



think harder

employment

# matters

JUNE 2010

Welcome to Employment Matters from the experts at Cobbetts. We hope you enjoy this edition and would welcome your feedback on any issues you would like to see covered in this regular publication.

If you have any queries, or require more detailed advice on any employment matter, please speak to your usual Cobbetts contact or:

Dawn Craig  
0845 165 5205  
dawn.craig@cobbetts.com

We hope you have enjoyed this copy of Employment Matters. However, if you do not wish to continue receiving Employment Matters, please email [news.employment@cobbetts.com](mailto:news.employment@cobbetts.com) marking the subject as unsubscribe and providing your name, company name and company address.

Copyright 2010 Cobbetts - All Rights Reserved - June 2010. The content of this newsletter is for information only and should not be relied upon as a substitute for legal advice.

## Mediation – it's good to talk!

The employee and employer relationship can often be strained and it is only human nature that there will be differences of opinion. In 2008/2009 a total of 151,000 claims were accepted by employment tribunals, with thousands of pounds paid out in compensation and legal fees. Behind this statistic lies an even greater cost in disruption to the smooth running of businesses and lost opportunities caused by conflict between staff.

Mediation is a means of resolving disputes, which is an alternative to grievance or disciplinary procedures and tribunal hearings. In the commercial field, where it has been used for some years, the statistics suggest a success rate of between 80 and 90%. Considering the statistics and the difficult waters, which HR staff are expected to navigate with disciplinary and grievance procedures, it is surprising that mediation is not used more often within companies to resolve issues between staff.

## What you need to know about mediation

Mediation is a process aimed at settling differences and disputes by agreement. The following are the general principles that apply to mediation but the parties can agree their own terms:

- The cost of the mediation is normally met by the company for which the parties work. Mediation often takes place at a neutral venue.
- The mediation process is voluntary and any of the parties can withdraw at any time without giving any reason for doing so.
- If no agreement is reached, everyone has exactly the same rights they had before the process began.
- The mediation process is confidential. The mediator will not disclose to any party any information given to him by another party, without express consent.
- All information disclosed during the mediation process is without prejudice, privileged and not admissible as evidence or disclosable in any proceedings.
- The only exceptions to the principles of confidentiality are if all parties consent to the disclosure of information or if the law requires the information to be disclosed;
- Mediation is non-binding unless and until a binding agreement is reached with the consent of the parties. If no agreement can be reached, the parties can resort to their contractual/statutory rights.
- If agreement is reached, it will be recorded in writing and means will be established of monitoring its implementation.
- Where the parties to the mediation still work together, they will often agree that a senior person in the business will be made aware of what has been agreed and given a role in making sure it happens.



think harder

# matters

## Are you convinced?

### It's good to talk

When there is a dispute, people tend to dig their heels in and communications often break down. This is a real feature and disadvantage of grievance processes once they get under way. The face-to-face meeting which takes place during the mediation process gets people communicating again.

### Time-saving/Money-saving

Disputes can take up a lot of management time and resources. Disciplinary and grievance processes are time-consuming, as are tribunal claims. A mediation session can usually be completed in a day. Money is inevitably saved if an agreement can be reached.

### Nothing to lose

If the process does not work for any reason (10 - 20% of cases do not work based on the above statistic) the parties can resort to internal procedures or legal proceedings. Even if unsuccessful, the process of mediation clarifies the issues and gives each party a better understanding of the other's position.

Mediation may not be right for everyone, some behaviours are fundamentally unacceptable and employers will want to use formal processes to establish the facts and send a message to employees. However, there are many cases where a conflict between talented employees, especially at a senior level, festers and prevents all concerned from doing their best for the business. In these cases, mediation can build on the parties' wish to continue in their roles to find a compromise, which liberates the employees concerned and improves the working environment for everyone.

## Case studies

Mediation can prove useful at any level but the following provide some examples of where it can be used:

- A Chief Executive is accused of bullying by a board director. In this instance it is in the interests of the company to get the matter resolved as quickly as possible so that the parties can get on with the job of running the company. Going through a lengthy grievance procedure may not be appropriate at this senior level and is very likely to result in one or both people leaving once the process is complete.

- A sales manager brings a tribunal claim which includes various accusations against the company which could be damaging if leaked to the press. Settlement discussions have broken down and the parties have reached a deadlock. Mediation may be beneficial in this instance to get the parties communicating again. The company is under the added pressure that they do not want press involvement and so the quicker route of mediation should be explored.

- A senior employee is involved in lengthy complex disciplinary proceedings. During the disciplinary process the employee puts in a grievance complaining about how the HR Director is dealing with the issues. All sorts of accusations are made regarding senior employees. Mediation creates a safe and flexible environment in which those concerned can focus on finding a workable solution rather than allowing the situation to escalate further.

Unresolved conflict can severely disrupt workplace communication, performance and employee job satisfaction and can be costly in terms of productivity and legal fees. Mediation is a pragmatic approach to dealing with conflict and since the repeal of the Statutory Dispute Resolution Procedures, it is now recognised as an extremely useful and highly cost effective method of resolving workplace disputes.

Cobbetts offers a mediation service using trained and accredited mediators who are qualified to work with all types of interpersonal disputes. Mediations can be organised at relatively short notice and can take place at a location convenient to both parties.

If you have just received a grievance or have experienced the type of situation we have described, we'd be happy to talk to you about how mediation could be used as a tool in your business.

Kevin Jaquiss is also involved at present in a project aimed at identifying the ways in which best practice for mediation of disputes in the workplace differs from other forms of mediation and how mediation can fit into a broader management culture aimed at reducing and eliminating conflict.

If you would be interested in contributing to the project or in participating in training sessions on conflict management, please contact Kevin at [kevin.jaquiss@cobbetts.com](mailto:kevin.jaquiss@cobbetts.com) or on 0845 165 5494 and he'll be delighted to tell you more.