

No Mediation for Workplace Bullying

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Mediation is an inappropriate alternative in cases involving any type of abuse or violence such as domestic violence, child abuse, sexual assault, school or workplace bullying.

The victims or targets in these situations are at a disadvantage and are subjected to further abuse.

Mediation is a process in which disputing parties with the assistance of a third party, the mediator, come together in an attempt to resolve their differences in an acceptable manner (win/win) to both parties. The mediation process assumes that all parties involved in the mediation are “sufficiently capable” of negotiating and reaching a mediated agreement with each other as equals in the process. In cases involving workplace bullying or any type of family violence, this is a false assumption; individuals experiencing abuse, violence, or similar interactions are disempowered their ability to deal effectively with their abusers are diminished.

When the mediation process was designed, it was not intended to or structured to deal with the complexity of workplace bullying or other forms of violence.

The most common reasons mediation fail are:

- Retribution
- The absence of trust
- The imbalance of power between conflicting parties
- Forced or coerced mediations and/or settlements
- Fear of subsequent intimidation and abuse post mediation
- Increased threats to personal safety post mediation
- Fear of the bully
- The complexity of workplace bullying
- Diminished psychological status of the complainant
- Undiagnosed depression or PTSD and suicidal complainants
- The mediated agreement will not be honored
- Limited power of a mediator and the process
- Duress of the complainant
- Attempts of the mediator to mediate the actual abuse
- Attempts of the mediator to minimize the abuse
- Inexperienced or poorly trained mediator (no knowledge of workplace bullying or family violence issues)
- Misunderstanding the differences between workplace bullying and interpersonal conflict

- Complainants acting as their own legal representative
- Mediator with a desire to settle a case no matter the cost.
- Perpetrator fabricating information against the complainant
- Perpetrator portraying him/herself as the victim in the situation
- Character assassination and demeaning comments references about the complainant during the mediation to keep the complainant off balance and emotional
- Unreasonable expectations of the mediation process by the complainant
- The inability of the complainant to enter into an agreement
- Extremely emotional complainant unable to articulate the real issue (s)
- Mediation does not cover prior behavior or abuse
- Multiple party involvement (more than one perpetrator)
- In some situations, the complainant will assume the role of protector for the perpetrator by minimizing the situation and behaving the way and saying the things they feel is appropriate to please the perpetrator (**learned abuse behavior: the same behavior demonstrated by victims of family violence**) and fear of the after effect of the mediation
- Overly aggressive complainant (a new feeling of empowerment and certain the mediator is going to stop the abuse)
- Inappropriate body language or gestures directed at the complainant
- Mediator is unable to take and keep control of the mediation process
- Inappropriate outbursts and interruptions by the perpetrator to disrupt the process (demonstrating to the complainant that he is in control)
- Mediator attempting to mediate the case with both the complainant and the perpetrator at the same table.
- The perpetrator does not see his/her actions as abusive or inappropriate

Public Sector (Government) Organizations

Mediations in government organizations present additional challenges.

External mediators (**paid by another government agency**) are given a sheet with the complainant's name and type of case (i.e. discrimination, harassment etc...) no other information is provided all contact with the complainant is made by EEO or HR before and after the mediation. Internal mediators (**paid by the organization**) are selected by EEO or HR to settle the case these are usually managers, other executives, or an employee who outranks the complainant.

- All mediated agreements must be approved by HR and EEO administrators (forces outside the mediation dictating the outcome).
- Government trained mediators take a one week 40 hour course and are termed mediators (poorly trained)

Note: government mediators may mediate one case prior to your case or your mediation may be their first case with no supervision or additional training. It is not unusual for a government-trained mediator to be trained and not get their first case for 12 or more months after training.

- Managers and other executives are used as mediators
- Internal ties to other managers and employees
- Organization has a skewed view of the complainant (labeled as a trouble maker)
- Mediator is aware of the rumors and gossip about complainant
- Family clusters (parents, siblings, other family members, close friends, church members) you never know the dynamics of whom you're dealing with.
- Ineffective zero tolerance policies applied to the abuse
- Notifying the complainant less than 24 hours that they will be going to mediation (no available union representative or attorney, no prep time for the complainant)

Mediation is not the end of the bullying experience for the target especially if the target remains employed in the organization.

Due to the structure of public sector organizations it is very difficult to totally impossible to make organizational changes. Each federal agency is operated by federal mandates and must go through the parent organization in Washington D.C. these mandates are implemented nationally for that particular agency and may be 10 plus years old (mandates are updated about every 20 years).

When I train new mediators, I tell them:

When dealing with any type of workplace bullying in any organization STAY away from zero tolerance policies these are the most worthless policies ever written. WHY?

Because they are open to interpretation and each time they are applied to the same behavior but by different individuals they are interpreted differently based on the relationships of the individuals involved.

Restorative Justice

A number of mediators, attorneys, organizations, arbitrators, and judges argue that restorative justice is a solution to make an individual “WHOLE” again.

Restorative justice is a process that attempts to repair harm caused by criminal behavior. The process attempts to address the needs of the victims and the offenders through a victim-offender mediation process. You will see this a lot with mediators that term themselves as “conflict coaches” or “boss whisperers.” This is also used with victims of domestic violence.

There are four key concepts of this process:

- 1). Encounter – provides the opportunity for target/bully to come together
- 2). Amends- bully takes measures to repair harm,
- 3). Reintegration- the target is restored (made WHOLE) and,
- 4). Inclusion- all parties participate in the resolution. This requires active participation from the target and the bully takes responsibility for his actions to repair the harm (apology from the bully) the purpose of this step is to have the two parties communicate with one another.

RJ is not an appropriate process to deal with workplace bullying! Here's why.

First, you will never get a bully to admit he is a bully. Bullies do not see anything wrong with their actions they see the target as the problem. It is impossible for the bully to restore any reasonable amount of a target’s life. The target will never be “WHOLE” again. Finally, mediation is not the end of the bullying experience for the target, rather an opportunity for the bully to validate the effects of the abuse on the target and gather additional ammunition to use against the target. Fifth, bullies do not respect confidentiality or the mediation process.

Failure of mediation as evaluated by targets of workplace bullying

Because cases slated for mediation are identified as cases of discrimination, harassment, violations of one of the protected statutes or problem employees, and not workplace bullying, traditional institutions and systems have not been recording success or failure of mediation to stop bullying.

The Workplace Bullying Institute conducted an online survey of 473 bullied targets to described the outcomes after mediation or arbitration was used to address their bullying situations. Results can be found at the WBI website (workplacebullying.org). A summary shows that 33% of targets were terminated or quit. There were no consequences for the bully in 52% of cases, and negative consequences for the offender followed mediation in only 7% of cases. Only 3% of bullies were terminated.

I conducted my own unscientific survey of 250 self-identified targets of workplace bullying in Texas. The results were:

- 75 (30%) tried mediation but were disappointed and left with unresolved issues
- 120 (48%) refused to mediate because they felt their lives could not be mediated
- 43 (17%) were not given the opportunity to mediate but believed mediation would not have resolved their issues
- 5 (2%) voluntarily went to mediation and were terminated within weeks after the mediation for “unrelated reasons”
- 2 federal employees that did go to mediation received termination notices prior to their scheduled mediation; the mediation was an attempt to get them to sign a statement stating they would not take legal action against the agency.
- 3 went to mediation because they felt “compelled” to do so
- 2 went to mediation and signed an agreement because they thought the mediation would stop the abuse, but they felt it made things worse because after signing the agreement. The company considered the issues resolved even though the abuse continued.

About the author ...

Dr. Walker is a Certified Workplace Violence Specialist, Certified and Texas Credentialled Distinguished Mediator, and has specialized training in Federal and EEO mediations, hostage negotiations, suicide and crisis counseling, Conflict Dynamic Profile (CDP). She conducts mediation to resolve workplace, school, family, and elder care disputes.

Dr. Walker is also the Texas State Coordinator working to enact the anti-bullying Healthy Workplace Bill in her state along with active citizen lobbyists.