

By Louise Phipps Senft

The negotiating table

Turning problems into opportunities

WHY BUSINESSES ARE USING MEDIATION AS A FIRST PROCESS RATHER THAN AS AN ALTERNATIVE PROCESS TO LITIGATION

More and more companies are using mediation to resolve customer service and employee complaints and disputes. Mediation in a business setting is a confidential, facilitated process of discussion and negotiation that allows the parties involved in a conflict or a dispute the opportunity to exchange views and collaborate to find mutually acceptable solutions. The process is often popular with employees because it enables them to discuss grievances in an informal setting that is less adversarial than more traditional grievance procedures.

Many managers, HR directors and CEO's are finding that mediation is a cost effective alternative to formal grievances or legal action. In particular, attempting to resolve workplace disputes through litigation is time consuming, expensive, damaging to employee morale, yields unpredictable results, and can cause negative publicity. By contrast, mediation is a faster process, costs less in terms of fees, creates little negative publicity (because it is confidential), and reduces the risk of expensive jury verdicts. The number of employment discrimination cases that are being filed today has almost tripled since the beginning of the 1990's, which further increases the costs of handling such cases in the traditional adversarial manner.

Because mediation of business disputes is so cost effective compared to the alternatives, many large institutions and corporations have instituted mediation or alternative dispute resolution programs. These include the US Postal Service, General Dynamics, General Electric, Lens Crafters, Northwest Airlines, Shell Oil, and American Express.

Mediation in a business setting should be an organized process in which the participants are encouraged to have a conversation, to be direct and to seek creative solutions. Therefore, business mediators need to provide a positive setting, communicate their neutrality, and help disputants understand each other's viewpoints, with or without agreeing with such viewpoints. The mediator must also listen for and highlight fruitful areas for discussion among the parties. Businesses should seek out mediators who have both in depth training as well as experience in mediating these disputes. Business mediators often have backgrounds in law, human resources, counseling, business management, or a combination of these. In addition to facilitating the mediation process, businesses might consider a mediation firm which can train managers and employees in

the organization to handle future workplace conflicts in creative ways that increase productivity and boost morale, thereby lowering employee turnover.

Any manager, HR director, or business owner who is desirous of avoiding the economic and psychological costs of litigation; or who is faced with a situation whereby an aggrieved employee or customer does not believe that management or in house grievance procedures are impartial should consider mediation as a first alternative, as it is often the first and only alternative that is necessary since the rates of satisfaction are exceedingly high among all participants. I know of no other process that has satisfaction rates for both management and employees and unions that remains in the 85%-95% range year after year. Additionally, mediation is ideal whenever there is a dispute between individuals who need to work together for the good of the organization or when groups of employees with strong conflicting views need to make decisions and at the same time maintain morale and cohesiveness. Mediation is a better process and has better outcomes.

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