

Before Your Session

How to Get the Most out of Facilitative Mediation



What is facilitative mediation?

Facilitative mediation encourages reconciliation and finding a way forward versus assigning blame or exacting retribution, which makes it ideal for mitigating several varieties of workplace conflict. Conducted outside of formal dispute channels, and amenable to creative problem solving, mediation presents a viable alternative to other grievance/complaint processes.

Facilitative mediators do not determine who is right or who is wrong in a dispute. Rather, they help the parties to identify the issues they wish to resolve and help ensure that the discussion remains productive.

The parties themselves suggest the solutions to their conflict, and mutually consent to any agreement or resolution.

Mediation is a voluntary process, and no one can be compelled to enter into mediation. In addition, all parties have the right to withdraw from the mediation process at any time.

Is the mediation confidential?

Yes. To facilitate free and open communication during the mediation process, the mediators and all participants in the mediation are bound by strict confidentiality. No one involved in the process, including Ombuds Office staff, mediators, and the parties themselves, may disclose what was discussed at the mediation.

With a few narrow exceptions, including an imminent risk of serious harm and unreported child or elder abuse/neglect, the mediators cannot disclose anything that is discussed. Per Nevada Revised Statutes 48.109, statements made during the mediation that is not otherwise discoverable are not admissible as evidence or subject to discovery in any subsequent action.

What kind of conflict is it?

Mediation expert Christopher Moore outlined a model of conflict that visualizes a “Circle of Conflict” that identifies five drivers of conflict:

Relationships: Negative experiences in the past can compound into a pattern of mistrust and lack of communication that can manifest in conflict. Being able to focus on future happiness, rather than justification or payback for past behaviors (or perceptions) may lead to the successful resolution of a relationship-driven conflict.

Values: Sometimes, people hold diametrically-opposed beliefs that can lead to intense conflict. Conflicts over core values may be difficult to resolve unless the parties “agree to disagree” or find a value that they both share, and reconsider the conflict through that lens.

Externals/Moods: People may find themselves in conflict for reasons that have little, if any, relationship to the ostensible issue. This may include people dealing with health issues or other problems that occur outside of the workplace, but can nonetheless drive conflict at work. Transcending conflicts driven by external factors require the parties to undertake a candid self-assessment and attempt to get beyond the “outside interference.”

Data: There are times when one person knows things that the other doesn't. There are times when everyone knows “the facts,” but their interpretation differs. Both instances can lead to disagreement. Data conflicts can be mitigated by sharing and coming to an agreement on the meaning of information.

Structure: The organization may be grappling with limited resources, which leads to conflict over how to allocate them. Or there may be issues with who has the authority to set policy. Or different departments may be working at cross purposes. All of these are examples of structural conflicts. Thinking “outside the box” to imagine how structures can be changed is one way to resolve structural conflicts.

Before your mediation, consider what is driving this conflict, rather than just focusing on the issue at hand. This may give you a better insight into how to resolve it.

Negotiating for your interests, not positions

In their classic *Getting to Yes*, Roger Fisher and William Ury of the Harvard Negotiation Project outlined the principles of interest-based negotiating. Fisher and Ury's "principled negotiation" model asks negotiators to separate the people from the problem, invent multiple options allowing for mutual gains, insist the outcome be based on an objective standard and focus on their interests rather than positions.

Fisher and Ury believe that arguing over *positions* ("I demand a raise" or "I insist that you are at your desk by 8 each morning) locks us into inflexible stances that inhibit efficient negotiating, can lead to unwise outcomes, and can jeopardize relationships. Instead, they advocate on focusing on *interests* ("I want my hard work to be recognized" or "In the interests of equity, all employees should work the same hours each day"). Before coming to the mediation session, think about what your interests are, and in the negotiation, think of creative ways to advance them—preferably resulting in gains for all parties—rather than coming in with a position in mind and either holding firm to or sacrificing it.

Do I need to bring anything?

You may want to bring notes to remind yourself of important details, but there is no need to bring "evidence" in the form of emails or text messages since the goal of the mediation is not to convince the mediators of who is right, but rather to reach a mutually-acceptable resolution.

To help ensure that all parties respect others and let them speak without interruption, you may want to bring a pen and paper, so that you can make notes about points that you want to raise while the other party is speaking, instead of interrupting them.

You may also bring water or another beverage, although we ask that you do not eat during the mediation session. If you require accommodation for any reason, please let the mediators know before the session begins.

Can I bring someone with me for moral support?

Usually, only the parties to the dispute and the mediators are present at the mediation session. If all parties, including the mediators, consent, "secondary" parties are permitted, with the caveat that they are bound to the same confidentiality as the principal parties.

If you are unable to bring someone with you to the session but still feel you need to hear a friendly voice, you may want to request breaks in the mediation in which you can place a quick phone call—but you may not reveal details about what is being discussed in the session, especially what other parties may have said, due to confidentiality.

What will happen at the mediation?

The mediation session unfolds over eight steps:

1. Introduction and orientation
The mediators introduce themselves to the parties, explain their role, answer questions about the process, and, with input from the participants establish ground rules for the session.
2. Openings
Each party has the chance to explain the issue(s) that have brought them to mediation.
3. Agenda setting
The mediators help the parties to identify the major issues that they want to address in the session; parties may identify their interest.
4. Information exchange
The mediators ask open-ended questions that clarify the issues at hand: what is the conflict really about?
5. Generating options
Both parties suggest possible solutions to the issues, being as creative as possible, and without taking ownership.
6. Reality testing
With the assistance of the mediators, the parties identify what is feasible and what is not, with a focus on developing a sustainable, mutually equitable solution.
7. Agreement drafting
The mediators assist the parties in drafting an agreement.
8. Closure
The mediators help the parties clarify the next steps, and give the parties information the chance to offer feedback about their experience.

What if we don't reach an agreement in our session?

Out of respect for everyone's time, the initial session is limited to two hours. If at the end of that time, the parties have not reached an agreement, we can schedule a second session. If the parties do not feel more mediation will be helpful, no more sessions will be scheduled.

What if I have concerns about the mediation process?

If you have questions or concerns about the nature of the process, confidentiality, agreements arising from mediation, or the conduct of mediators, please contact Ombuds David G. Schwartz.

If you have concerns about the Ombuds' conduct, please contact a member of the Ombuds Advisory Panel. Please note that members of the panel are not bound to the same confidentiality as the Ombuds Office or mediators, so please refrain from referencing the content of the mediation in your communications.