

CALIFORNIA EMPLOYMENT
LAW CORNER *By Jessica A. Braverman, Esq.*

Mediation in Employment Issues

Many employers and people have heard of Mediation, but few understand how the mediation process works and how early mediation intervention can be utilized at the workplace. Mediation with the right mediator can help ward off potential time consuming and expensive litigation and provide a balanced and practical solution to many work related conflicts.

What is Mediation?

Mediation is a voluntary process where a trained facilitator (mediator) works with the parties to identify the conflict and the sources of the conflict so that the parties may reach an agreement on an acceptable resolution. A mediator is a neutral and unbiased third party who helps facilitate. Normally the mediator will meet with all the parties together in a conference room type setting, but if needed, the mediator can separate the parties into separate rooms while the mediator “shuttles” between the rooms to help elicit communication. The mediator is not a judge and does not “rule” for one side or the other. Instead, the mediator’s role is to assist the parties to first clarify and communicate the issues, and then create an environment where creative and positive solutions to the conflict can be revealed. This is done in what is called “Joint Sessions” where all the parties work together in one room, or in “Private Caucus” where the parties are separated in different room. The mediator helps the parties reach its own agreement, so the parties control the process and have the ultimate say in the outcome.

Most people mistakenly believe that a dispute must be in litigation before a mediator can be brought in. In reality, mediators are available and able to assist parties during almost any stage of a conflict or disagreement when all of the parties agree to utilize the services of a mediator.

When cases are in litigation, often the Judge may determine that it is in the best interest of the parties to try mediation. The Judge then may order the parties to mediation. At this point the parties may take advantage of that court’s Alternative Dispute Resolution or ADR program, which means that the Court likely has a panel of mediator names that the parties may select. For example, in Contra Costa, the Superior Court has an ADR program in Martinez and the approved list of mediators can be found on line at: www.cc-courts.org/adrrpanel. The parties can also call the Contra Costa County Superior Court ADR program manager at: 925-957-5787 or visit 625 Court Street, Room B002 in Martinez, California.

What are the Benefits of Mediation?

One of the biggest benefits of Mediation is that the parties control the outcome rather than having a Judge, Jury or Arbitrator “rule” or decide the fated outcome. This gives the parties satisfaction in knowing that the agreement was reached mutually and voluntarily.

The next benefit is the confidentiality. Mediation is confidential versus having a complaint filed with the court which is open and accessible to the public at large.

Also, Under the California Evidence Code, the mediator cannot be forced to disclose any of the communications that take place in the mediation by a party or by the court (with very minor exceptions). This means that the parties can discuss the conflict openly and honestly with the mediator without fear that the information will be made public. Also, normally in a written settlement agreement the parties will agree to keep all the terms and conditions fully confidential, so even the agreement itself is kept private.

The third benefit of Mediation is cost containment. It is not a secret that a basic lawsuit will cost over \$60,000 in legal fees and costs, and jury verdicts in employment cases vary but many are in the millions of dollars. The cost to an organization as far as its morale, productivity, and relationships is immeasurable but must be factored. A day of Mediation can cost on average from \$1,500 to \$10,000 (for the mediator’s time) which is substantially less than the out of pocket costs of litigation.)Private mediators charge less than a Mediation Organization such as JAMS or AAA). Also, the actual reached agreement may or may not involve the exchange of money, but it much lower than jury verdicts typically. Many agreements provide for creative solutions that do not involve money. Believe it or not, often if a dispute is resolved early, parties will settle for a change in process or behavior and/or an apology.

Overall, Mediation helps preserve business relationships, helps restore morale and ultimately brings more satisfaction to the parties who feel more in control of the outcome. Many people feel it is more of a “Win-Win” outcome, rather than a “Win-Lose” proposition.

Under What Circumstances Should We Consider Mediations?

In the employment arena almost any conflict involving a department or a team would be ripe for a mediator. Even though Human Resource departments are normally the first to be brought in to resolve a conflict, often HR is perceived as biased towards one side. Also, in my travels, some times the conflict is due to an HR decision. A mediator is a neutral third party who is agreed upon because he or she is not biased towards or against any of the side. The types of conflicts that I have personally been called upon to mediate are personality conflicts between 2 or more department managers, conflict within



an entire department because of two managers who were in conflict, a clash between the Union and Management over interpretation of the Collective Bargaining Agreement and many others situations involving power struggles, personality differences and management styles. Also, where a hostile work environment is being alleged, or in sexual harassment or discrimination type situations, mediation may be an ideal way to resolve the issues.

Where there have been multiple complaints within a department, or where there has been high turnover in one area, that is a strong signal that it may be the right time to call in a Mediator. When in doubt, call a mediator that you trust to get his or her opinion. Braverman Mediation and Consulting in Pleasant Hill is a great resource to call at: 925-932-7011 along with the Contra Costa County Superior Court ADR program manager.

Can You Give an Example Where Mediation was Successful?

Recently, I was called in to Mediate at a large health care organization. The dispute was between the Operations Department and the Human Resources Department. Since the mediation is still underway, I cannot reveal all of the outcomes, but so far the parties have come to a written agreement on many of the issues involving the changing of certain processes, deadlines and approaches in communication.

Within this mediation, I interviewed over 15 of the employees to help identify the sources of the conflict. Initially when I was called, I was told that the conflict was a personality clash between the Head of Operations and the Head of Human Resources. However, after days of mediation, it became clear that the personality clash, was a symptom of the underlying conflict, which was a breakdown on several key processes. Because the conflict had gone on for so long without any satisfactory resolution, the parties became frustrated and diverted that frustration personally. So far, the mediation has been very successful in clearly identifying the right problems so that the right solutions can be reached.



For more information about Mediation, contact Jessica@CAELTC.com or call the California Employment Law Training Center at 925-827-4198, a San Ramon Chamber member. Jessica A. Braverman is a trained Mediator since 1995 and most recently was added to the Contra Costa County Superior Court ADR panel after completing an additional 42 hours of advanced mediation training in April 2008. Ms. Braverman owns Braverman Mediation and Consulting. See www.BravermanSolutions.com for more information.

DISCLAIMER: This is a best practice/information column only and all readers should consult their legal counsel before relying on any of the information listed in this column.

San Ramon Gets AAA Credit Rating

Standard & Poor’s (S & P) has raised its credit rating for the City of San Ramon to AAA on June 18, 2008, based on San Ramon’s “sustained, strong financial performance, which has resulted in high reserves in recent years.” This is the highest credit rating possible for a city, and has been awarded to only eleven of the 480 cities in California.

Mayor H. Abram Wilson commented on the news, “This AAA credit rating is a major achievement for San Ramon. It is the result of sound management of the City’s fiscal responsibilities to its citizens. The fact that S&P has made this determination now, with the impacts of the subprime mortgage crisis, declining property values, and downgrades in the rating of financial institutions, speaks volumes about San Ramon’s financial strength.”

S & P’s written comments documenting their premier AAA rating for the City of San Ramon are very informative:

“The City’s financial performance has been strong in recent years.”

“San Ramon crated a separate irrevocable trust to fund future retiree health benefit payments.”

The credit rating “is further supported by a broad underlying economic base, both from residential tax bases, and vibrant office parks...”

“The stable outlook reflects our expectation that the City will sustain its strong financial position.”

S & P's worldwide ratings organization builds its extensive knowledge and deep insight through its focus on sectors, type of debt and geographic location. Standard & Poor’s analytical teams concentrate on corporate finance, financial institutions, insurance companies, stated and municipalities, sovereign governments and the continued evolution of structured finance.

