

The Art of Resolution

Navigating Worker's Compensation Mediation



What is mediation?

- Mediation is a structured, voluntary process where a neutral third party (mediator) helps disputed parties reach a mutually acceptable resolution.
- In workers' compensation case, mediation often involves the injured worker, the insurer, attorneys, and in some cases the employers .

Why Mediation?

- Alternative to litigation: faster, less costly, and less adversarial.
- Provides a confidential space to resolve disputes.
- Preserves working relationships and improves communication.



Benefits of Mediation



- Helps clarify facts and reduce misunderstandings.
- Resolves disputes efficiently.
- Enhances collaboration with other stakeholders.
- Empowers parties to control the outcome.
- Saves time and money compared to litigation.
- Reduces emotional stress associated with prolonged conflict

The Role of the Mediator



- Remains neutral and impartial.
- Facilitates communication between the parties.
- Clarifies issues and encourages problem-solving.
- Helps explore potential settlement options

Mediator's Goals

To guide the parties towards a mutually agreeable resolution without deciding who is “right” or “wrong”.



Overview of Mediation Process



Parties submit a mediation petition, often triggered by a dispute over liability, denied treatment, or other benefit related issues.



Mediator reviews the case details, such as medical records, prior claims, and correspondence.



All parties should come prepared with relevant documentation and authority to negotiate settlement.

Opening Session

- The mediator explains the process, ground rules, and confidentiality.
- Parties introduce their perspectives or positions on the dispute

Issue Identification

Mediator identifies the key areas of the dispute, such as:

- Liability issues
- Benefit calculations
- Denial of medical treatment
- Settlement demands

Negotiation



- Parties work together to explore options and propose solutions
- Mediator may hold private sessions (caucuses) to discuss sensitive issues and encourage compromise

Resolution or Impasse



- If an agreement is reached, one of the parties documents the terms in writing by means of a settlement.



- If no agreement is reached the parties can proceed to either a settlement conference or worker's compensation court.

Challenges in Mediation

- Emotional tensions: parties may bring frustration or anger to the table.
- Power imbalances: injured workers may feel intimidated by employers or insurers.
- Unrealistic expectations: some parties may have fixed positions or misunderstand the legal framework.
- Limited authority: decision-makers must have the authority to settling during mediation.

Case Study 1

A construction worker reported ongoing knee pain and swelling to his employer. He stated he had no prior knee problems before performing repetitive job duties, including climbing ladders and frequent kneeling. The insurer paid his claim under reservation of rights while investigating compensability.

During their investigation, the insurer arranged an independent medical evaluation also called an IME. The IME physician concluded the worker's symptoms were the result of severe pre-existing osteoarthritis of the knee and opined his knee condition was not related to an Occupational Disease. Given that report, the insurer terminated time loss benefits and denied further treatment. The treating physician disagreed, opining the employee's work activities had permanently aggravated their pre-existing osteoarthritis.

The mediator facilitates discussion around medical evidence, occupational disease, weight of the treating physician, and settlement proposals.

Outcome: parties agree on an initial disputed settlement to avoid litigation

Case Study 2

A warehouse worker reported a back injury after lifting heavy boxes. The insurer denied medical and wage-loss benefits, asserting the injury did not occur in the course and scope of employment. However, the information provided did not substantiate that assertion. The employee maintained the injury was work-related and had been without benefits or treatment for several months.

The mediator identified the primary disputes as causation, the need for treatment, and employee's work capacity. During mediation, the mediator facilitated discussions on alternative solutions. The mediator encouraged the insurer to authorize an appointment with the treating physician to obtain an assessment of his current condition. The mediator also suggested the insurer consider agreeing to a previously denied functional capacity evaluation to determine the worker's physical ability and determine if they can return to work.

The mediation resulted in an agreement: the insurer would cover a medical evaluation with the treating physician and authorized a functional capacity evaluation. The employee agreed to undergo an independent medical evaluation to clarify their condition and treatment needs. This resolution allowed the claim to move forward without further litigation.

Case Study 3

A receptionist sustained a wrist injury requiring surgery. After returning to modified duty, the employee claimed permanent restrictions prevented a return to full job duties. The insurer contested the temporary partial disability benefits, arguing the employee could return to full-duty work based on their independent medical evaluation.

The mediator facilitates a creative solution, including a vocational rehabilitation assessment to help the employee transition to less physically demanding work and reassessing the work restrictions through a mutually agreed medical evaluation.

The agreement avoided prolonged litigation, provided additional medical clarity, and gave the employee an opportunity to explore alternative employment consistent with their restrictions.

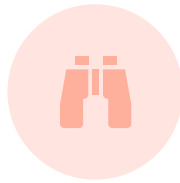
Tips for Effective Mediation



Come prepared with a clear understanding of case facts and legal framework.



Maintain professionalism and avoid inflammatory conduct



Manage expectations and keep the end goal in focus



Be ready to discuss settlement immediately and realistically

Key Takeaways



Success in mediation requires preparation, open-mindedness, and collaboration.



Listen actively-understanding interests leads to better solutions



Neutrality is crucial. Flexibility creates opportunities for resolution



Mediation allows for creative outcomes tailored to the needs of both parties, beyond what litigation typically offers.



Focus on the future. Look beyond the dispute to practical outcomes.

“An ounce of mediation is worth a
pound of arbitration and a ton of
litigation”

~Joseph Grynbaum

Thank you

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