



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Workers Compensation Act* and the *Rehabilitation Services and Claims Manual, Volumes I and II* for purposes of interpretation and application of the law.

Factsheet #42  
Updated: January 2013

## DISCRIMINATORY ACTION MEDIATIONS

*Please note this fact sheet is specific to Discriminatory Action Mediations relating to Occupational Health and Safety. For general information pertaining to Discriminatory Action matters please refer to Factsheet #11.*

### What is Mediation?

Mediation is a meeting between you and your employer together with a neutral third party called the mediator. The purpose of mediation is to resolve the complaint outside of the formal decision making process. Generally, mediations are conducted by teleconference although in exceptional circumstances meetings take place face-to-face.

In order to encourage settlement of the complaint, discussions in the mediation are confidential and are not allowed to be used in the formal decision making process. The mediator will tell the Board the outcome of the mediation (settled or not settled) but not of the details of the settlement agreement. Where the complaint is settled, the Compliance Section sends a letter to confirm that WorkSafeBC will not be taking any further action on the complaint. Please see below for what happens when a settlement agreement is not reached at the mediation.

### When is Mediation Available?

If there is a basic case for discriminatory action, the Compliance Section of WorkSafeBC will write to the worker and the employer, provide a copy of the file, and offer a mediation to resolve the complaint. If both the worker and the employer agree to mediation, WorkSafeBC refers the complaint to a third party mediation service provider. The mediation service provider will coordinate the mediation and will contact the worker and the employer to arrange a date and time for the mediation.

For more information:  
Website: [www.labour.gov.bc.ca/wab](http://www.labour.gov.bc.ca/wab)



Lower Mainland/Fraser Valley/Kootenays: 1-800-663-4261  
Northern & Central Interior: 1-800-663-6695  
Vancouver Island: 1-800-661-4066

## DISCRIMINATORY ACTION MEDIATIONS

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### Will the Workers' Advisers Office represent me at Mediation?

The Worker's Advisers Office is independent of WorkSafeBC. Under the *Workers Compensation Act*, the Workers' Advisers Office may provide a worker with representation only if the claim has merit, or put another way, a reasonable chance of success. Although WorkSafeBC may have accepted your claim, WAO's determination of merit may differ based on the facts and evidence we review.

In order for the WAO to represent you at mediation we must be satisfied that your claim has a reasonable chance of success of being resolved. This means that you must establish a prima facie or basic case of discriminatory action. Under the *Workers Compensation Act*, discriminatory action involves retaliatory action against a worker for the following reasons:

1. Carrying out an occupational health and safety duty or right;
2. Testifying on an issue relating to occupational health and safety; or,
3. Giving information about an occupational health and safety concern to an employer or person acting on behalf of an employer; another worker or a union; or WorkSafeBC.

For further details of what amounts to discriminatory action please refer to Factsheet #11.

### The Benefits of Mediation

Mediation provides the parties with the opportunity negotiate the settlement of the complaint with the assistance of a neutral mediator. If both parties agree to settle the matter at mediation, the matter ends as soon as the settlement terms have been implemented.

One of the chief benefits of settlement at mediation is that it results in a significantly quicker resolution to the dispute than through the formal decision making process. Mediation is an efficient way to resolve disputes, as it can be set up quickly and usually only lasts for a few hours. When the WAO is involved in the mediation process workers have an 80% success rate in reaching settlement agreements. Mediation 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 sides.

Mediation is an opportunity for settlement. Although you may be seeking a greater award through adjudication, you also risk receiving nothing if the adjudicator decides against your claim. The mediation process empowers you to determine what an acceptable settlement is in your circumstances.

Because mediation is conducted confidentially, the parties can feel free to propose different solutions in order to resolve the complaint. The parties may agree to remedies not otherwise available or enforceable through adjudication.

# DISCRIMINATORY ACTION MEDIATIONS

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## The Role of the Mediator

The mediator helps the worker and the employer resolve the complaint by helping them to:

- Understand each other's position;
- Identify what is in dispute;
- Explore how the complaint may be resolved; and
- Assist the worker and the employer in making a settlement agreement.
- Clearly state their position and understand the other's position.

The mediator is neutral, does not represent the worker or the employer, and does not provide legal advice. The mediator cannot make a decision on any of the issues.

## Reaching an Agreement at Mediation

If the complaint 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 worker and the employer will sign the settlement agreement and both will receive a copy. Only you and your employer are parties to a settlement agreement. Your representative is not a party to the settlement agreement.

Discriminatory action complaints often overlap with other areas of law. As a condition of settlement at mediation your former employer may ask that you sign a "release of all claims," by which you agree to forgo all other legal remedies. The Workers' Advisers Office does not provide advice on "release of all claims" forms.

A settlement for lost wages may affect your tax and/or employment status. It is your responsibility to obtain information about your obligations in relation to income tax and repayment to sources such as Employment Insurance or BC Employment and Assistance. The Workers' Advisers Office does not provide advice or representation on these matters.

To make an informed decision at mediation it is important that you have fully explored your legal rights and potential financial obligations.

## What happens if a complaint is not settled at Mediation?

If a settlement is not reached at mediation, the WAO will provide you with further representation only if your claim has merit, or, put another way, a reasonable chance of success.

## DISCRIMINATORY ACTION MEDIATIONS

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If either the worker or the employer does not agree to participate in mediation or if no settlement is reached, the complaint is sent back to WorkSafeBC - Compliance Section for a decision by an Investigations Legal Officer. The Investigations Legal Office will ask for submissions and make a decision in writing.

### **How long will it take for an adjudicated decision from the Compliance Section of WorkSafeBC?**

If the worker and the employer are unsuccessful in resolving the complaint at mediation, the complaint is returned to the Compliance Section for a formal decision. It may take up to two years for a decision from the WorkSafeBC Compliance Section.