

LWIA or other State or Federal civil rights agencies in an attempt to redress actions which violate laws, or filing or participating in an investigation conducted by the LWIA or any other agency charged with the administration of fair employment practice laws.

#### D. Settlement Agreement

When a resolution is reached, the mediator will assist the parties to develop a written settlement agreement. All parties to the dispute and the mediator (s) will sign the agreement. A copy of the agreement will be given to all parties involved in the complaint prior to adjournment. The settlement agreement shall:

- Describe the settlement of the issues and future responsibilities of the parties as agreed to by the parties;
- Be reached without coercion, duress or intimidation; and
- Not violate State Personnel rules, regulations and applicable collective bargaining, agency policies and procedures, federal and state laws.

If there is no resolution, the case shall be referred immediately for investigation.

A party to any agreement reached under the ADR/mediation process may file a complaint with the Civil Rights Center in the event the agreement is breached. In such circumstances, the following rules will apply:

1. The non-breaching party may file a complaint with the Director of the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach.
2. The Director of the Civil Rights Center must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with the Civil Rights Center based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.



Internet Address <http://www.commerce.state.il.us>

620 East Adams Street Springfield, Illinois 62701	James R. Thompson Center 100 West Randolph Street, Suite 3-400 Chicago, Illinois 60601	607 East Adams Street Springfield, Illinois 62701	2309 West Main, Suite 118 Marion, Illinois 62959
217/782-7500 Fax: 217/524- 1627 xTDD: 800/785-6055	312/814-7179 Fax: 312/814- 6732 xTDD: 800/419- 0667	217/785-2800 Fax: 217/785- 2618 xTDD: 217/785-6055	618/997-4394 Fax: 618/997- 1825 x TDD Relay: 800/526- 0844

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## ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

Rod R. Blagojevich  
*Governor*

Jack Lavin  
*Director*

### Workforce Investment Act

### Alternative Dispute Resolution Process (Mediation)

Equal Opportunity Employer/Program  
Auxiliary Aids and Services Are Available  
Upon Request to Individuals With  
Disabilities

# Illinois Department of Commerce and Economic Opportunity

## Workforce Development

### WIA Mediation as an Alternative Dispute Resolution Process

#### A. Mediation Program

##### INTRODUCTION

Mediation is an informal dispute resolution process whereby a mediator as an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. Mediation is a privilege, structured, non-adversarial negotiation process, as well as a short-term process. The objective of mediation is to help disputing parties reach a mutually acceptable agreement and to address and resolve allegations of discrimination.

Should an applicant/participant wish to file a Complaint of Discrimination in employment with the Local Workforce Investment Area (LWIA), the applicant/participant shall be advised of the option to enter Mediation as a problem-solving intervention process. The applicant/participant shall have the option of either having the complaint mediated or investigated. If mediated, the information and issues discussed during the meetings will not be disclosed, regardless of the outcome and whether the process is successful or not. If the option of mediation is not selected, the formal investigation process will begin.

#### B. EO Officer/Role of Mediator

All requests for mediation shall be processed through the LWIA EO Officer. The LWIA EO Officer shall:

- Act as a neutral officer
- Maintain strict confidentiality
- Help facilitate communication between the parties
- Assist parties in coming to their own agreement
- Make recommendations or suggestions to the parties, but cannot impose decisions upon the parties
- Appoint mediation representatives with authority to bind the LWIA in the event an agreement is reached during mediation
- Allow parties to attend mediation sessions without loss of leave or pay
- Support written agreements reached as a result of mediation, and

- Approve appropriate sanction(s) if written agreement is breached

#### C. Mediation Procedures

The LWIA EO Officer shall:

- Contact the respondent within 5 days of receipt of complaint and request to mediate to determine their willingness to mediate and secure a written agreement to that effect.
- Request that the agreement to mediate be returned to the LWIA EO Officer within 5 days (NLT the tenth calendar day after the complaint is received).
- Send written confirmation of the mediation conference to each party. The letter shall include the date, time, and location of the mediation conference, and a statement of the issues and the relief sought. Persons representing the parties shall also be notified.
- Each mediation must be held in sufficient time to reach resolution or closure within 90 days of the initial filing date of the complaint.
- Extensions of time constraints will only be granted when compelling conditions warrant and may not be cause to extend the closure of the case beyond 90 days.

##### 1. Mediation Setting

Mediation will be held in rooms that are private and in a location that will assure undisturbed mediation. Provisions will be made to ensure facilities utilized are accessible. Reasonable accommodations will be made to persons with disabilities. To encourage disputing parties participation, sessions should be as informal as possible.

Mediation will normally be held in face-to-face situations, but may be held via telephone conference or video teleconference when extreme circumstances warrant.

##### 2. Opening Statement of mediator

The opening statement will include four main points:

- a) The introduction of the mediation and a statement regarding the mediator's qualifications;
- b) A definition of mediation, the declaration of the mediator as a third party, and a discussion of confidentiality;
- c) An explanation of the ground rules (*i.e. courtesy, one party speaks at a time, keep the focus of discussion solution oriented rather than problem oriented, etc.*); and
- d) Confidentiality is an issue that all parties must agree about for the mediation to continue.

##### 3. Opening statement of the Parties

Each party will make an opening statement. In the opening statement, each party will identify the issues and facts surrounding the dispute and indicate the desired outcome.

#### 4. Clarifying Issues/Examining Resolutions

How the mediation session proceeds at this point is determined by the readiness of the parties to enter into dialogue. The mediator may use any or all of the following techniques to facilitate discussion:

- Ask direct questions;
- Brainstorm for possible solutions;
- Paraphrase and frame proposed resolutions; and
- Caucus with the parties privately to clarify issues, explore options, or identify possible solutions or alternatives.

#### 5. Confidentiality

- Mediation sessions will be closed to any individual other than the parties and their representatives, except by consent of both parties and the mediator.
- Communication and information disclosed during mediation is privileged and confidential and shall not be disclosed to any third party, except for purpose of implementation or enforcement, or by written consent of both parties.
- During the mediation process, notes may be taken. However, once the final settlement agreement has been signed, all notes must be turned over to the mediator and disposed of in the presence of both parties.
- The LWIA EO Officer is responsible for maintaining the mediation files. A copy of the agreement, or failure to reach an agreement documentation, will be maintained in the LWIA complaint file along with the copies of the mediation election form, notification letters, and similar pre-mediation documentation. Absolutely no information regarding proceedings of the actual mediation session will be included in any personnel file unless specifically agreed upon as part of the signed mediation agreement (*i.e. a letter of counseling or warning to the offender might be requested as part of the agreement*).

#### 6. Intimidation and Retaliation Prohibited

The LWIA(s) and its divisions or any individual is prohibited from retaliation against a complainant or the individual associated with or participating in a complaint filed with the