

The goal of the Alternative Dispute Resolution (ADR) Department is to provide the workers' compensation system with a quick and easy alternative to litigation for the resolution of disputes. Any party to a claim may request alternative dispute resolution or mediation at any time.

Alternative Dispute Resolution programs conducted at the Virginia Workers Compensation Commission may involve both Issue mediation*, Full and Final (Settlement) mediations and/or facilitations. The ADR program does not in any way diminish or change any benefits to which an employee, or his or her dependents, or survivors may be entitled under the provisions of the VWC Act.

ADR provides is a useful and efficient tool in a system that involves a high volume of cases, with repetitive issues and minimum controversy. A limited number of key, authorized and trained personnel evaluate and assist in the resolution of issues quickly rather than engage in litigation tactics. All parties retain the opportunity to adequately and effectively assert their interests and develop their case and go to a hearing if ADR does not resolve it.

Questions and Answers regarding Mediation

What is Mediation?

Mediation is a confidential process in which a trained, neutral third party (mediator) assists the parties in discussing the issues and trying to reach an agreement that is acceptable to everyone. Mediation is a forward-looking process that encourages the participants to focus on their current and future needs and interests rather than focusing on fault and blame for past actions. Mediation differs from a court proceeding in that the parties maintain control of their dispute. The decision-making power in mediation lies with the parties, not with the mediator.

Why is the Commission promoting the use of mediation?

Mediation offers the participants an opportunity to meet with one another in person or by phone and speak directly to each other in a confidential setting. The Commission believes that the parties to a dispute are in the best position to know what is best for them. Mediation affords the parties an opportunity to maintain control of their own destiny rather than submit their dispute to a decision-making authority. Mediation and other ADR sessions are scheduled quickly, so that a resolution may be obtained efficiently and without delay.

Do I have to appear when I am ordered to attend an ADR orientation session?

When the Commission "Orders" you to appear for an ADR orientation session, you are required to show up at the scheduled place and time. In some cases this may be by telephone.

What is an ADR Orientation session?

The statute defines orientation as "a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral may assess the case and decide whether to continue with a dispute resolution proceeding or adjudication" (8.01-576.4). "The neutral or intake specialist conducting the orientation session shall provide information regarding dispute resolution options available to the parties, screen for factors that would make the case inappropriate for a dispute resolution proceeding, and assist the parties in determining whether their case is suitable for a dispute resolution process such as mediation" (8.01-576.5).

What can I expect when I participate in mediation?

Mediation is a very informal process and all of the participants will be given the opportunity to contribute to the discussion. The mediator will encourage a discussion of the issues and of possible solutions. Time will also be spent evaluating these solutions so that if an agreement is reached it will address the interests of the parties. The mediator may offer suggestions and assistance in developing options. However, the final decision is left to the parties.

Who must attend mediation?

It is important to the process that the claimant be present. In addition, an insurance company representative, with full authority to resolve the issues at hand, should be present and/or available at set hours of the mediation. In cases involving employment, a representative for the employer should attend. You fulfill your obligation by showing up in good faith to try and resolve your dispute. In mediation you are not required to reach an agreement and you still maintain your right to a judicial hearing if no agreement is reached.

How comfortable should I be about speaking during the mediation?

Mediation is a confidential process. This means that the information that is shared during the mediation cannot be used by any of the participants in any subsequent court proceedings. In addition, the mediator cannot be subpoenaed to appear at any subsequent court proceedings with regard to what went on during the mediation. The only indication that the parties participated in mediation is a standard form that is included in the Claimant's file subsequent to the mediation. This form simply indicates who was present at the mediation, whether or not an agreement was reached. Mediations may not be recorded.

Who will my mediator be?

Commission mediators are all trained Commission staff who have been certified to mediate by the Supreme Court of Virginia. A Deputy Commissioner (DC) may mediate your case. These Deputy Commissioners are certified mediators with experience in workers' compensation law. If a DC mediates your case, the same DC will be prohibited from hearing your case if the case ends up in court. This restriction is necessary to preserve the mediator's neutrality in the process.

What does the mediator do?

The mediator's job is to try to help clarify the issues and assist the parties in negotiating with one another. If asked to do so by the parties, a mediator may offer opinions or a

neutral evaluation. Any opinions or neutral evaluation are not binding on the parties. The mediator will assist the parties in developing and examining their options. The mediator controls the process; the parties control the result.

What is expected of me at the mediation?

It is expected that all parties will come to the mediation in good faith. The mediator will ask the participants to share their thoughts. You should be prepared to provide the mediator with information you feel is relevant. You are not required to speak, but it is usually helpful for everyone involved if everyone participates openly. Mediation is your opportunity to "have your day."

How long will the mediation take?

It depends. The length of time spent in the mediation depends on a number of factors: the number of issues being addressed in the mediation, complexity of case, amount of information you choose to share, the preparation of the parties. Full and Final or Settlement Mediations are scheduled for three hours. Issue Mediations are usually scheduled for an hour and 30 minutes. Mediations may be scheduled for longer by request of the parties, or they may be continued for another session.

Who pays for the mediation?

There is no charge to either party for mediation with a Commission mediator. If the mediation is with a mediator, chosen by the parties, because there was no available opening with a Commission mediator, the parties decide who pays for the mediation.

How do the parties dress for mediation?

There is no formal dress requirement. Dress tastefully in casual clothes.

Do I need to bring anything with me to the mediation?

You may wish to bring any documentation with you that you feel is relevant to the issues you will be addressing during the mediation. For example, if the issue involves payment of medical bills, you should bring along copies of your bills.

Which issues might I expect to be mediated at the Commission?

The following Change in condition Claim issues are subject to mediation:

- a. Average Weekly wage "loss"
- b. Period of TT; Closed periods of disability
- c. Change in treating physician (Authorized)
- d. Return to work
- e. Failure to report incarceration, change in address or return to work
- f. Mileage
- g. COLA
- h. Period of TP

- i. Payment of prescription Costs
- j. Payment of Medical Bills
- k. PPD
- l. Authorization for Medical Treatment
- m. Credit (overpayment of compensation)
- n. Body Parts

Where will the mediation take place?

The Commission uses various sites across the Commonwealth of Virginia. With regard to which location, this determination may depend on where the accident occurred or where the parties to the claim are located. The Commission attempts to set the mediation at the location that is most convenient for the participants involved. If special accommodations are needed, please contact the Alternative Dispute Resolution Department at least 72 hours in advance of the scheduled mediation.

What documents are used to initiate and consider ADR at the Virginia Workers Compensation Commission?

The following documents:

- Claim for Benefits
- Letters from parties that request ADR/Mediation
- Deputy Commissioner Referral
- Employers Application
- Medical provider Application

When will the mediation take place?

This depends on the availability of those necessary to the mediation. A mediation is generally scheduled within 45 – 60 days of the time all parties consent to ADR. ADR will also schedule emergency mediations in cases where such action is necessary or requested by the parties.

What are the benefits of Issue Settlement or ADR Mediation*?

- **Control:** Mediation allows the parties to participate in how their case will be resolved, while litigation involves turning the decision making process over to another.
- **Timeliness:** A resolution can be reached more quickly through mediation than it can be through litigation.
- **Flexibility:** The particular circumstances of a case can be addressed flexibly.
- **Privacy:** Statements made in, and documents prepared for, mediation are confidential, and inadmissible in any litigation, so that the parties may be free to express sentiments that they could not express in litigation.

Does the Commission provide interpreters for mediation?

The Commission does not provide interpreters for mediation. If the parties wish to provide interpreters at their own cost, the Commission will provide ADR services.

*An Issue Mediation is processed in the same manner as any Full and Final Mediation. The Mediator may find himself/herself in a conversation with the adjuster, claims manager, employer and the injured worker. There is a likelihood that if the case/issues can't be quickly settled, then it will/should be given significant attention by everyone involved in order to understand why a resolution was not forthcoming. Therefore, it is important to have a plan as to how to put the case in a better position than it was in prior to the mediation, either by settlement, partial settlement, or an agreement as to how to move it forward.