

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Accommodation and Compliance Series: Mediation

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JAN'S Accommodation and Compliance Series

Introduction

Mediation is an informal, confidential process for resolving disputes by using an impartial third-party (the mediator) who meets with the parties to the dispute.

The mediator has no decision-making authority, but rather tries to assist the parties to resolve their dispute. Participation in mediation does not constitute an admission of any violation of the law. Sometimes mediation is the best way to preserve or build a better relationship. To participate, parties need only be open to the possibility of resolution. Generally, participation is voluntary.

Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

An employee working for a small employer filed an ADA complaint after his employer denied his accommodation request, but failed to talk to the employee about whether there might be other accommodations that would work.

The employee and employer agreed to mediation because neither wanted to go to court. They were able to work through the issue and came up with an effective solution.

An employee with a disability had been subjected to harassment by his direct supervisor and even after he reported the harassment to HR, it continued to happen.

He filed a complaint under the ADA. The employer and employee agreed to mediation. The employee did not want to return to work as long as the supervisor was there, but the employer did not want to terminate the supervisor. They agreed that the employee could transfer to another location with different supervisor.

An employee had requested an accommodation that the employer determined would create an undue hardship, but the employer did not explain why.

Because the employee did not understand why her accommodation request created an undue hardship, she filed a complaint. The employer and employee agreed to mediation. With the help of the mediator, the parties were able to communicate more effectively and were able to come up with a compromise that worked for both of them.

An employee and her supervisor got into a personal conflict about the employee's accommodation request, which they were unable to resolve.

Neither one took the issue to HR; instead the employee filed a complaint under the ADA for failure to accommodate. The employer and employee agreed to mediation and during mediation the supervisor and employee were able to openly discuss their issues and ultimately were able to resolve them.

After years of trying to come up with an effective accommodation, an employer finally told the employee that it would be an undue hardship to continue trying.

The employee quit his job and filed an ADA complaint. The employer and employee agreed to mediation. Neither was interested in resuming the employment relationship so they agreed to a settlement amount.

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