HR PRODUCTS AND SERVICES
HR RESOURCE GUIDE

ALTERNATIVE DISPUTE RESOLUTION

A Guide for Employers

Provided By:
HR Answers, Inc.

7650 SW Beveland, Suite 130
Tigard Oregon 97223
☎ 503-885-9815

Alternative Dispute Resolution

Table of Contents

INTRODUCTION

The 1990's saw an explosion of employment litigation, particularly with respect to employment discrimination claims. In 1994, for example, the EEOC received almost 100,000 discrimination charges. In response, many employers developed Alternative Dispute Resolution (ADR) programs to avoid the high cost of litigation, resolve disputes more quickly, and increase morale. At the same time, however, the courts, legislatures and some federal and state agencies attempted to limit the use of ADR techniques.

The enforceability of mandatory arbitration agreements was upheld on March 21, 2001, when the U.S. Supreme Court announced their ruling in Circuit City v. Adams. This was good news for employers who had or were considering mandatory arbitration. However, January 15, 2002, saw another, less favorable, ruling in Equal Employment Opportunity Commission (EEOC) v. Waffle House, Inc. As a result of this ruling, employers that have adopted arbitration agreements may be sued by the EEOC and may be ordered to pay damages that, if the suit had been brought by the worker, could be awarded only through arbitration. The good news is that the EEOC only filed 291 discrimination suits in 2000, so many of the advantages of adopting an arbitration system continue to exist despite this last case.

Although ADR, in its various forms, appears to be receiving increased attention and acceptance among corporations, many issues still exist with respect to the enforceability, validity and success of even a well designed and administered ADR program.

HR Answers, Inc has designed this packet to assist you with your understanding of Alternative Dispute Resolution and to offer guidelines for determining ADR methods and practices best suited for your organization. We do want to caution readers that this has a creation date, and therefore should be reviewed and used with that in mind. Readers should stay current with new rulings to ensure the most up-to-date information regarding this subject. Also, various state laws may impact the enforceability of ADR programs.

This guide should not be seen as a substitute for legal guidance, nor should it be used as a definitive document completely covering all aspects of ADR programs. All final policies, documents and procedures should be reviewed by an employment attorney prior to implementation.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

Alternative Dispute Resolution (ADR) refers to a variety of methods that can be used to resolve disputes or disagreements without formal litigation. It can be used within an organization to resolve disputes or differences between or with employees that could otherwise lead to potentially long, expensive, adversarial lawsuits. The premise behind ADR is that lawsuits are frequently not the best or most efficacious way to resolve disputes or differences. Lawsuits are adversarial in nature and therefore tend to lead to the destruction of relationships. Supporters of ADR contend that not only is ADR less contentious than litigation, it can give more parties more control over the dispute resolution process; it can allow for more creative solutions that provide greater satisfaction for both parties; and it can establish a sense of equity in the workplace that boosts employee morale. In essence, some believe that ADR can provide better solutions to certain problems and disputes. Also, ADR can avert the additional problems associated with lawsuits. These problems may include loss of productivity and morale for other employees who know of or are drawn into the dispute, the time loss for executives spent preparing for lawsuits, and the adverse publicity associated with lawsuits that can affect the attitudes of customers, stockholders and potential job applicants.

For example, if an employee charges an organization with sexual harassment or discrimination and this charge results in a lawsuit, the chances of restoring a good employer-employee relationship are very slim. An employer may spend a great deal of money fighting a lawsuit, may spend more money settling the lawsuit, and often end up with a former employee who is hateful and bitter towards the organization. The premise behind ADR is that such problems should be resolved internally using some method other than the traditional lawsuit. This type of alternative solution should cost less money, especially given the size of the settlements frequently imposed on organizations by juries, and it may be possible to salvage and even restore the relationship.

ADR has its critics. There are those who feel that ADR is very one-sided and management-dominated in a non-union setting and therefore puts employees at a disadvantage. Some attorneys strongly believe that ADR should not be used in situations that involve important policy questions or precedents which are likely to affect others not involved in the dispute. Union supporters say it weakens the power of the union because employees no longer need to join a union and pay union dues to ensure that their complaints will be heard. Also, some critics believe that arbitrators may not be required to apply or even know the law, and therefore could make decisions contrary to legal precedent.

METHODS OF ALTERNATIVE DISPUTE RESOLUTION

ADR does not refer to one single method of resolving disputes; rather, it refers to a variety of methods. ADR mechanisms run the spectrum from a process in which the parties have nearly absolute control over the result, to one in which resolution is placed entirely in the hands of a third party. Following are the basic forms of ADR:

Arbitration

Arbitration is a process in which both parties in a dispute agree to select a neutral third party to hear arguments, review the evidence and render a decision. The process is usually concluded much more quickly than a court proceeding because it is less formal and less complex. There are different types of arbitration. *Binding arbitration* means that both parties are "bound" by the decision of the arbitrator. If both parties make a final offer and the arbitrator must choose one of these offers, this is known as *last offer arbitration*. With a union contract, an arbitrator can be used to resolve differences in contract compliance or interpretation. This may be referred to as *grievance arbitration*. The public sector has typically used arbitration when collective bargaining breaks down.

Mediation

Mediation is less formal than arbitration, but more structured than other ADR techniques. The focus of mediation is to resolve the dispute, not to determine who is right and who is wrong. A mediator, usually a neutral third party, meets with both sides in the dispute and then conducts joint sessions to help them reach a negotiated settlement of their differences. The mediator's job is to encourage each party to accommodate the interests of the other party. To accomplish this goal, the mediator can hear any evidence and arguments he or she desires.

The mediator plays the role of facilitator rather than decision maker. However, a mediator will help both parties understand the strengths and weaknesses of their positions, the possibility of winning in a court case and the time and expense involved. A mediator can be particularly helpful when one or the other party is uncertain about the likelihood of winning litigation, whether the cost of litigation would be justified, or if there is an ongoing relationship between the two parties. Although a mediator will use a variety of techniques to encourage both parties to reach a compromise or settlement, the mediator, unlike an arbitrator, cannot make the final decision.

Depending on the issues and the situation, a mediator may play a variety of roles in the mediation process. A mediator may help reduce the hostility between parties and help them engage in a meaningful dialog on the important issues. A mediator may open discussions into areas not previously considered or may communicate positions or proposals in understandable or more palatable terms. A mediator should be able to probe and uncover additional facts or the real interests of the parties involved in the dispute. Without violating confidences, a mediator may also be able to help each party understand the other party's view better. The neutrality of the mediator can be helpful in narrowing the issues or deflating extreme demands, exploring alternative solutions, identifying what is really important and gauging the receptiveness of each

party to a proposal or suggestion. A mediator can also help structure a settlement that will not only resolve the current dispute, but also meet the future needs of the parties.

Mediation-Arbitration (med-arb)

A neutral party is selected to serve as both mediator and arbitrator in a dispute. Med-arb combines the voluntary techniques of persuasion and discussion used in mediation with the authority to issue a final and binding decision, if and when necessary.

Conciliation

Conciliation is an informal process in which a third party tries to get the parties involved in a dispute to reach agreement by interpreting issues, providing technical assistance, exploring possible solutions to a negotiated settlement, and diffusing tension. It is used most often in volatile situations or in disputes where parties are unwilling or unprepared to negotiate.

Facilitation

Facilitation is a collaborative approach designed to help resolve differences among groups of individuals. The facilitator is neutral and seeks to promote consensus on a number of complex issues.

Court Referral

Occasionally, a court refers a dispute to mediation or arbitration as an alternative to a trial. If the dispute cannot be resolve by one of these methods, the case may then revert to a trial.

Fact Finding

Fact finding is frequently used in public sector bargaining. The fact finder is a neutral third party who is selected to hear aspects of the dispute and recommend a resolution for each outstanding issue. The decision of the fact-finder may open the way to further negotiation or mediation. The American Arbitration Association (AAA) also suggests using fact finders in resolving sexual harassment complaints.

Negotiation

Negotiation is a voluntary process where parties attempt to reach a mutually satisfactory agreement. Negotiation steps may include informal and unstructured communications, which offer the chance for private resolution if the parties wish. There are no limitations on the presentation of evidence or arguments. Negotiation usually involves discussing or bargaining by the parties in a dispute to resolve the dispute or reach a settlement. Individuals are usually appointed to represent the position of each side in the dispute.

Mini Trial

Although the outcome of a mini trial is non-binding, it allows the exchange of information and evidence, usually through a neutral advisor. In one variation on the mini trial, presentations are made before a panel comprised of, for example, experts in the field or perhaps co-workers and managers. In all variations of mini trials, both sides are represented by counsel.

Ombudspersons

Ombudspersons are neutral third parties who receive and assess complaints or grievances. Depending on the situation, an ombudsperson will advise a complainant of available options and resources, propose a settlement of the problem or dispute, or take action to bring an apparent injustice to the attention of top officials. There are organizations that employ a full-time ombudsperson.

Peer Review Panels

Certain organizations use this form of internal dispute resolution as the final step in a dispute resolution process. When an employee with a complaint has used the chain of command and the problem has not been resolved to his/her satisfaction, s/he may take the dispute to a panel of employees and managers who have been trained to resolve employee disputes. Organizations generally prevent these panels from changing company policy, pay rates, benefits or work rules, but frequently allow them to make binding decisions within the parameters of their decision-making ability.

WHEN TO USE ADR

Generally, ADR should be used whenever it would be advantageous to avoid litigation. However, with all the choices available, what method of ADR should an organization choose? There are no definitive answers unless there is a legal reason, such as a union contract, that requires grievances to go to arbitration.

Generally, two parties can agree to take a problem to a form of alternative dispute resolution, such as arbitration, while they are in the midst of a dispute, or they can agree to a *future dispute resolution clause* in a contract. Future-dispute resolution clauses can be found in many commercial contracts.

There are also some questions that need to be answered before a decision is made as to the most appropriate type of ADR to use. In order to help with the decision-making process, ask the following questions:

- ✓ How long has the dispute gone on? The longer a dispute lasts, the less chance there is that it can be resolved by negotiation or mediation. Arbitration may be the best choice.

- ✓ How many people are involved? If there are a large number of people involved, such as employees, mediation may be the best course of action.

- ✓ What are the interests of each party? If the interests are unclear, fact finding may be necessary to sort them out.

- ✓ What are the relationships between the parties? If there is an ongoing relationship, negotiation or mediation may be the best tool to resolve the dispute and retain the relationship. If there is no ongoing relationship, arbitration may be the simplest solution.

- ✓ What are the issues? If the issue is the facts in a case, arbitration may be the simplest way of resolving the problem. If the issue is more one of interpretation or perception, mediation may be preferable. Also, the number of issues may affect the choice of methods. The greater the number of issues, the greater the likelihood that negotiation or mediation may be helpful to reach a compromise.

TRENDS IN ALTERNATIVE DISPUTE RESOLUTION

The American Employment Law Council recently performed an ADR survey using information from 152 employers, including Fortune 500 companies and the lawyers that represent them. A total of 52 written responses and approximately one dozen oral responses were received, producing a written response rate of over 33%, though not all participants responded to each question. Most of the responding employers focused on ADR experiences in nonunionized settings, and segregated their experiences with voluntary ADR from those with court-ordered ADR. Since the sample size in this survey was small, the significance of the results is limited. Nevertheless, they may be useful to employers who are still undecided concerning whether ADR is appropriate for their particular organization.

Use of ADR

When asked if they used any means of ADR to resolve employment disputes within the last three years, 75% of the employers replying (27 out of 36) responded affirmatively.

Types of ADR Being Used and Satisfaction Level

Employers responding to this survey indicated that informal grievance procedures were the most frequently used form of ADR. The next most popular method was nonbinding mediation, followed by binding arbitration, and nonbinding arbitration. A much smaller number of employers reported using a "rent-a-judge" procedure.

Satisfaction levels vary widely. Both binding and nonbinding arbitration methods reported a very high rate of satisfaction: over 80% of those using either of those methods reported being highly satisfied. Similarly, the satisfaction level was quite high for those using a nonbinding "rent-a-judge" proceeding, although the few employers using a binding "rent-a-judge" procedure reported a lower level of satisfaction.

Employers using nonbinding mediation reported mixed levels of satisfaction. About 45% of the employers reported a high level of satisfaction with the process, 34% reported a medium level of satisfaction, and 21% found that the process produced a low satisfaction level. However, comments from the employers indicated the mixed level of satisfaction was due in large measure to the quality of the mediators chosen. Nevertheless, the majority of users of nonbinding mediation found the process helpful, in that it provided the parties with a "reality check" as to the relative strengths and weaknesses of each party's case.

Mandatory Arbitration Concerns

In an attempt to reduce legal costs, many companies have agreed to arbitration of employment disputes with their employees by providing for it with language in their personnel policies. Usually such policies are mandatory.

As previously noted, such mandatory policies were considered a violation of employees' civil rights by the National Labor Relations Board, the EEOC, and some state courts. The federal argument is that, by agreeing to arbitration, the employee is giving up his/her constitutional right to have a jury trial. This was overturned by the 2001 U.S. Supreme Court decision that mandatory arbitration is enforceable.

The American Arbitration Association (AAA) requires that the employee be given the right of legal counsel in the arbitration process to assure that the employee's legal rights are protected.

Although ADR, in its various forms, is receiving increased attention and acceptance among corporations, many issues still exist with respect to the enforceability, validity and success. Therefore, it is even more important that these programs be well designed and administered.

Mandatory Arbitration

The most recent debate concerning ADR focuses on the enforceability of "mandatory" or "pre-dispute" arbitration agreements. Under this model, an employee agrees in advance to submit any disputes arising out of the employment relationship to ADR. Under a voluntary policy, by contrast, the employee may invoke the ADR option once a conflict arises.

Although mandatory ADR programs have become a popular alternative to civil litigation, they may not insulate an employer from court litigation, as seen in EEOC v. Waffle House.

Some states, including Georgia, Kansas, and Kentucky, have enacted laws prohibiting agreements that force employees to submit to arbitration as a condition of continued employment. Other states, such as California, are considering legislation that would make such agreements presumptively unlawful. These laws need to be reviewed in light of the recent federal cases.

There is a growing trend, on the other hand, toward the acceptance of voluntary ADR programs. The EEOC has issued a policy statement endorsing the use of voluntary ADR programs, and intends to implement ADR procedures to process discrimination charges. In February 1996, the Massachusetts Commission Against Discrimination began to offer voluntary arbitration of discrimination complaints in cases in which the agency found "probable cause" of discrimination.

The Commission on the Future of Worker/Management Relations (also known as the Dunlop Commission) assessed the use of Alternative Dispute Resolution as part of its charter in looking at worker-management relations. The Society for Human Resource Management (SHRM) surveyed over 300 companies on their current use of ADR as well as their beliefs about the role of ADR within organizations and reported this information to the Commission. SHRM is researching ADR practices because "SHRM is concerned with the sharp rise in employment litigation and the effect that the availability of punitive damages has had on the incentive for frivolous lawsuits. In the current system, employment complaints may take many years to settle and pose enormous costs to both employers and workers. Taxpayers must also bear the cost of supporting federal agencies who handle a growing number of employment

complaints."

Many organizations have included or are considering including arbitration agreements in employment agreements, or having new employees sign statements that they agree to arbitrate in the event an employment-related dispute arises. In essence, a new employee agrees that any disputes with the employer will be resolved through arbitration as opposed to litigation.

Based on this information, employers considering implementing mandatory arbitration agreements should consider the ramifications of mandatory versus voluntary agreements, and should consult with a labor attorney for the latest developments before implementing any policy. Given that this area is changing very quickly, any decision made should be verified to see that the most up-to-date information is used as the basis for any decision made.

Voluntary ADR Versus Mandatory Arbitration

A strong endorsement of alternative dispute resolution to settle workplace disputes that would otherwise be litigated is among the 15 recommendations that the Commission on the Future of Worker-Management Relations, popularly known as the Dunlop Commission, makes in its final report.

Created in March 1993, the 10-member panel chaired by former Secretary of Labor John Dunlop had been charged with examining current law and suggesting changes that could be made to increase workplace productivity, enhance labor-management cooperation, and increase the extent to which workplace conflicts are resolved by the parties themselves.

To accomplish its mission, the panel held 21 public hearings and consulted with representatives of business groups, labor and women's organizations, professional associations, academics, civil rights and other interested groups and individuals.

While it strongly encourages the use of ADR, the Commission emphasizes that it does not favor compulsory arbitration of employment claims as a condition of employment. Rather, it calls for continued experimentation with private dispute resolution systems, including arbitration, that are voluntary for employees and, in the case of arbitration, include specific guarantees of impartiality and fairness. According to the Commission, a fair arbitration includes the following:

> A neutral arbitrator who knows the law and understands the parties' concerns; a fair and simple discovery method for employees to obtain information necessary to present their claims:

- Cost-sharing between the employer and employee;
- The right of independent representation for any employee who desires it;
- A range of remedies available to the arbitrator that is equal to those available through litigation;
- A written opinion by the arbitrator; and,
- Sufficient judicial review to ensure that the result is consistent with the governing laws.

SHRM's Position

The Society for Human Resource Management strongly encourages the establishment of dispute resolution procedures that provide employees a process that is accessible, prompt and impartial, and that results in reduced dispute resolution costs and more timely resolution of complaints as an alternative to costly litigation. The Society strongly encourages federal, state, and local legislative and regulatory changes that will allow these same agencies to recognize the use of internal alternative dispute procedures as the final means of dispute resolution, provided those systems meet certain standards of fairness and provide the employees with due process. Standards of fairness should include:

- Accessibility;
- The opportunity for a hearing before one or more neutral, impartial decision makers;
- The opportunity to participate in the selection of decision makers;
- Participation by the employee in assuming some portion of the costs of the dispute resolution process;
- The opportunity to recover the same remedies available to the employee through litigation; and,
- Confidentiality of proceedings.

These standards will allow employers and employees to resolve disputes in a fair, balanced and timely manner without burdening government administrative processes or creating the need to resort to private litigation. This in turn will allow government agencies to concentrate their efforts where they are needed.

DESIGNING AN ADR PROGRAM

Given the unsettled nature of this area of the law, ADR appears to work best when:

- All sides participate willingly and in good faith. That is, employees are fully apprised of the implications and consequences of agreeing to the ADR process and express their consent freely.

- Employees understand that the process contains safeguards, such as impartiality, confidentiality, and fairness.

- Employees have rights and remedies similar to what they would have in a court of law, including a process for the disclosure of relevant evidence, a fair process for the selection of an arbitrator, the right to be represented by an attorney, and the right to reinstatement and/or monetary damages in the event of a finding in their favor.

Thus, these factors should be considered when developing an ADR policy:

- Will the ADR program be mandatory or voluntary?

- What types of claims will be subject to or excluded from the program?

- What type of process will best suit your organization? In most large companies, for example, a multi-step process culminating in arbitration is most effective.

- What procedural rules will the process include? These rules may cover the disclosure of information, time limits for filing and processing claims, who bears the cost of the process, whether counsel will be permitted to participate, the rights of appeal, and the scope of damages that can be awarded.

Each of these factors requires careful consideration in light of the current judicial and legislative landscape. Nonetheless, ADR can offer substantial benefits to the company and the workforce.

The use of ADR to resolve employment discrimination and other wrongful discharge claims is not necessarily simple, and it will not eliminate all litigation costs. There will still be discovery, such as the disclosure of relevant documents, and lawyers will, of course, argue legal issues regardless of the forum. Although the issue has not been decided, it may be that arbitrators will need to have the power to award the same remedies as a court in order for a compulsory ADR agreement to be enforced. These remedies might include punitive damages and attorney's fees. Nevertheless, some form of ADR will streamline and shorten the process used to resolve many employment disputes, resulting in more rapid decisions at a lower cost.

ADR IN ACTION

Human resource practitioners are especially interested in how ADR works within an organization to minimize litigation costs, resolve employee disputes and improve employee morale. For further information on how ADR has been used to resolve disputes between different organizations, consider reading Alternative Dispute Resolution: Why It Doesn't Work and Why it Does by Todd Carver and Albert Vondra in the May-June 1994 issue of the Harvard Business Review. In terms of specific situations, many feel that ADR is suitable for resolving harassment complaints and employee workplace disputes.

ADR and Harassment

There are those who feel that ADR is the best choice for resolving harassment complaints. One researcher believes that mediation in particular is appropriate for many harassment complaints because of the desire for confidentiality, the need for a variety of remedies, and the interest of both parties to resolve the problem quickly without the cost, delay and exposure associated with litigation.[1] This researcher also believes that providing mediation as a resolution to harassment problems will ultimately encourage victims to come forward with their problems and thus not only prevent the situation from escalating, but eventually lead to a decrease of the incidents of harassment in the workplace.[2]

During the 1994 meeting of the American Bar Association in New Orleans, several attorneys discussed the value of ADR in harassment, especially sexual harassment, claims. They also believe that mediation in particular is a useful tool in settling harassment claims because:

- Mediation permits the parties to keep the details of the complaint confidential. They believe that the airing of charges and countercharges in the media can be very distressful to company/employee morale.
- Negotiated or mediated awards tend to be considerably less than jury awards.
- Since sexual harassment is really about power, mediation neutralizes the power that one party has over the other and puts both parties in a position to negotiate.
- Mediation is well suited to fact finding which is almost always an important element in a sexual harassment case.
- A good mediator can help the victim unburden emotionally which can help bring about a resolution.
- A good mediator can put both parties at ease which can also help speed the resolution process.
- Mediation permits parties to work with non-traditional remedies. In some cases, workplace training, sensitivity sessions, or job structure changes can be incorporated into a settlement.

[1] Stamato, L., "Sexual Harassment in the Workplace: Is Mediation an Appropriate Forum?"; Mediation Quarterly; Vol. 10, No. 2, Winter 1992; Jossey-Bass Publishers.
[2] Ibid.

- Mediation can help to preserve relationships between parties.

The American Arbitration Association (AAA) also believes that mediation and/or arbitration can be very beneficial in resolving complaints of sexual harassment. The AAA believes that sexual harassment claims have, in the past, mostly been handled through an adversarial process. Because these claims often deal with situations involving ongoing relationships between employee and employer or between co-workers, an inquisitorial approach is frequently ineffective. It can be difficult to verify who is telling the truth or even what the truth is. Any direct challenge to the honesty of people in the same workplace interferes with their future ability to work together harmoniously or, in many cases, to work together at all.

To create more appropriate methods of resolving these disputes, the American Arbitration Association (AAA) convened a working group representing the full spectrum of points of view in this field - large and small employers, unions, plaintiff employment lawyers, representatives of the alternative dispute resolution field, and experts on organizational dynamics. This group worked for a year to understand and meld the different perspectives.

This group designed a process to address the needs of the accuser, the accused, and the employer. It is a model which can be adopted by employers in whole or with modifications. The AAA believes that their Model Process will provide for more efficient and sensitive resolution of harassment claims. The Appendix contains a model harassment resolution process using the AAA model as a foundation, however, we have modified it to help an employer resolve an harassment complaint internally as much as possible. In addition, it points out times when management may want to decide it is more appropriate to use impartial outside sources. This model assumes that the process will be internal dispute resolution, and if that is unsuccessful, mediation from an external mediator, and, if that is unsuccessful, binding arbitration. If an employer, for example, chooses not to require employees to submit to binding arbitration, the process (and associated forms) would have to be modified accordingly.

The Peer Review Process

In 1982, a General Electric Appliance division implemented a Peer Review Grievance procedure. The program was so successful that it spread to many other sites, and the person who helped develop and implement the process, Harvey Caras, left to start his own consulting firm. Caras has since helped many other organizations, large and small, implement this policy. The reason for developing this program was to find a way of allowing employees to complain and have their complaints dealt with in an effective, timely, and dignified manner. For many organizations who currently have a dispute resolution process, the first few steps will be familiar. An employee who has a complaint first takes the complaint to his/her immediate supervisor. If the supervisor does not resolve it to the employee's satisfaction, the employee may go up the chain of command until a certain level of management is reached. If a situation is not resolved before it reaches the top level of management, the employee is allowed to take the complaint to the Peer Review Panel.

The Peer Review Panel is comprised of a group of employees and managers. Although the number varies with the organization, the key is that the number of employees always outnumbers

the number of managers. For example, Peer Review Panels are commonly comprised of three employees and two managers. All members of the Panel go through a one day training session, especially since one important criteria in the peer review process is that panel members keep information confidential. Employees volunteer for this duty; management members may be picked or assigned. An actual panel for a particular complaint is usually picked randomly. However, if the issue is bias of some sort, the protected group involved in the dispute should be represented on the panel. Since it is important that the panel members be perceived as unbiased, often the employee with the complaint has an opportunity to dismiss panel members if s/he feels that the panel selection is biased.

The panel meets as a group, listens to the employee's grievance, then assesses the situation. Panel members may call on the supervisor or manager and other employees to testify. They may also review other relevant documents such as personnel records. To help with the decision-making process, they review other panel decisions for precedent and consistency. Panel members vote by secret ballot. When a decision has been made, all panel members sign it before giving it to the employee and supervisor.

The Peer Review Panel has the authority to make final binding decisions within the scope of their charter. Management does not have the right to overturn the decision. As was stated earlier, these panels usually don't have the authority to *change* company policies, pay rates, benefits or work rules. In actuality, the types of issues brought to Peer Review Panels include discipline up to and including discharge, promotions, performance appraisals, job assignments, and pay disputes over issues such as overtime or holiday pay. Also, some organizations limit the scope of the panel to only certain specific issues such as discipline.

Organizations that use a Peer Review process claim that it is effective because employees perceive it as fair and equitable. It fosters a spirit of cooperation and trust between employees and management in that both are working together to solve problems. The Peer Review process has been shown to work with exempt as well as non-exempt employees. Many employers also feel the process motivates supervisors to do a better job of supervising employees and to think carefully about making decisions about an employee that could be construed as arbitrary, capricious, inconsistent or unfair. We also believe that such a Peer Review process would provide motivation to have clearly written and defined policies, and to update them as needed, because poorly or vaguely written policies would be subject to interpretation by the Peer Review Panel.

It is important to note that since the Electromation decision in which the National Labor Relations Board ruled that certain employee committees were illegal under the National Labor Relations Act, peer review committees have been found to be legal in two separate state courts. In reviewing the Peer Review process, the NLRB stated that "The Board precedent has for many years upheld the right of employers to establish committees to which the power of grievance adjustment is delegated."

WHO SHOULD CONSIDER ADR?

Employers who are interested in pursuing ADR as a means for resolution of claims, and not as just another hoop to jump through before heading to court, might consider some form of compulsory arbitration for certain employees or for certain employment disputes. Knowledgeable counsel should be retained to help develop and implement such a program.

Regardless of whether ADR will eventually take the place of traditional litigation, employers can take some steps to minimize exposure to litigation by creating their own forums to hear and resolve employment disputes in one or more of the following ways.

Establishing a multi-grievance procedure for non-union employees. An employee handbook or procedure manual containing a process for dispute resolution will give many disgruntled employees the chance to be heard that they desire.

Provide employment contracts with ADR clauses for highly compensated executives. These individuals often have knowledge of sensitive corporate information that a company would rather not have disclosed to the public. Resolution of employment disputes through arbitration or some other nonjudicial mechanism may avoid public disclosure of confidential information. Moreover, rapid resolution of an employment dispute will reduce both the amount of back pay at issue and the associated resolution expenses.

Using a Peer Review Committee for assessing employee concerns. An employee panel can hear and decide the validity of a co-worker's concerns.

Mediating administrative charges where appropriate. Resolving a discrimination charge before it reaches court should be considered, especially when a jury will decide whether an employee is entitled to compensatory or punitive damages. Assess those claims that might be resolved with a minimum of effort and expense. Obtain a general release from liability as part of the final resolution.

***Consider ADR rather than litigation*.** For those cases that cannot be resolved early on, consider using some mechanism other than trial. Such a decision will have to be voluntary by both parties but, generally speaking, the process will cost less and take less time than litigation. The parties can set the parameters for discovery and select the decision maker. If the parties agree to be bound by the decision, it should withstand subsequent judicial scrutiny.

HELPFUL HINTS FOR IMPLEMENTING ADR

Following is a list of helpful hints from companies that have implemented ADR or from consultants that have helped organizations implement ADR systems.

Top Management Support

Get top management support. If executive management still believes that litigation is the best solution for the employment-related issues, Human Resource professionals will have a very difficult time creating, implementing, or administering any type of effective ADR program.

Deciding on the Type of ADR

Every method for resolving disputes has different characteristics. Each individual organization will value these characteristics to a different degree. These characteristics include timeliness of the resolution process, whether or not the decision is binding, the involvement of stakeholders, the external defensibility (will it stand up in court), and the perception of fairness. Each organization must evaluate which characteristics it values and then choose a method that provides the desired characteristics.

Choosing an Arbitrator/Mediator

Arbitration and mediation require their own type of expertise. Your labor attorney may be an excellent litigator, but you may not want that type of skill when you choose to settle a dispute in a less adversarial manner. One attorney, in discussing his profession's need to learn mediation skills, made the comment, “Lawyers, as advocates, need to learn mediation advocacy and peace-making skills. We were, however, trained as gladiators only and were not taught the skills of a peacemaker.” Using an attorney trained only as a “gladiator” to accomplish peacemaking may not be effective. However, your attorney may be able to recommend a good candidate, or you can check out some of the sources listed in Appendix B.

Some attorneys who have used various forms of alternative dispute resolution shared their ideas on when and how to choose a mediator during a panel discussion on ADR. One said he always looked for a mediator who would help settle the case and bring the process to closure, rather than leaving people in emotional trauma after the process is over. Another said it is often important to use a mediator who will help participants vent their feelings, if venting emotions will help settle the case quickly. A third attorney said she prefers to find mediators who are skilled at balancing the interests of both parties, instead of merely evaluating the cases, because a settlement reached by an interests-based mediator produces enduring results that satisfy both parties.

In other research on ADR, a management attorney described his ideal mediator as “intelligent, well-informed, analytical, honest, and well-versed in employment law…. someone who has the patience and fortitude to see the process through to settlement.” Honesty is important in helping both sides to realistically evaluate a case; sensitivity is necessary to address emotional issues of personal bias, and creativity is necessary to develop solutions that are satisfying, but non-

monetary.

Many attorneys like to work with full-time mediators because they are likely to have the most experience. Full-time mediators must provide good service to both parties in order to keep getting referrals. Regardless of who you choose, it should be someone who understands what you want and with whom you feel comfortable working.

Ground Rules

If an organization decides to establish an ADR procedure, it should consider experimenting on a pilot basis before making a permanent policy. This gives an organization time to devise rules that work, given the type of dispute resolution used, the comfort top management has with the process, and any other parameters that the organization feels need to be in place. For example, if an organization has decided to adopt mediation procedures, the rules may include what types of cases will go to mediation, how it is decided mediation will be used, and whether the mediator will meet with each party separately or with both parties at once.

Peer Review Panel

Peer Review Panels appear deceptively simple. In reality, they are only effective when care and consideration has been put into setting up a good system. The first step an organization must take is to draft the administrative procedures. Everyone needs to know what the rules are and how they will be applied. Everyone needs to know the steps of the process and the timeframes involved. Everyone needs to know how panelists get chosen. The jurisdiction of the panel must be clarified - what issues can be decided by the panel and what issues cannot.

The second step in designing an effective peer review system is communication. This must begin early in the design process and continue consistently throughout the life of the system. The issues decided in creating administrative procedures must be communicated to all employees in language they can understand.

No peer review system will be effective without training of both supervisors and employees who volunteer to participate as panel members. Training should ensure that all volunteers understand and can apply decision-making guidelines, ethical and legal principles, and effective questioning and listening techniques. In addition, supervisors may need training to help them resolve problems before they escalate to the Peer Review Panel. This means that they should not only be trained in policies and procedures, but in their role in implementing these effectively and consistently.

Fourth, an organization should measure the effectiveness of any system implemented. It needs to be asking questions about the issues, what and where they are, how effectively issues got resolved and why, and how employees perceive the fairness of the system. It also may use standard procedures such as turnover, absenteeism, and productivity to measure the effectiveness of any system.

CONCLUSION

To make a sound business decision, companies need to examine their legal and labor costs before developing and implementing an ADR program. Employers must also evaluate their ability to initiate new training and communication programs. It is important to learn what other companies in your industry are doing.

Companies should set goals that fit within the corporate culture before deciding how to structure the ADR program. Included in that would be the scope of the program – typically, workers' compensation and unemployment benefits disputes are not included – and whether it will include current employees or only future hires. Employees should be included on development committees and focus groups while the plan is being developed, and companies should introduce the program through a training program. If binding arbitration is used, the agreement should be separate from other employee information.

The use of ADR and other preventive steps to minimize potential litigation can help employers avoid the uncertainty inherent in a jury trial. Such efforts will likely lead to a greater number of disputes resolved before they ever reach court, all at a cost lower than that available through the current system. More than a few employers and employees (and even their respective attorneys) would welcome such a result. However, the ultimate cost and effectiveness of ADR is still an open issue, and employees considering its use should carefully review the likely impact on the dynamics of their particular work force. Moreover, as with any potential change in the structure of employment relations, employers are cautioned to consult with legal counsel prior to implementing any policy on the use of ADR.

In the preface to the book, Getting Disputes Resolved, the authors make this analogy:

> "Like rainfall, conflict is inevitable. Properly controlled, it can be a boon; too much in the wrong place can create a problem. The challenge is to build a structure that will direct disputes along a low-cost path to resolution.[3]

Litigation in our society and in our businesses is increasing dramatically. Given that when a group of people work together, there is bound to be conflict, organizations that plan to survive should plan to deal with inevitable conflict. Alternative Dispute Resolution provides employers and employees alike with reasonable methods of dealing with conflict, disputes, and disagreements.

[3] Ury, Wm., Brett, Jeanne M., Goldberg, Stephen B.; Getting Disputes Resolved; Jossey Bass Publishers; San Francisco, CA; 1988.

APPENDIX A:
SAMPLE ADR PROCESS

MODEL
HARASSMENT CLAIMS RESOLUTION PROCESS

INTRODUCTION

The purpose of this process is to give employers a tool to use in the assessment and resolution of employee complaints of harassment. The underlying assumption is that it is the employer's policy that harassment in the workplace will not be tolerated.

DEFINITIONS

The following words, phrases or terms used in this document have the following meanings:

Accused - person or persons who have been identified in a complaint by an accuser as the perpetrator(s) of harassing behavior

Accuser - person or person(s) initiating a harassment complaint. If others join in this complaint, they will also be referred to as the Accuser

AAA - the American Arbitration Association, an international, public service, not-for-profit provider of dispute resolution services since 1926

Arbitration - the submission of the dispute to an impartial person for a final and binding decision

Complaint - any written or oral report of sexual harassment made to any employer's management

Designated Manager - the management employee designated by an employer to receive any complaint of harassment

Employer - the organization employing the Accuser

Fact-Finding - an assessment of a complaint by impartial third persons who examine the issues and the facts and issue a report

Fact-Finding Report - the written report issued by the Fact-Finding Team containing a summary of the facts learned in its assessment

Fact-Finding Team - the neutral team (appointed by management or another impartial party) to assess a complaint of harassment (Note: if an employer chooses to assess complaints internally, employees chosen to participate in the fact finding process should receive special training)

Mediation - an intervention by an impartial third person with the purpose of helping the parties reach their own solution

INITIATION OF THE RESOLUTION PROCESS

A. The Designated Manager

The resolution process is initiated when the designated manager receives any complaint of harassment from an accuser.

B. Confidentiality

It should be stressed to the accuser and to any management person informed of the complaint at this stage of the resolution process, as at all others, that confidentiality is to be maintained, to the greatest extent possible. The confidentiality relates both to the fact that a complaint has been made and to its assessment. The management employee who receives the complaint, the accuser, and the designated manager must understand that only those employees with a reason to know will have access to information relating to the complaint and its assessment. Where information about a complaint or an assessment is needed for a valid business reason, the designated manager should convey only the information required for that person to fulfill his or her responsibilities and no more. Any violation of the confidentiality provision could compromise the process.

C. Documentation

Upon receipt of a complaint of harassment, the designated manager should take the following steps. Copies of forms referenced for use in documentation are included in the Appendix.

1. *Written Complaint.* Either the accuser or the designated manager should document the complaint. This documentation should include as many details of the incident or incidents as possible and should be described in the words of the accuser. No matter who prepares the written complaint, the accuser should be asked to sign it and should also receive a copy of it. If the accuser refuses to sign the written documentation, the employer may choose to proceed with the resolution process.

2. *Confidentiality Provision.* The accuser should be asked to sign a confidentiality provision, which may be included in an employer's complaint form or in a separate document. This provision should include a statement affirming that any neutral fact-finders may not be called as witnesses in any later proceeding. It is the decision of the employer to proceed whether or not the accuser signs the confidentiality provision.

3. *Agreement to Process.* The designated manager will explain the process to the accuser and obtain the accuser's signed agreement to abide by the terms of the fact-

finding process or the fact-finding and mediation process. At the employer's option, the process may proceed without the accuser's signed agreement to the process. *If an arbitration provision is part of the process:* The accuser will be asked to sign an agreement acknowledging an understanding that, if mediation does not resolve the claim or dispute, it may ultimately be submitted to arbitration.

4. *Notification of the Accused.* The designated manager will notify the accused as soon as the complaint is made. The designated manager will explain the process to the accused and seek to obtain the accused's signed agreement to abide by the terms of the process. At the employer's option, the process may proceed without the accused's signed agreement to the process. The accused will be asked to sign a confidentiality provision, which either may be included in the agreement to the process or in a separate document. At the employer's option, the process may proceed whether or not the accused signs the confidentiality provision. In those instances where the complaint is of a hostile environment and no individual is specified in the complaint, no notice to an accused need be given at this stage of the process.

5. *Immediate Intervention.* If it appears that intervention with the accused is necessary to prevent any continued harassment, the designated manager will immediately meet with the accused, describe the complaint, and take whatever action is necessary to prevent continued harassment.

FACT-FINDING

A. Appointment of Fact-Finding Team

The designated manager will promptly appoint a neutral fact-finding team to assess the complaint and issue a written report of its findings. The fact-finding team will be comprised of one female and one male in cases of sexual harassment, or similar pairing for other types of harassment; will not include anyone in the direct chain of command of either the accused or the accuser; and will be picked from a list of managers and supervisors who have undergone harassment training and have not been charged previously with claims of harassment. If the circumstances warrant it, the designated manager may choose to hire an outside party, such as AAA or independent consultants, to act as fact-finders. The key issue for the designated manager will be the neutrality of people who could act as fact-finders.

B. Disclosure and Challenge

Any person appointed as a fact-finder shall disclose immediately to the designated manager any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the fact-finding or any past or present relationship with the parties or their representatives. The accuser may object to the fact-finding team for cause within one business day after receiving notice of its appointment.

It is the responsibility of the designated manager to determine if an objection to a

member of the fact-finding team by the accuser has any merit and to modify the team accordingly.

C. Assessment

The fact-finding team will conduct joint interviews of persons who have information concerning the alleged harassment. It will interview both the accuser and accused. In an extensive hostile environment complaint, all persons who fall within the category of the accused must be interviewed. Witnesses who are identified by the accuser and the accused must also be interviewed. During these fact-finding interviews, no lawyer may be present representing any party. The employer, the accuser, and the accused are expected to cooperate by making themselves and persons over whom they have influence and control available to answer all questions directed to them fully and factually. The fact-finding team will have access to all relevant information and documents. The assessment and delivery of the fact-finding report will be completed within two weeks after the appointment of the team. The designated manager may extend this time, but only for good cause.

D. Fact-Finding Report

The fact-finding report will be concise and written in plain English. It will summarize the facts found by the fact-finding team and identify the fact issues on which the team cannot agree. It will not reach any conclusion as to whether there has or has not been harassment. It will not recommend a remedy. The report will include credibility determinations only where both of the fact-finders are in agreement. In the report, close questions of credibility may be identified and explanations included as to the circumstances which make them close questions.

E. Report Distribution

The fact-finding team will provide the report to the designated manager, who will provide copies of it to the accuser, and the accused. The accuser and the accused will receive the report whether or not they are currently employed by the employer when it is issued and distributed. Where the complaint involves extensive hostile environment allegations, the employer may limit distribution of the report to only the accused who are the primary subjects of the assessment and the findings. All employees who are provided a copy of the report should be advised of their obligation of confidentiality. Before they receive the report, they will be required to sign a confidentiality provision similar to the one signed by the accuser at the initiation of the process.

F. Report Results

In many cases, the results of the fact-finding report will suggest possible actions needed to be taken by management. The goal of any action taken will be to resolve what happened to cause the complaint and prevent the problem from happening in the future. This needs to be done in such a manner so that all parties can work together productively and harmoniously. Solutions may range from simple, such as training, to serious, such as discipline or discharge.

MEDIATION

A. Initiation of Mediation

If a mutually satisfactory resolution is not reached on or before 30 days after receipt of the fact-finding report, the process may proceed to mediation at the request of the employer, the accuser or the accused. If the process has proceeded without the accuser's agreement to mediation, the accuser should again be requested to agree to participate in the mediation phase of the process. If the process has proceeded without the accused's agreement to mediation, the accused should again be requested to agree to participate in the mediation phase of the process.

B. Appointment of a Mediator

The designated manager will arrange for a mediator. The mediator may be of either gender, but cannot be one of the fact-finders unless agreed to by all of the parties. The designated manager will again have to make a decision as to how to best find a neutral mediator. There are private mediators available for hire or one can be recommended by various agencies/organizations.

C. Disclosure and Challenge

Any person appointed as a mediator shall disclose to the designated manager any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the mediation or any past or present relationship with the parties or their representatives. Upon receipt of this information from the mediator or another source, the designated manager shall decide whether to hire another mediator. The accuser or the accused may object to the mediator for good cause within one business day after the appointment. Upon objection of the accuser or the accused to the service of a mediator, the designated manager shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the designated manager will appoint another mediator. The designated manager is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

D. Mediation Procedure

Mediation will begin on or before 30 days after the appointment of the mediator. The designated manager will provide the mediator with a copy of the fact-finding report. All of the parties are expected to engage in the mediation in good faith.

ARBITRATION

A. When Arbitration Required

If mediation is unsuccessful in resolving the dispute, it shall be mandatory that the parties proceed to binding arbitration.

B. Selection of an Arbitrator

There will be one neutral arbitrator of either gender. The designated manager will submit simultaneously to each party an identical list of five proposed arbitrators from which one arbitrator shall be appointed. Each party may strike two names from the list on a peremptory basis.

C. Disclosure and Challenge

Any person appointed as a neutral arbitrator shall disclose to the designated manager any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of this information from the arbitrator or another source, the designated manager shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

D. Arbitration Procedures

The established procedures will be followed in conducting the arbitration. The arbitration shall begin on or before 30 days after the appointment of the arbitrator.

E. Employee Wages

The employer shall pay the wages of current employees who are subpoenaed for the arbitration for the time they spend appearing and testifying in the arbitration, to the extent they would otherwise have been working.

F. Remedies

The arbitrator shall have broad powers to award appropriate remedies consistent with Title VII of the Civil Rights Act of 1964, as amended.

G. Arbitrator's Award

The results of the arbitration shall be reported to all parties in writing on or before 30 days after the close of the evidence. The award shall contain a brief summary of the facts upon which the arbitrator based the award. All parties shall be bound by the arbitrator's decision, which decision shall be enforceable pursuant to applicable law.

H. Exclusion of Arbitrator's Liability

Any arbitrator will not be a necessary party in judicial proceedings relating to the arbitration. Any arbitrator shall not be liable to any party for any act or omission in connection with any arbitration conducted under this process.

FEES AND COSTS

A. Fact-Finding
The employer will pay all costs associated with the fact-finding process.

B. Mediation
The employer shall pay the cost of the mediation, with the exception that any party desiring representation, legal or otherwise, shall pay the cost associated with that representation, subject to the parties' agreement.

C. Arbitration
The employer shall pay the cost of the arbitration, with the exception that any party desiring representation, legal or otherwise, shall pay the cost associated with that representation, subject to the arbitrator's award.

FORM 1:
CONFIDENTIAL HARASSMENT COMPLAINT FORM

Name: _____

Please describe what happened in as much detail as possible. Include the date, time, and place of the incident(s); the person(s) involved and the names of those who might have witnessed the incident(s). (Add additional pages, if needed.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Date: _____ **Signature:** _____
(Accuser)

Prepared by: _____
(if the Complaint was prepared by other than the Accuser)

Title: _____

FORM 2:
ACCUSER'S AGREEMENT TO PARTICIPATE
IN HARASSMENT CLAIMS RESOLUTION PROCESS:
FACT-FINDING, MEDIATION, AND ARBITRATION

I have filed a confidential harassment complaint. A representative of my employer has explained my employer's Harassment Claims Resolution Process to me. I have received a copy of the Process and have read it and understand it. I agree to participate in the Process and abide by its terms. I understand that I may confidentially consult at any time with an attorney at my discretion and own expense.

I understand that the assessment of my complaint will be conducted in as confidential a manner as possible. Only those persons with a reason to know will have access to information relating to the complaint and its assessment.

I agree to keep the fact that I have filed a complaint and the specific facts regarding the complaint confidential. I will not discuss the matter with anyone in the workplace except the fact-finders. I may discuss this matter confidentially with my family and others outside the workplace as necessary for my support and guidance.

I also understand and agree that the neutral fact-finders who will conduct the assessment may not be called as witnesses in any later proceeding.

I agree to submit the dispute regarding the harassment complaint I filed to mediation under the established Employment Mediation Rules of which I have been notified.

I further agree that if our mediation negotiations are unsuccessful, our dispute will be submitted to binding arbitration under the established arbitration procedures of which I have been notified.

I also agree that I will faithfully observe this agreement and the process, and that I will abide by and comply with the award rendered by the arbitrator and that a judgment of the court having jurisdiction may be entered upon the award.

Date: _____ **Signature:** _____
(Accuser)

FORM 3:
ACCUSED'S AGREEMENT TO PARTICIPATE
IN HARASSMENT CLAIMS RESOLUTION PROCESS:
FACT-FINDING, MEDIATION, AND ARBITRATION

I have been informed that a harassment complaint has been filed against me. A representative of my employer has explained my employer's Harassment Claims Resolution Process to me. I have received a copy of the process and have read it and understand it. I agree to participate in the process and abide by its terms. I understand that I may confidentially consult at any time with an attorney at my discretion and own expense.

I understand that the assessment of the complaint will be conducted in as confidential a manner as possible. Only those persons with a reason to know will have access to information relating to the complaint and its assessment.

I agree to keep the fact that a complaint has been filed and the specific facts regarding the complaint confidential. I will not discuss the matter with anyone in the workplace except the fact-finders. I may discuss this matter confidentially with my family and others outside the workplace as necessary for my support and guidance.

I also understand and agree that the neutral fact-finders who will conduct the assessment may not be called as witnesses in any later proceeding.

I agree to submit the dispute regarding the harassment complaint I filed to mediation under the established Employment Mediation Rules of which I have been notified.

I further agree that if our mediation negotiations are unsuccessful, our dispute will be submitted to binding arbitration under the established arbitration procedures of which I have been notified.

I also agree that I will faithfully observe this agreement and the process, and that I will abide by and comply with the award rendered by the arbitrator and that a judgment of the court having jurisdiction may be entered upon the award.

Date: _____ **Signature:** _____
(Accused)

FORM 4:
CONFIDENTIALITY AGREEMENT (FACT-FINDERS' REPORT)

I have received a copy of the Fact-Finding Report regarding _____ [Accuser's] harassment complaint. I agree to keep the contents of this report strictly confidential. I agree that I will not discuss the Report with or show it to anyone in the workplace except the fact-finders, the mediator, or a representative of my employer designated to resolve the matter. I may discuss this report confidentially with my family and others outside the workplace as necessary for my support and guidance.

Date: _____ **Signature:** _____

FORM 5:
AGREEMENT TO MEDIATE (AND ARBITRATE) HARASSMENT COMPLAINT

We, the undersigned parties, agree to submit our dispute regarding the harassment complaint filed by _____ [Accuser] to Mediation under the established Employment Mediation Rules.

We further agree that if our mediation negotiations are unsuccessful, our dispute will be submitted to binding arbitration under the established arbitration procedures.

We also agree that we will faithfully observe this agreement and the process, and that we will abide by and comply with the award rendered by the arbitrator and that a judgment of the court having jurisdiction may be entered upon the award.

Date: _____

_____
(Accuser)

_____
(Accused)

_____
(Employer's Representative)

Title:_____

APPENDIX B:
ADR RESOURCES

ADR RESOURCES

The following list is not all-inclusive, but rather an idea of the types of services that are available in the marketplace. Given that the use of ADR is growing at an increasing rate, we recommend that you conduct further research if you are interested in finding providers of ADR services.

ORGANIZATIONS:

1. Federal Mediation and Conciliation Service

An independent federal agency created to promote labor-management relations. The FMCS provides mediation services, training and an online searchable roster of private sector arbitrators.

Website: www.fmcs.gov
Email: publicinformation@fmcs.gov

2100 K St., NW
Washington DC 20427
202-606-8100
fax: 202-606-4216

Portland Office:
1220 SW 3rd Ave
Suite 1630
Portland, OR 97204
503-326-2178
fax: 503-326-5031

2. American Arbitration Association

Founded in 1926 to "foster the study of arbitration, to perfect its techniques and procedures under arbitration law, and to advance generally the science of arbitration," the American Arbitration Association is a private, not-for-profit organization offering a broad range of dispute resolution services. Its other chief functions are education, promotion and research. Publications are available on their web site. The AAA maintains a National Panel of Arbitrators, whose members represent diverse fields and are nominated by leaders in their industry or profession based on their experience, competence and impartiality. The AAA draws on the panel when providing lists of names from which parties may select arbitrators in particular cases.

Website: www.adr.org

335 Madison Ave, Floor 10
New York, NY 10017-4605
212-716-5800
fax: 212-716-5905
Customer Service 800-778-7879

Pacific Northwest Office:
1020 One Union Square
600 University St.
Seattle, WA
98101-4111
206-622-6435
fax: 206-343-5679

3. American Bar Association – Section of Dispute Resolution

An information clearinghouse on dispute resolution, providing information on local resources.

Website: www.abanet.org/dispute/home.html
Email: dispute@abanet.org

740 15th St., NW
Washington, DC 20005-1019
Section Office 202-662-1680

4. National Institute for Dispute Resolution

Created in 1983, the NIDR provides technical assistance, coaching, educational programs and consulting, and an extensive offering of publications and videos on dispute in a wide variety of settings.

Email: nidr@igc.apc.org

1726 M Street, NW
Suite 500
Washington, DC 20035-4502
202-466-4764
fax: 202-466-4769

5. Center for Employment Dispute Resolution

A not-for-profit alternative dispute resolution organization comprised of a consortium of trained mediators, fact finders and neutrals. Their focus is on EEO diversity based workplace disputes that include racial and sexual harassment and wrongful discharge.

http://www.cedr-adr-consortium.org/

505 N Lake Shore Dr.
Chicago, IL 60611
312-527-3774

6. Caras & Associates, Inc.

The consulting firm formed by Harvey Caras, who developed the Peer Review Panel for GE.

www.carasadr.com

5999 Harpers Farm Rd.
Suite E250
Columbia, MD 21044
410-730-7163
fax: 410-964-2667

OTHER WEBSITES:

Mediate.com
http://www.mediate.com/
This site provides online articles, information on training programs, links to other mediation resources and offers a mediator locator and referral service.

Mediationworks.com
http://www.mediationworks.com
Dana Mediation Institute, Inc. hosts resources for the prevention, resolution, and management of workplace conflict in all types of organizations, national and international.

U.S. Equal Employment Opportunity Center Mediation web site.
http://www.eeoc.gov/mediate/
A government web site that includes mediation facts, questions and answers, policy statements and contact lists.

BOOKS:

Beer, Jennifer E. & Eileen Stief. ***Mediator's Handbook***. New Society Publishers, Ltd., 1997. 168 p.

Nolan-Haley, Jacqueline M. ***Alternative Dispute Resolution in a Nutshell***. West Publishing Group, 2nd edition, 2001. 417 p.

Patterson, Susan and Grant Seabolt. ***Essentials of Alternative Dispute Resolution***. Pearson Publications Co., 1997. 284 p.

Stitt, Allan J. ***Alternative Dispute Resolution for Organizations: How to Design a System for Effective Conflict Resolution***. John Riley & Son, Ltd., 1998. 288 p.

Ware, Stephen J. ***Alternative Dispute Resolution***. West Wadsworth, 2001. 270 p.