



Virginia Employment Commission
Effective: December 2, 2016

VEC MEDIATION PROGRAM GUIDELINES

POLICY

It is the policy of the Virginia Employment Commission (VEC) to maintain effective employee and customer relations by offering all VEC employees, applicants for employment, registrants, eligible applicants/registrants, participants, and terminees an alternative means of addressing and resolving disputes, including discrimination complaints. To that end, Alternative Dispute Resolution (ADR) is available to VEC employees including probationary and non-classified, applicants for employment, and any person receiving services through the Unemployment Insurance and Wagner Peyser program and who files a discrimination complaint.

BACKGROUND

Alternative Dispute Resolution (ADR) is a method of resolving disputes without litigation. Arbitration and mediation are the two major forms of ADR. The VEC has selected mediation as the form to be used to resolve conflicts by allowing participants to focus on core issues of difference in a confidential environment and with the assistance of a neutral third party.

The Workforce Innovation and Opportunity Act (WIOA) and Section 188 of WIOA requires that recipient of financial assistance provide an alternative method to address allegations of discrimination, including allegations made by recipients of programs and services.

Mediation is recognized by National Association of State Workforce Agencies (NASWA) as the most appropriate form of ADR for addressing allegations of discrimination. Mediation is the ADR process that will be used in Virginia's WIOA, UI and Wagner Peyser programs and services. This procedure is provided to offer guidance on how the mediation process will be administered at the VEC.

DEFINITIONS

Mediation - A voluntary process in which mediators assist persons in conflict discuss the issues in an open, honest, confidential forum, in arriving at a mutually satisfactory agreement.

Mediator – A trained neutral person who manages the process and does not decide the issues for the persons in conflict.



*“Virginia is an Equal Opportunity Employer,
Program Auxiliary Aids and services are available upon request for individuals with Disabilities.”*

Agency Mediator Coordinator – The VEC Human Relations Manager administers the mediation program.

State (Agency) Program Administrator – The Department of Human Resource Management (DHRM) Office of Equal Employment and Dispute Resolution (EEDR) administers the VEC mediation program.

PROCEDURES

1. Initiation of Mediation
 - a. All request for mediation will be processed through the Agency Mediation Coordinator. Request may be verbal or written.
 - b. The Agency Program Administrator will contact the parties to determine their willingness to mediate.
2. Intake/Assessment
 - a. The Agency Program Administrator will interview each party to the mediation and assess the appropriateness of the issues for mediation and the willingness of the parties to resolve their conflict¹.
 - b. The Agency Program Administrator will ensure that the parties have a basic understanding of the mediation process and understand that no party will be penalized or retaliated against for participating in, or refusing to participate in mediation.
3. Scheduling
 - a. The Agency Program Administrator will coordinate the scheduling of the mediation.
 - b. Agency mediators will be used unless the parties request mediators from outside the agency. If outside mediators are requested, the Agency Program Administrator will request either mediators from other state agencies through EEDR or professional mediators who will provide services.
4. How Mediations will be conducted
 - a. Mediations will be held in a room that is private and in a location that will assure the mediation will not be disturbed.
 - b. During the mediation process, notes may be taken. However, once the mediation has been completed all notes must be turned over to the mediator for disposal.
 - c. Provisions will be made to ensure that the facilities utilized are accessible. Reasonable accommodations will be made for person(s) with disabilities and language translations for individuals that are limited English proficient (LEP).

¹ Almost any kind of dispute can be mediated. Mediation is particularly useful in resolving ADA complaints. Mediation is not appropriate if violence is an issue or if there is a question of fraud.



5. Completed Mediations

- a. When resolution is reached, the mediator will record the parties' written agreement. The parties will sign the agreement, and copies will be given to them.
- b. The Agency Program Administrator will review the agreement, if one is reached, to ensure that it does not contain any provision that is contrary to law or policy.

6. Confidentiality

- a. All mediation sessions are strictly confidential and will be closed to any individual other than the parties involved and if applicable, their representatives, except by consent of both parties and the mediator.
- b. The only written document that may leave the room is the agreement reached by the parties. No notes may leave the room; no form of audio or video recording is permitted.
- c. Communication and information disclosed during the mediation is privileged and confidential and shall not be disclosed to any third party (except in form of reasonable accommodation or language translation services), except for the purpose of implementation or enforcement or by written agreement of both parties.
- d. The Agency Program Administrator is responsible for maintaining the mediation files and is the only person who can grant access to the documents.

7. Impact of Mediation on the Grievance Procedure

- a. If a grievance has been initiated at the time of the request for mediation, and the parties agree to mediate, the grievance will be suspended pending the conclusion of the mediation.
- b. If a grievance has not been initiated at the time of the request for mediation, the agency will grant an extension to the 30-calendar day grievance initiation period at the request of the employee.
- c. As a result of mediation, the parties may agree that a written grievance will not be initiated or that the grievance in progress will be concluded.
- d. If the parties do not reach an agreement, the employee may initiate a grievance within the 30-calendar day extension period or continue a grievance from the step at which it was suspended.

8. Impact of Mediation on the Discrimination Complaint Procedure

- a. Complainants will be offered the opportunity to participate in mediation within 15 calendar days of filing a complaint. Upon notification that the complaint has been accepted for investigation; the choice whether to use mediation or the investigative process rests with the complainant.
- b. The mediation should be held in sufficient time to reach resolution or closure within 90 calendar days of filing of the initial complaint.
- c. The mediation process will be concluded when one of the following occurs:
 - i. The complainant withdraws the complaint in writing



- ii. The parties sign a settlement agreement, or
 - iii. The parties are unable to resolve the dispute.
 - d. If a resolution is not achieved, complaints will be investigated by the appropriate EO Officer (or his/her designee) in accordance with the Discrimination Procedures for Complaint Investigations.
 - e. All agreements to resolve a discrimination complaint will include a no admission of discrimination clause, and a statement that the complaining party agrees to withdraw the complaint.
 - f. The Agency Program Administrator will follow up on any settlement agreement to ensure that actions are completed in a timely manner and that ongoing requirements of the agreement are monitored.
- 9. Breach of the Agreement
 - a. If either party alleges that the agreement has been violated, the Agency Program Administrator will review the agreement with each party and attempt to resolve the issues, which may have contributed to the violation.
 - b. If the Agency Program Administrator is unsuccessful in resolving the issues, the parties may return to mediation to resolve the issues, void the agreement, amend the agreement, or enter into a new agreement.
 - c. If management alleges that an employee has breached the agreement, and the agreement is voided, management may take action retroactively to address the issue that led to mediation.
 - d. If an agreement is voided because of a breach of an item that was accepted by an employee as resolution of grievance; the employee may reinitiate the grievance within 5 workdays at the step where it was concluded.
 - e. Within 30-calendar days after an agreement has been voided, an employee has the right to initiate a grievance on the issue that led to the request for mediation.
 - f. For any agreement reached to resolve a discrimination complaint, the Civil Rights Center (CRC) Director must evaluate the circumstances to determine whether the agreement has been breached. If the agreement has been breached, the complainant may file a complaint with the Director, CRC, based on his or her original allegations and the Director of CRC will waive the time deadline for filing.

10. Responsibilities

a. Agency Program Administrator

- i. Promote mediation to all staff and customers
- ii. Establish written program guidelines
- iii. Maintain a roster of mediations and data on mediation activities
- iv. Monitor agency settlement agreements for compliance
- v. Coordinate and schedule mediations
- vi. Provide training programs for mediators



b. Agency Management

- i. Promote mediation as an alternative for resolving disputes
- ii. Grant approval for employees to be trained as mediators
- iii. Allow employee participation in mediation without loss of leave/pay

c. Agency Head

- i. Designate individual with authority to bind the agency in agreements reached to resolve discrimination complaints
- ii. Support written agreements that bind the agency
- iii. Determine appropriate sanction(s) if a written agreement to resolve a discrimination complaint is breached.

