



Mediation Guide for Insurers

1. Understanding the Workers' Compensation Mediation Process

The purpose of mediation is to prevent, when possible, the filing in the Workers' Compensation Court of disputes by injured workers or insurers if a fair and reasonable resolution can be reached at an earlier stage.

Mediation is not intended to be a formal process such as a hearing. Rather it is to facilitate the exchange of information between parties, to assess the information that is provided by the parties, and to assist the parties in resolving the issue(s) by pointing out strengths and weaknesses based on statute and case law. Very rarely is a dispute so "black and white" that a recommendation totally in support of one side or the other is appropriate. The role of the Mediator is to facilitate a resolution of the issue(s), not act as a judge.

2. Submitting Documentations

In order for the mediation process to work, it is imperative that copies of ALL documentation relative to the issue(s) at hand are submitted to the Mediator at least 1 week prior to the scheduled conference. This ensures that the Mediator has enough time to adequately review the documentation and consider each party's position before the conference is held.

A checklist accompanying your copy of the **NOTICE OF MEDIATION CONFERENCE** sets forth specific items the Mediator feels would assist him or her in fully understanding the dispute. However, keep in mind that this is merely a guideline and there may be documentation in your file which is not on the checklist but is crucial to the issue(s). You are in the best position to make the determination of what documentation is pertinent to the issue(s) in mediation.

3. The Conference

Prior to the conference both parties will receive a NOTICE OF MEDIATION CONFERENCE with the date and time of the conference. If the petitioner has requested the conference be held in person, the location will be referenced. All in-person conferences are held in Helena.



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Once the Respondent receives the Notice, ARM 24.28.105 allows ten working days to submit a written request for dismissal if they do not feel the requirements of 39-71-2401 have been met by the Petitioner or if they feel mediation is not the appropriate forum for the dispute.

The claimant and a representative of the insurer with settlement authority must participate in the conference. In addition, legal counsel is often retained to handle the conference. **Prior to the conference, the disputing parties must furnish the Mediator the names and phone numbers of the participants.**

During the conference, the petitioning party is usually given the first opportunity to present its position. The responding party is then given the same opportunity. Since mediation is intended to be an informal process, there is no formal protocol that needs to be met. However, there is one "rule" that all parties are asked to observe and that is not to interrupt the other parties while they are speaking.

Keep in mind that mediation is an informal process and therefore very flexible. We encourage the parties to take an active role and let the Mediator know what you expect from the process. In some situations more than one conference can be beneficial in assisting the parties to reach a resolution. The Mediator will sometimes suggest the parties reconvene if additional information is needed by one party or the other. However, you or your representatives are in the best position to know what you want and need from the mediation process. Please do not hesitate to let your wants be known to the Mediator. We will make every effort to tailor the process to meet the needs of the parties participating in each conference.

4. Feedback

We encourage feedback from the parties participating in the conferences. Without this it is very difficult to know if we are meeting the expectations of those using the process. In addition, it allows us to stay informed of our customers' desires and amend the process when appropriate.