

# Federal Sector Alternative Dispute Resolution Fact Sheet

The use of alternative dispute resolution (ADR) techniques by federal agencies has increased dramatically in the equal employment opportunity (EEO) process. In 1998, the Equal Employment Opportunity Commission's ADR Study of Federal Sector EEO ADR Programs reported that more than half of the federal agencies surveyed had active ADR programs. As of January 1, 2000, all federal agencies were required to establish or make available an ADR program during the pre-complaint and formal complaint stages of the EEO process. In order to build on the success of ADR programs, it is vital for employees and management officials to understand and participate in the ADR process.

## What is ADR?

ADR generally refers to a number of processes and approaches that are designed to resolve disputes in a manner which avoids the cost, delay, and unpredictability of more traditional adversarial processes, such as, litigation, hearings, and appeals. Numerous types of ADR techniques exist, including mediation, facilitation, fact finding, early neutral evaluation, settlement conferences, and peer review. [Chapter 3 of the EEO Management Directive \(MD\)-110](#) provides a detailed description of each of these techniques.

The most common form of ADR is mediation. A neutral third party helps facilitate discussion, explore options, and assist the parties in creating their own solution. Mediators are not arbitrators or judges and do not impose agreements. The focus is on the parties understanding each other's interests and crafting a win-win solution.

Every agency has the discretion to create its own unique ADR program that is best suited for their particular office environment. Mediation has been the most popular form of ADR offered by federal agencies in the EEO process. Over 87 percent of the agencies who responded to EEOC's 1998 ADR survey stated that mediation is their primary ADR technique. The EEOC has encouraged federal agencies to experiment with other forms of ADR, including a combination of ADR techniques. Many agencies have established pilot programs to decrease the processing time of EEO complaints and improve the overall satisfaction of the participants.

## Why is ADR beneficial?

Agencies and complainants have realized that utilizing ADR during the early stages of the EEO process has many advantages. ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually-satisfactory fashion. Rather than receiving a decision from an unknown third party, such as an administrative judge, the parties have the opportunity to write their own agreement in a manner which satisfies both of their needs. Not only does ADR provide a Win-Win resolution for the parties, but it also costs less and uses fewer resources than traditional processes. For example, complainants could avoid costly attorney's fees and the agency could minimize the use of investigators, legal staff, official time, and court reporter fees. Moreover, since the parties are using ADR during the earliest stages of the EEO process, a resolution will avoid numerous years of litigation in administrative and court proceedings. As a result, the complainant's working relationship can improve rather than deteriorate due to ongoing legal battles, and the overall employee morale can be enhanced when the agency is viewed as open-minded and cooperative in seeking to resolve disputes.

## How does the ADR process work?

The revised regulations do not require federal agencies to conduct ADR in every EEO case; rather, agencies have the discretion as to which EEO cases are offered ADR. Complainants may not file a new complaint based on the agency's refusal to offer ADR in their particular case.

If the agency offers ADR during the pre-complaint, or the informal, stage of the EEO process, the complainant may choose between participating in the ADR program or the traditional EEO counseling activities. Once the complainant elects to participate in the ADR program, all EEO counseling activities will end. It is also important to note that electing ADR increases the EEO pre-complaint processing period from 30 to 90 days. In the event that the matter concludes without resolution after 90 days, the agency will conduct a final interview, and issue a notice of right to file a formal complaint.

The revised regulations have established certain core principles which must be incorporated into every federal sector ADR program. The overriding requirement is that the ADR program is fair. Fairness requires voluntariness, neutrality, confidentiality, and enforceability.

1. Voluntariness means that the parties (in this context, the complainant and the agency) knowingly and willingly enter into an ADR proceeding and that they have the opportunity to end the proceeding at any time. In this regard, once the ADR proceeding ends, complainants may re-enter the traditional EEO complaint process in order to pursue their claim. Moreover, any agreements between the parties must have been reached without coercion or duress.
2. Neutrality means that the ADR proceeding is impartial and independent of control by either party. A neutral third party who assists the parties in reaching an agreement must not have any stake in the outcome of the proceeding.
3. Confidentiality of the ADR proceedings must be maintained by the parties and the neutral third party. This means that information concerning the underlying facts of an ADR proceeding and records generated as part of that proceeding may not be made part of the EEO complaint record. The Alternative Dispute Resolution Act of 1996, 5 U.S.C. § 574, provides that neutrals in ADR proceedings may not voluntarily disclose or be required to disclose dispute resolution communications, with certain statutory exceptions. The exceptions include fraud, waste and abuse, unreported sexual harassment and criminal activity.
4. In order to have an enforceable settlement agreement, the agreement must be in writing and signed by both parties. The revised regulations at 29 C.F.R. . 1614.504 set forth specific procedures by which the EEOC enforces all settlement agreements.

Nothing said or done during attempts to resolve the matter through ADR proceedings may be made the subject of an EEO complaint. All concerns with the operation of the agency's ADR program should be resolved by contacting the local administrator of the ADR program. For more information, you may contact the EEO Office at Yokosuka Naval Base, DSN 243-9579 COMM (from the States) 011-81-46-816-9579 COMM (within Japan) 046-816-9579 or Email: [EEO-CNFJ@fe.navy.mil](mailto:EEO-CNFJ@fe.navy.mil).