

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW  
SUITE 9500  
WASHINGTON, DC 20001

## EQUAL EMPLOYMENT OPPORTUNITY ALTERNATIVE DISPUTE RESOLUTION PROGRAM

### PURPOSE

The Federal Mine Safety and Health Review Commission's (FMSHRC) Equal Employment Opportunity (EEO) Alternative Dispute Resolution (ADR) program provides an alternative procedure for resolving allegations of discrimination based on race, color, religion, sex, pregnancy, national origin, political affiliation, sexual orientation, gender identity, marital status, disability, genetic information, age, membership in an employee organization, or other non-merit factor. The ADR program is an early and expeditious means of conflict resolution, which retains the legal and administrative due process rights of the parties involved.

### SCOPE

This program applies to any FMSHRC employee and applicant for employment (the aggrieved person).

FMSHRC reserves the right to determine that an aggrieved person's complaint may not be appropriate or feasible for ADR, such as in cases in which there is a need to establish policies or precedents, where resolution of a dispute would have a significant effect on non-parties, where a full public record is important, where FMSHRC must maintain continuing jurisdiction over a matter, or where it would otherwise be inappropriate. However, FMSHRC will not decline to offer ADR because of the basis (e.g., sex, race, etc.) of the aggrieved person's claim.

### ADR PROGRAM PROCEDURES AND TIMETABLES

#### ADR TECHNIQUE

The ADR program is a non-adversarial process that may be used to address an aggrieved person's EEO complaint through the use of a trained mediator. The mediator is an impartial and neutral third party, who assists the parties to voluntarily reach an acceptable resolution of the issues in dispute. An aggrieved person may

elect mediation during the informal complaint process or the formal complaint process prior to a hearing by an Equal Employment Opportunity Commission (EEOC) Administrative Judge.

Where FMSHRC offers ADR as a means of resolving an EEO dispute, the aggrieved person's election of ADR is voluntary and does not waive any of his or her rights within the traditional EEO process, including the right to a hearing or a final FMSHRC decision. At any time prior to the resolution of the dispute, the aggrieved person is free to end the ADR process and retains the right to proceed through the administrative EEO process.

#### INFORMAL COMPLAINT PROCESS

Prior to filing a complaint, the aggrieved person must contact the EEO Director within 45 calendar days of the matter alleged to be discriminatory. The EEO Director will arrange for an EEO Counselor to be provided. The EEO Counselor will immediately initiate an informal inquiry to identify the issues in the dispute and the aggrieved person's requested relief, advise the aggrieved person of his or her rights, and offer the option of using FMSHRC's ADR program. The aggrieved person must sign the ADR Election Form (Attachment 1) indicating whether he or she will elect ADR or the traditional EEO counseling program.

If the aggrieved person chooses the informal counseling process, the EEO counselor shall proceed with counseling pursuant to the procedures explained in FMSHRC's memorandum entitled "EEO Discrimination Complaint Process" posted on FMSHRC's bulletin board and on its website [www.fmshrc.gov](http://www.fmshrc.gov).

When the ADR process is invoked, the aggrieved person must agree to extend the informal counseling process for an additional 60 calendar days; however, the total time for the informal process, including counseling and mediation, shall not exceed 90 calendar days from the day of initial contact with the EEO counselor.

#### FORMAL COMPLAINT PROCESS

An aggrieved person may request mediation during the formal complaint process prior to a hearing by an Administrative Judge. FMSHRC is required to investigate a formal complaint within 180 calendar days; however, if the aggrieved person elects mediation, this time period may be extended by agreement for an additional 90 days.

## MEDIATION PROCESS

After the aggrieved person elects to pursue his or her claim through mediation, the EEO Counselor will prepare a Mediation Intake Report (Attachment 2) and immediately forward both the ADR Election Form and the Intake Form to the EEO Director. Upon a determination that the aggrieved person's claim is appropriate for mediation, the EEO Director shall secure a mediator and make necessary logistical arrangements, including special accommodations, such as interpreters, auxiliary aids, etc., if necessary. The mediator will contact the parties to arrange a mediation.

FMSHRC will designate an employee to participate in the mediation, who will have the authority, after consultation with appropriate FMSHRC officials, to resolve the dispute by entering into a settlement agreement with the aggrieved person. The mediator, the aggrieved person, and the designated employee are the only persons required to be at the ADR session. The aggrieved person and the management official also have the right to have a representative present.

The mediator is not a judge or an arbitrator and has no power to make a decision; instead he or she tries to help the parties work together to creatively resolve the claim, by suggesting possible resolutions to the parties; but the resolution reached must be achieved by the parties themselves. The mediator is subject to the following requirements:

- The mediator is required to have sufficient training as is generally recognized in the dispute resolution profession and must have knowledge of EEO law.
- A mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy.
- The mediator shall advise parties of the ADR process, rules of confidentiality, and the terms of mediation.
- Any information submitted to the mediator during the mediation is for settlement purposes only, and any notes taken by the mediator are destroyed after written settlement has been reached.
- Neither the EEO counselor nor the EEO Director will serve as the mediator in the ADR process.

The mediator is responsible for ensuring that any agreements be reduced to writing and signed by the parties, which, upon execution, shall be final and binding. Written agreements reached as a result of mediation shall be forwarded by the mediator to the EEO Director for distribution to the appropriate parties. The mediator will follow up to assess compliance with written agreements within 30 calendar days of execution by the parties. If all the actions stipulated in the agreement have not been fulfilled at that time, the mediator shall forward the issue to the EEO Director, who shall advise the aggrieved person of all available options. The EEOC has enforcement authority over the settlement agreement.

When it becomes apparent that continued efforts to resolve the matter through ADR will be unsuccessful or if the dispute is not resolved within 90 calendar days, the mediator will terminate mediation and notify the EEO Director. A written Notice of Termination of Mediation shall be prepared by the mediator and provided to the parties and the EEO Director. If the termination of mediation occurs prior to the filing of a formal complaint, the EEO Counselor will then conduct a final interview, advise the aggrieved person of the right to file a complaint regarding the matter(s) raised, and issue a Notice of Right to File. The aggrieved person may then continue with the EEO administrative process and file a formal complaint.

#### CONFIDENTIALITY

FMSHRC and its management officials are required to maintain the confidentiality of ADR. Nothing said or done, by either party, during the ADR process can be the subject of any future EEO complaints. The mediator presiding over the mediation cannot testify in later proceedings involving the aggrieved person's claim(s).

#### RESPONSIBILITIES OF ALL FMSHRC STAFF AND APPLICANTS

All FMSHRC staff and applicants for employment are required to comply with the terms of the ADR program, and cooperate in good faith with the terms set forth at the beginning of mediation.

#### RECORDKEEPING

A copy of the settlement agreement will be provided to the EEO Director and retained for one year or until the EEO Director is certain that the agreement has been fully implemented, whichever is later.

Pursuant to the EEOC's authority to collect Federal complaints processing data, FMSHRC will maintain a record of ADR activity for annual reporting to the EEOC no later than October 31 of each year on EEOC Form 462.

#### AUTHORITY AND REFERENCES

Civil Rights Act of 1964, as amended  
Civil Rights Act of 1991  
Age Discrimination in Employment Act of 1967  
Rehabilitation Act of 1973  
Equal Pay Act of 1963  
29 C.F.R. Part 1614  
Administrative Dispute Resolution Act of 1990  
EEOC Management Directives (MD) 110 and 715  
[www.eeoc.gov/federal/adr/index.html](http://www.eeoc.gov/federal/adr/index.html)  
Genetic Nondiscrimination Act of 2008 (GINA)

January 24, 2012

MEMORANDUM

To: \_\_\_\_\_

From: \_\_\_\_\_  
EEO Counselor

Subject: Alternative Dispute Resolution (ADR) Election Form

On \_\_\_\_\_, we initially spoke regarding allegation(s) of discrimination. Specifically, you alleged that \_\_\_\_\_

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As an employee of, or applicant for employment with, the Federal Mine Safety and Health Review Commission (FMSHRC), you have been advised that you may seek resolution of these matters using alternative dispute resolution (ADR) techniques. Mediation is the ADR technique that FMSHRC will make available to resolve discrimination complaints that the agency determines are appropriate for ADR. If you would like your concerns to be considered for mediation, please be advised that:

- Your decision to enter mediation is voluntary. Your request for mediation will be reviewed and, if accepted for mediation by the EEO Director, will be scheduled and completed within ninety (90) calendar days from the date of your initial contact with me.
- All discussions during mediation sessions are confidential.
- Statements made in settlement negotiations may not be used as evidence should you elect to file a formal discrimination complaint.
- Requests for accommodation to facilitate communication during mediation (e.g. auxiliary aids, interpreters, etc.) should be conveyed when mediation is requested.
- You are entitled to a representative of your choosing throughout the mediation process.
- When you and the management official reach a settlement agreement during mediation, the agreement will be put in writing by the mediator and is final and binding.

You may choose to withdraw from mediation any time before an agreement is reached and may resume the EEO process. You will retain the right to file a formal complaint on those issues of discrimination raised with me that are not resolved during ADR. You will be issued a Notice of Right to File and will have 15 calendar days from receipt of the notice to file a formal complaint.

**ELECTION:**

I elect \_\_\_\_\_. I do not elect \_\_\_\_\_ to use the ADR program.

\_\_\_\_\_  
Employee/Applicant's Signature

\_\_\_\_\_  
Date

MEDIATION INTAKE REPORT

To be completed by the EEO Counselor

Name of Aggrieved Person: \_\_\_\_\_

Agency and Division/Unit: \_\_\_\_\_

Office Telephone: \_\_\_\_\_

Date of Contact: \_\_\_\_\_

Summary of Issues: \_\_\_\_\_

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Prepared by:

\_\_\_\_\_  
EEO Counselor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Telephone Number