



# Office of Employment Dispute Resolution

## CONSENT TO MEDIATE

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We agree that:

1. The mediation process will include an opportunity for all participants to be heard, identification of issues to be resolved in mediation, generation of alternatives for resolution, and, if participants desire, writing an agreement.
2. All participants will participate in good faith, work together, and agree to treat each other with respect and courtesy. Participation in mediation is voluntary. At any point, a participant may withdraw from the process. Each participant to the mediation may consult with independent legal counsel at any time during the mediation process.
3. The mediator, as a neutral third party, will facilitate discussion in order to enhance communication and understanding. If participants choose to reach a resolution, the mediator will assist in this process. The mediator is not an advocate, judge, jury, counselor, or therapist. The mediator does not give legal advice. The mediator will not solve the dispute, express an opinion on who is right or wrong, or make decisions for the parties. The mediator will help the parties generate possible solutions and assist the participants in reaching decisions that are acceptable to each of them. The mediator may determine that during the mediation process, separate meetings with the parties are appropriate.
4. Pursuant to Virginia Code § 8.01-581.22, all memoranda, work product, and other materials contained in the case files of a mediator or mediation program are confidential. Recording the mediation, secretly or otherwise, is strictly prohibited. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties agree in writing. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except: (a) where all participants to the mediation agree, in writing, to waive the confidentiality; (b) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation; (c) where a threat to inflict bodily injury is made; (d) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (e) where an ethics complaint is made against the mediator by a participant to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint; (f) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation; (g) where communications are sought or offered to prove or disprove any of the grounds listed in Virginia Code § 8.01-581.26 in a proceeding to vacate a mediated agreement; or (h) as provided by law or rule. However, mediators may be required to report allegations of abuse to appropriate authorities. Further, if someone who is not a party to the mediation files an ethics complaint against the mediator, confidentiality will be waived to the extent necessary for the complainant to prove misconduct and the mediator to defend against the complaint.
5. The participants agree not to involve the mediators, the Agency Workplace Mediation Coordinator, EDR's Mediation Staff, the Department of Human Resources Management and its staff, or any records pertaining to this mediation in any court or administrative proceedings, unless the proceeding pertains to alleged mediator misconduct or vacating a mediated agreement as outlined in Virginia Code §§ 8.01-581.22, 8.01-581.23, and 8.01-581.26.
6. If a written agreement is reached, it must be reviewed and approved by the Agency Workplace Mediation Coordinator and an EDR Mediation Program Director to ensure consistency with state and agency policies and mediation program guidelines. Any mediated agreement may affect the legal rights and responsibilities of the participants. Participants may have draft agreements reviewed by an independent legal counsel or another individual of choice prior to signing. Each participant pledges to abide by the terms of the signed agreement.

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Signature of Participant

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Date

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Signature of Participant

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Date

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Signature of Mediator

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Date

\_\_\_\_\_  
Signature of Mediator

\_\_\_\_\_  
Date