



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Best Practices for Mediation

What is mediation?

Mediation is a way to reach an agreement with your employer – or former employer – about your employment dispute. It is an informal process where a trained mediator facilitates a meeting between you and your employer to try to reach a resolution. Mediation is voluntary. This means that both you and your employer have to say that you want to try to resolve your dispute through mediation.

Will the mediator decide who wins my case?

No. The mediator does not decide who is right or wrong. The mediator cannot make you or your employer say yes to a settlement offer. You can say no to a settlement offer in mediation if you do not want to or do not agree to it. The mediator is neutral and does not take either side. The mediator's job is to help you and the other side work out your differences.

Do I have to pay for mediation?

Probably not. If you are offered mediation through the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR), the mediation is free. See our Fact Sheet on [How to File a Charge of Discrimination](#) to learn more about the EEOC and IDHR process. Here, the mediator is probably someone who works for the EEOC or IDHR and their job is to be neutral.

However, there are also times when employees and employers decide to pay for a private mediator to help them resolve a dispute.

What happens during mediation?

Every mediation is a little different, but you can generally expect the following things to happen:

- **Introduction:** The mediator welcomes the parties and discusses the “rules” of the mediation. One common rule is that the parties agree to keep all conversations within the mediation confidential. Another rule is that the parties agree to be respectful.
- **Opening Statements:** Both you and your employer have time to give a short opening statement. This statement is usually not more than 5-10 minutes. The person who made the complaint, usually the employee, will go first. This is your opportunity to tell

your side of the story and explain what you are looking for to resolve your case. After you finish, your employer will likely respond and explain their side of the story.

- **Negotiations:** After opening statements, the parties enter into negotiations.
 - The mediator will likely put you and your employer in separate rooms. The mediator will then talk to you privately, and will talk to the employer privately. The mediator will go back and forth between each room, and will share any settlement offers, counteroffers and information that they might give the mediator permission to share. The mediator will keep confidential information that you want to tell the mediator but not your employer. Be sure to tell the mediator which information you want to keep confidential and which information you are okay with them sharing.
 - The mediator may suggest that you and your employer should come back together to talk through issues directly face-to-face. This might happen if you are asking for something where more specific details are needed. For example, if you want your employer to do an ADA training, you might want to talk to the employer about what the training might include.
- **Conclusion:** By the end of the mediation, you may:
 - Reach a resolution. If so, you will likely review and sign a settlement agreement that says what you agreed to. Sometimes, there will be one agreement for the EEOC/IDHR, and another private agreement directly with your employer;
 - Decide that although you did not reach a resolution during the mediation, you and your employer want to keep talking so that you might be able to reach an agreement. If there is a good reason to do so, the EEOC/IDHR will generally allow you to keep talking to your employer to try to reach a resolution for a short period of time; or
 - Decide that an agreement is not possible at this time. If this happens and your case is with the EEOC or IDHR, the agency will then move on from the mediation stage, and start its investigation of your case.

What should I ask for to resolve my case?

This is a difficult question because there are so many different factors to consider. Consider using the following process to think through your demand.

Step 1: Add up your monetary damages

Here are the general categories of damages and relief that you can ask for as part of the mediation.

- **Back pay:** Back pay, also known as lost wages, is the money that you would have already earned if you were not discriminated against, minus any income you did receive.

- Tip: You need to “mitigate” your damages by trying to find another job – be prepared to explain how you have done this. See our fact sheet on [How to Mitigate your Damages](#).
- Tip: Bonuses, commissions and benefits lost are also part of back pay.
- **Front pay:** Front pay is the money that you would have earned in the future if you were not discriminated against, minus any income you will receive.
 - Tip: Front pay is generally hard to get, so you probably do not want to ask for a lot of your settlement demand as front pay.
- **Compensatory damages:** Compensatory damages are money that helps compensate you for any emotional distress or pain and suffering that you have experienced as a result of the discrimination. This category also includes any other out-of-pocket expenses such as medical bills.
 - Tip: The ADA limits the amount of compensatory and punitive damages you can get, even if you win your case before a jury. The limits are based on the size of your employer. Learn more about the statutory caps [here](#).
- **Punitive damages:** Punitive damages are intended to “punish” your employer.
 - Tip: Generally speaking, most employers do not agree to punitive damages during mediation.
- **Miscellaneous:** There may be other “damages” that you have experienced that you will want to ask for.

Step 2: Consider if you want to request any non-monetary relief

Here are some examples of non-monetary settlement requests:

- **Reinstatement/Instatement:** If you were fired, you may ask for reinstatement, which means that you would like your job back. If you were never hired, you may ask for instatement, which means that you would like a job.
- **Positive/neutral reference letter:** Consider asking for a positive (or at least a neutral) reference letter, which can be helpful as you try to find another job. A neutral letter of reference confirms that you worked at the company from your start date to your end date. A positive letter of reference has more details including what your employer liked about you while you worked there.
- **Reasonable accommodations:** If you are still employed, you can ask that your employer provide you with reasonable accommodations.
- **Modified policies:** If you experienced discrimination because your employer had a bad – or discriminatory – workplace policy, you may want to ask that your employer change the policy.

- **ADA/Disability training:** Many employees ask for some form of ADA or disability awareness training as part of their settlement demand. Trainings can help educate employers and are intended to make the workplace fairer for others in the future.
- **Miscellaneous:** There are no hard rules about what you can or cannot ask for during mediation. If you have other creative ideas about how to reach a resolution, you should feel free to suggest them.

Step 3: Consider what you would be willing to resolve your case for

As you know, you are unlikely to get everything in a mediation that you would get if you took the case all the way to trial and won. It is helpful to think through what you would be willing to settle for, though we do not recommend having a “bottom line” as you want to give yourself flexibility during the mediation.

Different people have different perspectives on mediation and settlement. There is no right or wrong answer, but it is helpful to think through your position.

Reasons others have decided not to accept a settlement offer:

- My employer did not give a reasonable settlement offer, so I am not willing to accept it.
- Getting my job back is the most important thing. Getting my job back is more important than money. Since my employer did not offer that in the mediation, I am not going to accept an offer.
- I have a “bottom line”, or minimum amount that I am asking for, that I am not willing to go below.
- I am committed to taking my case to court, even though I understand that it is a difficult process.

Reasons others have decided to accept a settlement offer:

- I don't like to take risks, so I would prefer to have a resolution now than risk not know what might happen in the future with the case.
- I have bills to pay and need the money now. Even though the settlement is not perfect, I would like to accept to use the money now to support myself.
- Even though I think I have a strong case, this process is becoming very stressful and I think it would be better for me and my family if I accept an offer now so I do not need to continue into litigation.
- I know that I was discriminated against because of my disability. But I want to move forward and put this chapter of my life behind me.

What should I do before the mediation to prepare?

- **Ask for accommodations (if you need them).**
 - Many people with disabilities need accommodations for the mediation to be accessible to them.

- Here are a few *examples* of accommodations:
 - Sign language interpreters
 - Real-time captioning
 - Additional break time
 - Permission to see the mediation room in advance
- Here are some tips about asking for accommodations:
 - If possible, ask the mediator at least two weeks before the mediation
 - Make your request in writing so there is a record of what you asked for and when
- **Prepare your opening statement.**
 - Explain the facts of your dispute.
 - Explain how this situation has affected you. How did it make you feel?
 - Do your best to predict your employer’s response – try to put yourself in their shoes. What arguments are they going to make and what can you say to respond?
 - Explain your settlement demand, as well as how you arrived at your request.
- **Gather relevant records.**
 - You are not required to share these documents with the mediator or your employer, but they may be helpful to have.

What should I do on the day of the mediation?

- Leave early so that you arrive at the mediation early.
- Be prepared to be at the mediation all day. Bring water, snacks and a phone charger.
- Bring your outline for your opening statement, your settlement demand and your records.
- When your employer talks, be respectful and keep a “poker face.” Try not to make faces or react while your employer is talking. Your employer may say things that are difficult to hear or that you might not agree with. It is better to not take it personally and remember they are advocating for their position just like you are advocating for yourself.

What are other strategies for a successful mediation?

- Be accurate. Be relevant. Be convincing. Be polite.
- Emphasize but don’t exaggerate.
- Be careful of words like “discrimination” which will put your employer on the defensive.

- Consider what to share with mediator alone and/or with other side.
- Strive for resolution, but be prepared that this situation might not be resolved at mediation.

Where can I learn more about the mediation process?

- EEOC guidance on the mediation process:
<https://www.eeoc.gov/eeoc/mediation/ganda.cfm>
- IDHR guidance on the mediation process:
https://www2.illinois.gov/dhr/FilingCharge/Pages/dhr_mediation_fact_sheet.aspx



DO YOU HAVE A QUESTION? CONTACT THE HELPLINE FOR FREE LEGAL ADVICE

Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (toll free) or (844) 744-4879
800-610-2779 (tty)

employment@equipforequality.org
www.equipforequality.org/employment

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. This publication is made possible by funding support from The Chicago Community Trust, the U.S. Department of Health and Human Services, the Administration on Intellectual and Developmental Disabilities and the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration; the U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. The contents of this publication are solely the responsibility of Equip for Equality and do not necessarily represent the official views of any of these agencies.

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EMPLOYEE WORKSHEET: Preparing for a Mediation

Use this worksheet to help organize your thoughts to prepare for your mediation. You can use this worksheet as an outline at your mediation as well.

List your legal claims:

1. _____
2. _____
3. _____

Claim 1:

What information is necessary to share with the mediator/your employer about this demand? Do your best to share critical information, but not to provide unnecessary information.

Gather but not always necessary to share. What support do you have for your position? Possible support can include relevant documents, notes, emails, etc.

What do you think your employer will say? Do you have a response to that?

Claim 2:

What information is necessary to share with the mediator/your employer about this demand? Do your best to share critical information, but not to provide unnecessary information.

***Gather but not always necessary to share. What support do you have for your position?
Possible support can include relevant documents, notes, emails, etc.***

What do you think your employer will say? Do you have a response to that?

Claim 3:

What information is necessary to share with the mediator/your employer about this demand? Do your best to share critical information, but not to provide unnecessary information.

***Gather but not always necessary to share. What support do you have for your position?
Possible support can include relevant documents, notes, emails, etc.***

What do you think your employer will say? Do you have a response to that?

EMPLOYEE WORKSHEET: Outlining Your Settlement Demand

Monetary Request				
	Amount	Basis for Amount	Documents to Support Request	What Will Employer Say? How Can You Respond?
Back Pay				
Front Pay				
Compensatory Damages				
Punitive Damages				
Miscellaneous				
TOTAL				

Injunctive Relief Request				
	Details of Request	Reason / Support for Request	Documents to Support Request	What Will Employer Say? How Can You Respond?
Reinstatement / Instatement				
Reference Letter				
Reasonable Accommodation				
Modified Policies				
Training				
Miscellaneous				