

PHRC PILOT MEDIATION PROGRAM FREQUENTLY ASKED QUESTIONS

1. What is mediation?

Mediation is an informal process in which a trained, neutral mediator helps people explore and resolve their differences together. The goal of the mediator is not to determine who is right and who is wrong, but to produce a settlement acceptable to both parties. Mediation is voluntary for both parties and either party can opt out of mediation at any time.

2. What can I get out of mediation?

Mediation saves time and money as opposed to investigations or going to court so it can better alleviate the stress of the entire situation. Further, mediation is a more personalized process which allows the parties to draft an agreement that satisfies everyone's needs. Often, when people think about settlements they think about money, but money is only one of the many remedies mediation can provide. Here are just a few examples of what your employer may agree to in mediation:

- Reinstate you to your prior job
- Continue your health insurance coverage for a period of time
- Not to contest your application for unemployment compensation
- Provide a positive written letter of reference for you to assist in your employment search
- Remove disciplinary actions in your employee record
- Change the policies and practices in the workplace that gave rise to your dispute
- Issue you a formal apology
- Grant your request for a reasonable accommodation
- Agree to change the reason for leaving in your file from 'terminated' to 'resigned'
- Agree to reimburse you for the out-of-pocket expenses that arose from filing your claim with PHRC, such as travel to and from the office, parking, taking time off of work, or attorney's fees

3. If mediation is voluntary, why should I participate if my employer could just decline?

Because employers often agree to mediate. There are many reasons why an employer would want to resolve an employment dispute in mediation. Mediation offers employers an opportunity to clear up disputes and misunderstandings in a neutral and confidential setting. You may be raising issues in the workplace that they may not have been aware of, in which case mediation can open their eyes to methods of improving their business relationship with employees. No matter how broken you feel your relationship with this employer is, you may be surprised to find how willing they are to work with you so you can both move on.

4. How much does it cost?

The mediation program is free of cost to its participants.



5. Is it confidential?

Yes. It is extremely important that both parties feel comfortable enough to explain their positions without worrying about having something they say held against them later. Before the mediation begins, both parties and the mediator agree to keep the mediation confidential. The mediation process and any documents submitted to the mediator are not public records so any records, conversations, or notes taken during the mediation are destroyed once the mediation is over. To further protect confidentiality, the mediation program is insulated from the investigative function of PHRC. The details of the mediation sessions are not disclosed to the investigator in the event the mediation fails to result in an agreement.

6. What records will be destroyed at the end of mediation?

At the end of the mediation, the mediator will destroy any notes they have taken during the course of the mediation. The mediator will then direct the individuals present to do the same. The only documents that are not destroyed are the Agreement to Mediate, the Mediation Settlement Agreement, and any documents the parties brought with them to the mediation session.

7. Who are the mediators?

The mediators are lawyers who are certified and trained in mediation and have been trained specifically in employment law by PHRC. Although the mediators work for the state, they are not PHRC employees. The mediators have no stake in the outcome of the mediation. They are there solely to encourage the parties to communicate, find common ground, and develop potential solutions. Their role is to remain neutral and they cannot give legal advice or advocate on behalf of either party.

8. When does the mediation take place?

Mediation will take place before any investigation of your PHRC complaint begins. Offering mediation early in the process allows both parties to come to the table and possibly resolve the problem before the passage of time makes resolution more difficult.

9. Where does the mediation take place?

Mediation is best carried out at a neutral location so neither party feels intimidated or pressured. The mediator will pick a neutral location that is convenient to both parties.

10. Can I bring someone with me?

Yes, you can bring one person with you. You may bring an attorney, but it is not required. If you would prefer to bring someone for support, ask yourself if there is someone whose input you would value in reviewing the terms of a settlement.



11. Who will my employer send to mediation?

If your employer agrees to mediation, your employer will send an individual to represent them at the mediation. This individual may or may not be an attorney. Whoever the employer chooses to send must have the authority to enter into the mediation settlement agreement. This means that by having the representative sign the agreement, the employer agrees to follow through on the agreement's terms.

12. How can I prepare?

The best way to prepare for mediation is to keep an open mind. The mediation has a better chance at succeeding if both parties focus on what they can agree on. The other side may say things you disagree with or feel are inaccurate. In those situations it's helpful to try to understand the other side's point of view while you explain your side of things. Before attending a mediation session, it may be helpful to spend some time thinking about what the conflict is about for you personally. Is there anything that might help your employer see your point of view? What would it take for you to participate in mediation and feel satisfied? What do you think the other party wants?

13. What happens if we don't reach an agreement?

If the dispute cannot be resolved in mediation meaning the mediation settlement agreement is not signed within ten days after the employer has been served with the complaint, the Mediation Program Legal Coordinator returns the case to the PHRC investigator who proceeds with the investigation.

14. What happens if we do reach an agreement?

The mediator will assist the parties in writing the settlement terms into the agreement. Every mediation agreement includes a request that the complaint filed with PHRC be closed. The parties are left with a document that clearly lays out their responsibilities going forward. The PHRC is not a party to this agreement nor does it enforce them.

15. If the PHRC does not enforce the agreement, what happens if my employer doesn't do what they agreed to do?

PHRC's regulations allow them to review the written mediation settlement agreement. The reason for this review is because the agreement states that in exchange for what your employer has offered you, you have agreed to close your discrimination case against them. Closing the case does not mean the employer can refuse to follow through with the terms of the agreement. You have a right to be free from discrimination so if you feel your employer is not complying with the agreement you have the right to petition PHRC to reopen the investigation. The investigation is reopened once the investigator determines the mediation agreement has not been complied with.

16. What happens if I sign the agreement then change my mind?



The mediation settlement agreement is a contract between you and the employer. If after signing, you decide you are unhappy with the terms you initially agreed to and would rather proceed with your claim against the employer, the employer may be able to file a lawsuit against you for breach of contract. It's important to keep this point in mind when considering who you bring with you to the mediation. In deciding whether or not you are satisfied with the terms of the mediation settlement agreement, it may be helpful to seek the advice of someone with you who knows you and your needs.

17. Do I get an opportunity to express my thoughts on the process once it's over?

Yes, at the end of the mediation process you will receive surveys to rate your experience in the program and evaluate the mediator. These surveys are a confidential way for you to provide feedback to help further develop the program.

18. Where can I get more information?

Contact the Mediation Program Legal Coordinator at (717) 787-9537 or RA-mediation@pa.gov.