
**Oregon Bureau of Labor and Industries
Alternative Dispute Resolution Program**

MEDIATION 101



Mediation is a safe and confidential platform for both parties to communicate through a mediator to reach a negotiated settlement agreement. **Mediation is fair.** The mediator does not take sides, provide legal advice, or make decisions for you. Instead, they facilitate conversation, encourage problem-solving, and help clarify issues. The goal is to help both parties agree on a resolution that suits their needs. In mediation, parties are in control of the outcome, not the agency. Parties can agree on resolution terms that may not be available at the conclusion of litigation or contested case proceeding.

BOLI's Alternative Dispute Resolution (ADR) Team is committed to providing Oregonians with accessible, free, and confidential mediation services that support individuals, businesses, and employers in resolving disputes promptly and efficiently. At the heart of our work is the belief that everyone deserves to be treated with fairness, respect, and dignity in their work environments, housing, and public spaces.

As impartial facilitators, ADR Team mediators are dedicated to self-determination of the participants, open communication, and productive negotiation. Our approach supports opportunities for repair, recovery, and closure, while offering a mediation process that is clear, understandable, and transparent to the parties involved.

WHAT IS MEDIATION



MEDIATION PROCESS

1 Screening & Agreements to Mediate

If both parties express interest, you will be asked to engage in a brief screening call with a mediator. You will be asked to sign an agreement to mediate which includes agreements to maintain confidentiality. If accepted into the mediation program, the date of mediation will be set on a mutually agreeable day and time. All pending deadlines in the investigation will be paused while the case is in the mediation program.

3 Statements & Opening Discussions

Each party will have an opportunity to share their perspective of the dispute with the mediator. We encourage brief written mediation statements of up to three pages submitted before the mediation, but a verbal summary is also acceptable. In the mediation statement, please include (1) three best facts for your position; (2) three worst facts for you; (3) your goals for the mediation; (4) a summary of any alleged income loss or emotional distress; and (5) any earlier settlement negotiations between the parties.

5 Reaching an Agreement

If both parties reach an agreement, the mediator will help write it up in clear terms. Note that settlements of claims outside of the BOLI complaint will not be enforced by BOLI and BOLI will not draft a settlement agreement that goes beyond the scope of the complaint.

2 Mediator Introductions

On the day of mediation, the mediator will begin by explaining the process, rules, and schedule of the mediation, which is generally set for a full day. Most mediations occur over video conference, and sessions are conducted with parties in separate meeting spaces.

4 Negotiation & Exploring Solutions

During the mediation, parties will work with the mediator to explore various options for resolving the dispute. The mediator helps to ensure that the conversation remains focused, respectful, and constructive. Parties do not have to interact with one another during the mediation but can do so if all parties agree and the mediator thinks it's a good idea.

6 No Agreement

If an agreement isn't reached, the parties will be referred back to investigation and/or prosecution, and the parties must act within the timelines provided.



GENERAL TIPS

For all parties.

- **Be Prepared to Negotiate:** Be open to finding a solution that might not be exactly what you originally wanted. Mediation is about compromise and closure, not “winning.”
- **Bring Notes:** You may want to write down your thoughts or key points before the mediation to stay organized.
- **Get Legal Advice:** The mediator won't give legal advice; you should consider consulting a lawyer before mediation to understand your rights and obligations. All parties participating in mediation have the right to representation.
 - The BOLI website has an Attorney List on the Contact Us page: <https://www.oregon.gov/boli/about/pages/contact-us.aspx>;
 - Legal Aid Services of Oregon can be contacted at (503) 224-4086
 - Oregon State Bar has a lawyer referral service <https://www.osbar.org/public/ris> (800) 452-7636.
- **Bring Support People:** Parties are allowed to bring attorneys, union stewards, HR representatives, spouses, or other support people into the mediation session. Any person present in the mediation session must sign the mediation agreement to maintain and reinforce the confidentiality of the session.
- **Be Open to Listening:** Mediation works best when both parties listen to each other's concerns with an open mind. Your willingness to communicate, listen, and compromise is key to the success of the process.
- **Stay Calm and Respectful:** It's important to stay calm and respectful during the process, even if emotions run high. Get good rest and tap into your personal practices that help you with patience and flexibility.
- **Focus on Interests and Solutions, Not Positions:** Try to focus on what you need and why, rather than rigidly sticking to a single solution. What is important to you at this time? Will it always be important to you?



- **Consider the Long-Term:** Think about the long-term impact of any agreement you make, not just the short-term benefits.
- **Consider Litigation Costs and the Impact of Investigation:** In mediation, parties have 100% control of the outcome. In an investigation or ultimately trial, parties have little control of the outcome and the impact on your life and the lives of witnesses to the case can be substantial.
- **Look at Oregon's Workplace Fairness Act:** For settlement of claims or allegations of the unlawful conduct described under ORS 659A.370(1)(a) and (b), a mediator in the mediation will provide a person who is a party to the mediation and who is not represented by an attorney with a copy of the model procedures and policies made available by the Bureau of Labor and Industries under ORS 659A.375. The Oregon Workplace Fairness Act (OWFA) addresses sexual harassment in the workplace, as well as other requirements regarding diversity, equity, and inclusion. All parties are encouraged to familiarize themselves with the Act.
- **Prepare for Challenging Conversations:** Mediation can be an emotional process for all involved. If you choose to share details of your emotional well-being during the mediation, please remember that our mediators are not trained mental health professionals. Please utilize your care practices during the mediation such as breathing, walking, or calling a mental health or other medical professional. Breaks are welcome and encouraged during mediation.



SETTLEMENT

Mediation is unique because the parties can agree to solutions to their dispute that might not be available in court. Parties might also want to agree to solutions that could be available in court. BOLI will not permit parties to enter into an agreement with terms that violate the law or public policy.

BOLI Approved Settlement Options

Available Settlement Terms	Prohibited Settlement Terms
<ul style="list-style-type: none">• Prompt Resolution and Dismissal of the Pending Claim/Complaint at BOLI• Termination of the Pending Investigation• Changes in the Workplace• Policy Changes• Compensation – Economic and Non-Economic Loss, As Appropriate• Informational Posters for Employees• Mandatory Training• Mandatory Reporting• Reinstatement• Apologies• Job References or Letters of Reference• Non-Opposition to Unemployment Insurance Application	<ul style="list-style-type: none">• No Rehire• No Reapplication• Non-Disparagement• Non-Compete• No Solicitation• Confidentiality of the Settlement Agreement (mediation communications are protected per the terms of the mediation agreement)• Covenants Not to Sue that Extend Beyond the Named Respondents• Covenants Not to Sue that Extend Past Claims and Matters as of the Effective Date of the Agreement• Obligations to Cooperate in Future Claims and Litigation



INFORMATION FOR COMPLAINANTS

Review and bring supporting documents, including your mediation statement and any case-related materials.

Preparing for an Economic Loss Settlement

If you are negotiating compensation, bring the relevant information. This information can be found in personnel records, including time and pay records, hire/offer letter, performance evaluations, employee handbook or benefits information, collective bargaining agreements, or separation documents.

Here are some helpful things to gather and consider prior to mediation:

- A chronology of work history from the date of separation to the present mediation including hourly wage/annual salary
- Hourly wage/annual salary
- While working for Respondent, any other compensation (such as benefits including health insurance, life insurance, pension, sick leave, vacation pay)
- Whether you anticipated a promotion or pay raise from Respondent
- After separation from Respondent, did you look for other work? If not, why not?
- Did Respondent's actions impact your work reputation or your ability to get a job in the future?

Preparing for a Non-Economic Loss Settlement

Respondent's actions may have impacted your emotional well-being.

- For immediate and urgent mental health needs, please call 9-8-8
- Immediate Needs Resource Guide on the BOLI Website
<https://www.oregon.gov/boli/about/pages/contact-us.aspx>

Here are some helpful things to gather and consider prior to mediation:

If Respondent's actions impacted your emotional well-being and you are considering negotiating compensation connected to your emotional distress, please bring any supporting documentation you wish to share. Remember that emotional well-being is unique for each person, and may look like:

- Sleeplessness, excessive fatigue
- Anxiety, stress, depression, panic attacks
- Relationship strain, humiliation, loss of self-esteem
- Ulcers, gastrointestinal disorders, hair loss, headaches
- Other impacts on your body and mental health

You are not required to share information about your emotional well-being with the mediator.



INFORMATION FOR RESPONDENTS

What to Bring to Mediation:

Settlement Authority: The individual representing Respondent during mediation must have authority to settle the case and execute a settlement agreement on the day of session.

Relevant Documents: Review your supporting documents including your mediation statement, bring supporting documentation to the mediation, and know your case information.

Insurance: Individual or business insurance may cover employment discrimination or other claims, contact your insurance company to find out. If your insurance company is handling this matter or will otherwise be involved in settlement negotiations, a representative of the insurance company with authority to settle must attend the mediation or be readily available by phone and must sign the mediation agreement.

General Release Terms: BOLI does not enforce nor assist in the drafting of any global or general release terms for a BOLI-approved settlement. BOLI settlements are limited in scope to the complaint or claim pending before the agency. However, Respondents may propose broader releases as a separate agreement. Should you wish to propose one, come prepared with that proposed text and appropriate consideration for further releases.

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