

## FREQUENTLY ASKED QUESTIONS

### FAQ's – ALTERNATIVE DISPUTE RESOLUTION (ADR)

#### **Q: What is Mediation?**

Mediation is one of many voluntary dispute resolution techniques, collectively referred to as Alternative Dispute Resolution (ADR). In mediation, a third-party neutral assists the opposing parties to reach a voluntary, negotiated solution.

Often times a breakdown in communication is the root cause of the problem. Through the mediation process, the mediator facilitates discussion between the parties in an effort to uncover the needs and interests of the parties. Mediation gives the individuals involved the opportunity to discuss the dispute, clear up misunderstandings, find areas of agreement, and, ultimately, incorporate those areas of agreements into the form of a settlement agreement.

#### **Q: How Does Mediation Work?**

After contacting the NEXCOM EEO Office to request counseling, an EEO staff member will offer the option of mediating instead of counseling. If mediation is elected, management will identify the Responsible Management Official (RMO) who will participate in the mediation on behalf of NEXCOM. The RMO will have knowledge of the dispute and be authorized to agree to resolutions. Either party may have an attorney or other representative present, but it is not mandatory. Every effort will be made to schedule the mediation within 30 days from the date the election is made.

The process begins with the mediator explaining how mediation works and answering any questions. During the mediation session, the mediator guides a discussion between the parties. Each side is given the opportunity to speak freely and candidly, without interruption, and to explore possible remedies. If the mediation is successful, the terms of the agreement are written into a settlement document that can be, in the case of Formal EEO Complaints, binding on all the parties. Workplace disputes, on the other hand, are typically memorialized in a Memorandum of Understanding which the parties can use as a reminder of their obligations and responsibilities.

#### **Q: Why Consider Mediation?**

The parties to the mediation control the outcome – YOU have the power to create solutions. Mediation also saves time, it is confidential, and it is an inexpensive way to save from the high costs of litigation or arbitration. Through mediation, parties look to the future rather than dwelling on the past – it is a process of relationship building and fostering a positive means of open and fruitful communication.

#### **Q. At what point in the complaint process is it best to request mediation?**

A. The earlier mediation takes place in the complaint process the higher the probability that a settlement will be reached. The pre-complaint stage of the EEO complaint process is the ideal time for mediation. Parties are not focused on the related facts only or digging into positions that may be difficult to retract from later. One of the key components of mediation is to uncover the underlying

needs and interests of the parties, rather than negotiating positions.

**Q. Are all issues eligible for mediation?**

A. Although most issues can be mediated there are a few that are not appropriate for mediation. Since NEXCOM wants to mediate in good faith, the NEXCOM EEO Counselor will evaluate the issues presented to determine whether mediation is appropriate. Factors such as the nature of the issue, the relationship of the parties, and the relief being sought are considered.

**Q. Does there have to be a formal EEO Complaint to qualify for mediation?**

A. No. Issues involving Informal Complaints and workplace disputes can also be mediated. Often times there are conflicts between Associates or between Associates and Management. Addressing those conflicts early in the process is one of the hallmarks of mediation.

**Q. What happens if management does not comply with the resolution reached in mediation?**

A. Any resolution of a formal EEO Complaint reached during mediation is documented in the form of a legal settlement agreement. This is a written contract between the Complainant and NEXCOM. The settlement agreement is signed by the Complainant and the designated Management Official. This explains the rights and responsibilities of both sides, and specifies the rights of the parties if one of the parties does not comply with the terms of the agreement.

**Q. What are the similarities and differences between EEO Counseling and mediation?**

A. Mediation and counseling are ideally completed within 30 calendar days, but cannot exceed 90 calendar days. Mediation however, is usually completed in less time. Whether mediation or counseling is elected, the Complainant still has a right to file a formal complaint if the dispute is not resolved. Witnesses are not called in a mediation or in counseling.

**Q. Is mediation confidential?**

A. Yes, with limited exceptions. As federal employees, you are obligated to report any security compromise, evidence of fraud, waste, abuse, criminal activity, or threats of imminent physical harm. With those exceptions in mind, the mediator will not testify for or against any party in any other forum or proceeding. Because the mediation is confidential, no party is allowed to record the sessions. There are other rules that also apply, but they will be explained fully by the mediator.