all of the documents that they wish to rely on at the mediation session, including any records the Branch may have requested them to produce.

What to bring to the mediation session

Both the employer and the complainant will be given an opportunity to tell their story. They should bring any relevant records or documents such as pay stubs, calendars, time sheets, letters, etc.

The parties may bring a friend, spouse, accountant or legal counsel with them if they wish. However, the mediation is between the parties and the mediator has discretion to limit participation by others.

It is important, especially for employers, to ensure that whoever attends the mediation has the authority to enter into a binding agreement to resolve the matter.

Translation Assistance

If a party wishes translation assistance, they must bring their own translator, as the Branch does not provide this service.

Reaching an agreement at mediation

If the dispute is resolved at mediation, the mediator will assist the parties in writing the terms of their agreement in a document called a “settlement agreement”. The parties will sign the settlement agreement and both will receive a copy. Once the parties have signed the agreement it becomes a legal document, which can be filed and enforced in B.C. Supreme Court in the same manner as a judgment of the court.

Failure to reach an agreement at mediation

If the parties can't reach an agreement, the issue will proceed to a hearing or investigation with a different officer of the Employment Standards Branch. Although the discussions are “without prejudice”, any documents provided that were not created expressly for the mediation will form part of the record and will remain in the file.

For more information on the hearing process, please see the *Complaint Hearings* factsheet.
