

Thank you for agreeing to participate in DOE's Mediation Program. Here is some information to assist you in preparing for the mediation process.

1. Mediation Process. Mediation is a type of an Alternative Dispute Resolution (ADR) technique to resolve workplace disputes. A neutral third party or mediator assists the parties in discussing their concerns in a productive manner. Mediation is available any time during the EEO administrative process at no cost to you. Its benefits include providing each party a greater degree of control to resolve a dispute as compared to traditional litigation and adjudication in addition to the potential cost-savings and more timely outcomes it offers.
2. Voluntary. Mediation is voluntary for all parties. Either party may withdraw from the mediation process at any time for any reason.
3. No admission of Guilt. Participation in mediation does not imply in any manner whatsoever an admission of guilt or any kind of wrongdoing by DOE management and none should be inferred by participation in this process.
4. Confidentiality. The mediation is confidential and therefore the parties may not discuss the substance of the mediation with anyone unless agreed to by both parties or by court order or applicable law. Each participant will sign a "Mediation Confidentiality Agreement" at the mediation.
5. Mediator. The mediator is an employee of DOE's Office of Hearings and Appeals or another federal agency who is a qualified and experienced mediator. The mediator is impartial and independent who has no stake in the outcome of the mediation. He/she will not provide any legal advice nor act on either party's behalf.
6. No Binding Authority. The mediator does not have the authority to bind DOE or the employee to anything. The choice to continue in the mediation process or whether or not to reach a settlement agreement resides solely within the parties.
7. Pre-Mediation Teleconference. Once a mediator is assigned, the mediator will typically hold a joint pre-mediation teleconference with the parties. Its purpose is to answer any questions about the process and address any preliminary matters such as clarifying the issues in dispute or considering any special accommodations that may be needed at the mediation.
8. Program's Timeliness Expectations. The mediation process is expected to end within 30 days after a mediator has been assigned. The mediation session is expected to be no longer than one day except for unusual circumstances with the mutual agreement of both parties. To meet these timeliness goals, to ensure the effectiveness of the mediation process and to demonstrate your respect for all involved, it is best that you have a clear schedule for the entire day and ensure minimum interruptions during the mediation.
9. Scheduling a Mediation. Mediations are usually scheduled to begin in the morning. If other employees in your organization have access to your electronic calendar, you may want to schedule the mediation as a "Meeting" rather than as a "Mediation."
10. Mediation Participants. Either party may be accompanied by any person of their choosing so long as the other party does not object. If the other party objects, the objecting party may withdraw from mediation unless the parties can reach an agreement on who may attend the mediation. If the other party is represented by legal



counsel, a member of the Office of General Counsel for General Law (GC-56) will also attend the mediation. Whether or not a member of OGC will be at the mediation, you are highly encouraged to meet with OGC prior to the mediation to establish a mediation strategy and develop the parameters of the Settlement Official's settlement authority. During that meeting, it is also recommended to include a representative from the Office of Chief Human Capital Officer.

11. DOE Settlement Official. For EEO disputes, DOE must make accessible an individual with settlement authority, and no responsible agency official or management official directly involved in the case will serve as the person with settlement authority. Therefore, if you were directly involved in the circumstances giving rise to this dispute, you may not serve as the person with settlement authority. Prior to the mediation, you should consult with OGC regarding who would best serve as the settlement official.
12. Briefing Senior DOE Management. If you are in the line management of the Deputy Under Secretary for Management and Performance, the Deputy Under Secretary for Management and Performance expects that each program director provide him regular status briefings on any EEO, CBA, and other cases within his organization. To that end, you should ensure that he has been briefed about this mediation.
13. Mediation Session. The mediation normally begins by the mediator introducing him/herself and making brief opening remarks about the process. The mediator will likely provide an opportunity to both parties to make a brief opening statement. It is typically a good idea to make an opening statement and therefore you should consider drafting one in advance of the mediation session.
14. Mediation Terms Worksheet. If you reach a common understanding on how to resolve the dispute, the terms of your understanding should be documented in the Mediation Terms Worksheet that the mediator will provide you. It is your and the employee's responsibility to author the terms of the Mediation Terms Worksheet. Although the mediator may assist the parties to overcome a drafting impasse, the mediator will not draft any of the terms although he/she may act as the scribe.
15. Settlement Agreement. You should not sign a final settlement agreement at the end of the mediation. If you draft a Mediation Terms Worksheet, the mediator will provide that document to the HQ Mediation Program Manager (or the OGC counsel at the mediation) to be incorporated in a final settlement agreement that the parties will review before signing it at a later date. The Offices of General Counsel, Civil Rights and Chief Human Capital Officer review settlement agreements for legal sufficiency before a final settlement agreement is signed by the parties.
16. NTEU and Administrative Grievances. For NTEU grievance guidelines and mediation, see Article 11 of the 2013 Collective Bargaining Agreement between DOE Headquarters and the NTEU; and, Administrative Grievance Policy and Procedures, see DOE Order 342.1, dated 2/2/06, Section I-3, Mediation.
17. ADRO Website - The ADR Office's webpage includes additional information which will help you prepare for mediation. Go to www.energy.gov/oha/services/alternative-dispute-resolution/hq-mediation-program-workplace-conflicts, and then click "Mediation Process." You may also want to view the mediation videos on the website.

