

# 7 Benefits of Using Alternative Dispute Resolution for Workplace Disputes



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# WELCOME



Thank you for reading about my work and for considering me to assist you in resolving labor and employment issues in the workplace. For the past thirty years, I have been an active arbitrator and mediator, working in both the non-union and union sectors in private and public employment.

If you are confronting a workplace dispute, you may want to retain my services based upon the following considerations:

- I have served as a neutral in thousands of disputes throughout the United States, and have dealt with statutory claims, wrongful termination, discrimination issues, partnership dissolutions, disputes under executive agreements, and a host of subjects under negotiated labor agreements. I currently serve as a permanent umpire under various national collective bargaining agreements, as well as a permanent arbitrator on panels appointed by several major corporations to mediate and arbitrate employment disputes.
- I am a Distinguished Fellow in the International Academy of Mediators, a member of commercial, labor, and employment neutral rosters of the American Arbitration Association, a member of the arbitration panel of the Federal Mediation and Conciliation Service, a member of the arbitration panel of the National Mediation Board. I also am a 30-year member of the National Academy of Arbitrators, a member of the National Association of Railroad Referees, and a member of the National Academy of Distinguished Neutrals.
- For more than twelve years, I was a tenured professor at the Institute and Management and Labor Relations at Rutgers University, where I also served as Director of the Program of Industrial Relations and Human Resources. I continue to teach as a visiting lecturer at Rutgers and am a frequent speaker at seminars and programs throughout the United States.
- I can help you control the costs of dispute settlement. I do not charge administrative or docketing fees, and my hourly rates are competitive.
- I am mindful of your procedures and preferences for the efficient management of cases and will not impose restrictive rules that do not serve the mutual interests of the parties. I am guided by the terms that parties have negotiated into their agreements but with an eye toward always protecting the integrity of the proceedings over which I preside.
- Depending on the wishes of the parties, I maintain strict confidentiality and never seek to publish arbitration decisions.

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Even in well-managed companies, disputes arise. They can be between co-workers, supervisors and subordinates, or boards of directors and corporate officers. They can involve statutory issues, contractual claims, performance disputes, or simply personality clashes. In unionized companies, disputes involving bargaining unit employees are resolved through grievance procedures that provide for binding arbitration as a last resort. But even in the unionized sector, many disputes arise that do not involve the terms of a collective bargaining agreement, but rather, an allegation of discrimination or harassment under various employment statutes, such as the Americans with Disabilities Act, Age Discrimination in Employment Act, Civil Rights Act, and a variety of state human relations laws.

If you are facing an employment dispute, it is important to know that you have options. Litigation is not the only route through which you can pursue a resolution, which is why you might consider alternatives like mediation and arbitration. While each has their own merits, there are several common elements in both of these forms of alternative dispute resolution (ADR).

If you find yourself a party to a dispute, it may be worth your while to consider whether arbitration, where a third party issues a binding decision, or mediation, where a third party helps guide the discussion, is a better fit.

## 1. Preserving Relationships

Just because there is a legal dispute between you and another party does not mean that you intend or want to sever ties completely. In many instances, such as a dispute between an employer and employee or a conflict between a contractor and business, the relationship may actually proceed after the dispute has been resolved.



Rather than inflaming conflict between two parties to a legal dispute, mediation and arbitration help to diffuse the conflict and provide a neutral forum where an experienced professional helps guide them to a resolution. In many cases, those who have used alternative dispute resolution are able to continue working together after the dispute has been resolved because of this neutral forum.



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## 2. Improving Communication Skills

In many cases, conflict may arise as a result of communication breakdowns. One of the biggest benefits to using mediation and arbitration is that you can pick up on valuable communication skills to use in the future as well as in your present relationship with the other party. Identifying issues that have arisen as a result of communication breakdowns may also help inform your decisions about working with others in the future.

## 3. Identify Opportunities for Improvement

You may learn over the course of dispute resolution that future agreements and contracts could be written differently to minimize the chances of a dispute or perhaps that additional training could be valuable. Coming out of mediation with the skills to implement these changes can be beneficial to you.



## 4. Flexibility

When you are a party to a litigated case, you are very much at the mercy of the court when it comes to scheduling your sessions and the manner in which they must proceed. Outside of the courtroom, however, you may find greater flexibility in resolving your case. Setting up your sessions with a mediator or arbitrator also tends to be easier, meaning that you can resolve your case more quickly.

A strict litigation outcome may not reflect the needs of either party or your dispute. Working with alternative dispute resolution, you have more control and opportunity for flexibility over how your dispute unfolds as well as how the final agreement is structured. Since you have more opportunity to influence your final arrangement, you are more likely to walk away satisfied with the outcome than if you had pursued litigation.



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## 5. Cost

Since you are more likely to resolve your case in an efficient manner using mediation and arbitration, the cost tends to be less as well. Anyone who has been involved in litigation in the past knows how quickly expenses can mount. In situations like mediation, you do not even need to have legal counsel present. Instead, you'll be working with a neutral third party who serves to facilitate conversation. Expenses for the mediator can be split between the disputing parties. Since you do not have to rely on the formal procedures of the courtroom, you can maximize the money spent on your case by being prepared ahead of time.



In order to make the most of your arbitration or mediation, the selection of the professional guiding it is crucial. Selecting a mediator with a background in your industry, and with knowledge of labor and employment laws, can also help to speed up the process and provide important insights into your case.

## 6. Work With a Neutral Professional

Although many judges are highly informed about numerous issues, you might benefit from the expert insight of an experienced mediator or arbitrator. In technical disputes, it is a wise decision to select a mediator or arbitrator with experience in that field. Doing so may also allow for more creative and industry-specific solutions.

In arbitration, an experienced individual can make the process go faster. In mediation, however, the individual guiding the conversations is not equipped with decision-making power. Instead, he or she is in place to help identify critical issues in the dispute and help suggest possible avenues for solution.

Selecting the right mediator or arbitrator is a process that you should consider carefully. Ensure that you look into their background, education and experience in the ADR arena. Choosing the right individual can help you resolve your case quickly and effectively.



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### 7. Maximize Time

Many different benefits of mediation and arbitration are listed above with regard to your greater involvement in the process, but making the most of your time is also an important factor. Since you can contribute to how the process is structured, you're more likely to reach a final resolution quickly and effectively.

Regardless of the kind of dispute you are involved in, you should consider the value of your time. Especially in matters where you need to return your focus to your life and your work, engaging in litigation is a poor choice for resolving the issue. The negative and divisive effects of a bitter, lengthy litigation linger for a long time. Mediation and arbitration are better options. And even though arbitration is an adjudicative process, experience has shown that disputes which are submitted to arbitration are handled with greater efficiency, are less costly, have outcomes that are more predictable, and are generally more manageable than cases that are battled in a courtroom. Regardless of whether your dispute is better suited to arbitration or mediation, using an ADR professional who is skilled in conflict resolution will probably spare you the frustration and headache of a dispute that is litigated in court.



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# How I Approach Mediation

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My professional life has been dedicated to conflict management. I appreciate the value of both litigation and arbitration in certain cases, but also firmly believe that in appropriate circumstances, mediation is a more efficient, less expensive, and less risky process for the resolution of disputes. A skillful mediator will not only facilitate communication between disputants, but may also explore with them creative and smart solutions that represent a win-win outcome, which is not often possible in either the courtroom or arbitration tribunal.

I am a pro-active mediator. Succinctly put, I do not wait for the “deal” to come to me; I work hard to find and “sell” the deal. I urge parties to prioritize their issues, and I often assist them in formulating and packaging their proposals. In that sense, I am more of an evaluative than a facilitative mediator, although effective mediation often requires a combination of styles, depending on the parties, the nature of the dispute, and when the mediator gets involved. I view my role as one of encouraging parties to constantly rethink their positions, realistically assess the risks of failure, develop shared goals with their adversaries, and put aside personal antagonisms that impede settlement. In addition, I attempt to clarify misunderstandings, explore new areas of discussion, be sensitive to unspoken issues and relationships that may affect negotiations, and manage the pace of the discussions and the timing of proposals.

My clients often say I am tenacious. That is true. Negotiations tends to take time, and the process of settlement needs to be managed – not rushed. “Hanging in” and showing the parties that I am totally committed to helping them resolve their impasse frequently dissuades them from giving up and inspires them to renew their settlement efforts. What I ask in return is that the parties enter into mediation with a sincere desire to reach settlement and a willingness to move in some direction to achieve that result. Using mediation solely for discovery, or to pummel one’s adversary instead of seeking genuine understanding and/or compromise, constitutes an abuse of the process and the mediator. I also expect the parties to come prepared to engage in meaningful and intelligent discussion. That task necessarily involves a careful identification of the issues; an assessment of the claim, facts, defenses, and potential damages; some knowledge of relevant law and litigation risks; preparation of supporting arguments; and consideration of alternative positions. The mediator’s effectiveness is directly affected by the level of preparation that the parties bring to the mediation process.

My personal philosophy also emphasizes the importance of fairness in the process and dignity in the outcome. I encourage parties to appreciate the significance of face saving and the need that everyone has to conclude negotiations with some sense of satisfaction and dignity. I try to manage the mediation so that the mutual perception of the parties is that the process is never demeaning, and the mediator is always trustworthy.

In the end, successful mediation is as much about timing and perception as it is about the content of proposals. The mediator’s task is to help disputants appreciate one another’s needs and objectives – i.e., “where they are coming from” – so that the give-and-take incorporates not just the exchange of substantive demands, but also an understanding of the respective motivations and goals underlying those demands.



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# Thoughts on Mediation

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A defining quality of mediation is its ability to redirect parties toward each other, not by imposing solutions on them, but by assisting them to find a new and shared perception of their relationship and dispute – a perception that will change their attitude toward one another.

In order to bring about this alteration of perception, the mediator plays many roles. She is a catalyst, facilitator, negotiator, confidante, problem solver, educator, translator, agent of reality, bearer of good and bad news, and sometimes even a scapegoat. All of these roles are important to the dispute resolution process. Mediation is a party-driven and creative problem-solving process in a protected environment. The process is confidential, and nothing that is said or proposed may be used as an admission of liability in litigation, should litigation ensue. With the mediator's help, the parties can explore opportunities for resolution of impasse in ways that meet their needs. Moreover, they get to participate in a process that enables them to view their dispute as a problem to be solved, not as a battle to be won.

Mediation also permits parties to determine their destiny. By contrast, litigation is a blunt instrument applied by people who do not stand in the disputants' shoes: judges and juries. Moreover, litigation looks backwards at a prior set of events, apports fault, and determines damages – all delivered to the parties at great expense. Mediation, on the other hand, is forward-looking, and it can explore outcomes that often combine monetary and non—monetary interests. If it does not settle all of the issues in dispute, mediation often can narrow the dispute to discrete issues that can be submitted to arbitration or litigation. And, if the parties have any hope of preserving their relationship, that hope has a better chance of fulfillment in mediation than in litigation, which usually is divisive and embittering.

Working through a mediator also permits parties to avoid the psychological pitfall of reactive devaluation, that phenomenon which leads one party to discount or discredit any proposal made by the other side. The mediator can assist the parties in sidestepping this pitfall by serving as a lens and filter, the person who can get the parties to focus on their shared objectives and who can present information in a manner that will result in its being carefully considered rather than simply trashed.

Experts in conflict resolution know that barriers to settlement consist of many factors besides monetary differences and disagreements about law and contract. The common obstacles include selective perceptions in making evaluations, gaps in information, failure to communicate, insufficient attention to underlying issues, disconnects between attorneys and clients, anger and embarrassment, negative attitudes and tactics of parties and lawyers, inadequate negotiating skills, inappropriate reliance on experts, preoccupation with winning, inability to break impasse, and an inadequate understanding of the process of moving toward resolution.

Mediators provide a vitally important service in assisting parties to get beyond their formal positions, negotiate meaningfully, and move purposefully toward mutually acceptable solutions to their dispute. In many cases, the skilled mediator can overcome the obstacles that often arise in unassisted negotiations and facilitate creative resolutions that are not available in the win-lose environment of litigation.



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