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## Dispute resolution: Strategic solutions for businesses

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### *What types of business disputes exist?*

- *External:* Business/Business; Business/Contractor/Supplier; Employee/Client/Customer
- *Internal:* Employer/Employee; Employee/Employee; Management/Board of Directors
- *Indirect:* Employee/Other

### *What are the options for dispute resolution?*

- *Litigation:* Litigation is a formal process in which a judge (or jury) makes a decision based upon evidence. Typically, litigation involves attorneys in contested cases, requires the use of discovery to obtain information, and contains rules of procedure for the submission and presenting of information to the court. It is both adversarial and time consuming.
- *Early Neutral Evaluation (ENE):* ENE is a process whereby a neutral individual with a background in ADR listens to each party give their version of events. After their perspectives have been considered, the neutral evaluator offers his/her opinion on the disagreement. This opinion is not binding in any way, but if the neutral party is respected and trusted by both sides, it can help the parties reassess their negotiating positions with an eye toward finding common ground.
- *Mini-Trials:* A mini-trial is a process where an impartial panel (or a jury) hears summarized arguments and testimony by each party in a dispute. The parties are generally not bound by the outcome. Where a great deal is involved and the parties are unsure as to how a jury or a judge will react to certain positions, this approach allows the parties to gain a feel for how their case might succeed (or not succeed) in the "real world".
- *Arbitration:* Arbitration is a method of settling disputes where a neutral arbitrator hears a presentation of evidence from the parties and renders a decision. Arbitration is generally the result of a contractual agreement to resolve a dispute in this manner. The arbitrator's decision-making authority derives from the agreement of the parties. The arbitrator, subject to the agreement between the parties, will normally define the extent of discovery and set a limited time period for it to

take place. Some hearings involve witnesses, in addition to the parties. In other arbitrations, there may not be a hearing if the parties decide to submit their dispute in written position documents.

- *Collaborative Law:* Collaborative Practice is a reasoned approach to dispute resolution based on the commitment of the parties and their attorneys to resolve their dispute outside of the court system. It is a process intentionally geared toward settlement from the outset, facilitating an open and honest, yet confidential exchange of information by the parties. This approach focuses on the interests of both parties.
- *Mediation:* Mediation is a voluntary method of settling disputes in which a neutral third party, a mediator, with no decision-making authority, assists the parties in negotiating a mutually beneficial settlement. It has been called "no-fault conflict resolution" because the goal is to reach a solution fairly and quickly, not to decide who is right or who is wrong in a costly court battle. Mediation is also strongly favored due to its flexible format and the confidentiality of the process.
- *Partnering:* Partnering is a process designed to establish co-operative working relationships among parties (stakeholders). Partnering workshops integrate team-building, issue identification, and the development of mutual goals and open communication. The focus is on fostering cooperation among parties to prevent or reduce future conflict. Experienced neutral facilitators lead partnering workshops. Following the initial workshop, facilitators coordinate with the parties to ensure that the project or contract is successfully completed. Partnering is especially popular in the construction industry and for large government contracts.
- *Ombuds:* A Swedish word meaning commissioner or agent person who acts as an intermediary in a dispute and who can be either internal or external of the organization. Typically, the individual is charged with the duty of investigating and addressing the sources of complaints lodged by private citizens against businesses, institutions, and officials. An ombudsman is a high-ranking company manager

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or executive whose reputation throughout the company enables him/her to facilitate internal disputes between the company and employees.

*How do you select which process?*

- *Confidentiality (privacy)*
- *Control (who controls the decision/outcome)*
- *Cost*
- *Enforcement (how is the decision enforced)*
- *Timing*

*What is the value of mediation and Collaborative Law?*

- *Creative:* Mediation and Collaborative Law are creative alternative dispute resolution processes. They allow parties to tailor agreements to their needs and create mutually beneficial agreements.
- *Confidential:* The confidential nature of mediation and Collaborative Law gives parties the ability to seal an agreement, thereby preserving trade secrets and minimizing any adverse publicity.
- *Efficient:* The adversarial nature of litigation is both emotionally and financially draining. Mediation and Collaborative Law allow parties to bypass the stresses and turmoil of litigation.
- *Flexible:* Parties are able to control timing and cost by scheduling at their convenience.
- *Successful:* Parties control the decision-making process. This leads to agreements that meet the specific needs of the parties, and are therefore more likely to be adhered to than litigated agreements. Successful agreements can often help mend broken relationships and preserve key business partnerships.

*How can businesses incorporate ADR solutions?*

Businesses can better manage workplace disputes by formally incorporating ADR solutions into their internal and external relationships. These solutions are easily inserted into company best practice. Dispute resolution clauses should be written into contracts, requiring the use of mediation and/or arbitration prior to, or instead of, litigation. Company policy should also promote the use of ADR to resolve internal disputes. Employee benefit programs can include or recommend ADR services that are available to employees to assist them in quickly and amicably resolving conflicts outside of the workplace.

*Why have an ADR solution?*

A properly designed and developed ADR system reduces the number of unnecessary disputes, enhances corporate reputation and compliance, and substantially reduces legal costs and lost executive time.

ADR services not only help resolve the dispute at hand, but also provide a structure for employers to improve human resource policies and procedures and avoid future issues. While certain cases do not resolve through ADR, using conflict management and dispute resolution tools at an early stage can help mitigate costs mushrooming and positions hardening. This leads to more successful outcomes and a better workplace environment.

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