



What Happens In Mediation?

A Guide to Understanding the Process

By Employment Law Mediator
Corey Hanrahan

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Why They Call Me The Marathon Mediator

Before getting to that, let's go back to the start. I have been an employment rights attorney since 2008. In fact, I have dedicated my entire legal career to fighting for employee rights. In doing so, I have gone up against some of the country's largest employers.

After working as an associate at a larger law firm, I opened my own law practice (The Hanrahan Firm) in 2014. Since then, I have helped recover more than \$10 million for California employees. In doing so, I was recognized as a Rising Star by Super Lawyers Magazine from 2016 to 2018, and from 2021 to 2023, he has been recognized as a Super Lawyer by Super Lawyer's Magazine for Plaintiff's employment litigation.

Throughout my career, I realized the benefit and value of mediation. The reality is that most cases (most lawyers will tell you 95%) settle before trial. Trial presents serious unknowns (from what evidence the judge will allow, to what the witnesses will say, to what your jury panel looks like). So, in 2021, I completed the "Mediating the Litigated Case" program through the Straus Institute for Dispute Resolution at Pepperdine Caruso School

of Law. And the rest, as they say, is history. From that point on, I started building my mediation practice, to help employees across California resolve their employment disputes.

So, why do they call me the marathon mediator? Well, in my spare time, I'm an avid distance runner. I have several top 100 finishes in local San Diego half marathons, and have run the Boston Marathon four times while raising money to help persons with disabilities (more of that in a second). In total, as of the writing of this book, I have completed 7 full marathons and more than 80 half marathons.

And, in 2013, I helped found Team Hoyt San Diego. We are a local 501(c)(3) nonprofit dedicated to providing assistance to persons with disabilities to allow them to compete in athletic events, including running races and triathlons. So, of those races that I have run, two of the full marathons were pushing a wheelchair, and probably 70+ of the half marathons were also completed pushing a wheelchair.

Is Mediation Right for Me?

A lot of people are unfamiliar with mediation. They have questions about whether mediation is right for them, or their case. It's not an unusual question. So if you're wondering the same thing, you're not alone.

Mediation can be a highly effective way to resolve conflicts and disputes, including employment issues. While mediation may seem intimidating, I can assure you that it is not. A mediation is simply a settlement discussion that uses the help of a third party. That third party is known as, not surprisingly, the mediator.

The goal of mediation is to help parties reach a mutually agreeable resolution to their dispute, to either put an end to formal legal proceedings, or avoid those costly proceedings in the first place.

Mediation can be particularly helpful, and right for you, if any of the following are true:

1. You are involved in a dispute. These can be workplace issues, family conflicts, business disagreements, or personal injury matters.
2. You prefer a collaborative approach. Lawsuits can often turn the closest of friends into the worst of enemies. Mediation may be right for you if you wish to maintain, or even improve, your relationship with the other party.
3. You want more control. The best reason to mediate is if you want to maintain, or regain, control of the outcome of your dispute. If your case goes before an arbitrator, a judge, or a jury, you lose control of

the outcome. Your future can be decided by an arbitrator, a judge, or twelve complete strangers (jurors). However, in mediation, you are in control of the outcome because you can decide to settle or not settle, based on how much money is being offered. Or if you are the defendant, you can decide how much money you are willing to offer to resolve the dispute.

4. You want a faster and more cost-effective resolution. Mediation is generally far quicker and less expensive than litigation. This can help put more money in your pocket, by saving you on costly litigation.
5. You value your privacy. One of the biggest advantages of mediation is that it is confidential. This means that your dispute, the discussions at mediation, and any agreements reached in mediation are not made public (unlike a filed lawsuit).

These are just some, but not all, of the benefits of mediation, to help you determine if mediation is right for you.

Can The Mediator Award Me Money?



A mediator cannot award you money. A lot of people confuse mediation with arbitration. In an arbitration, a third-party neutral called an arbitrator (oftentimes a retired judge or a lawyer) hears all of the facts of the dispute, and decides who wins and whether or not a party gets money. In a mediation, though, the mediator has no power to award money or make legally binding decisions. Instead, the mediator guides the process of negotiations. And a good mediator will help identify common interests that help explore potential solutions.

If the mediator cannot award me money, why do I need one?

That's a really good question, and a question that a lot of my clients used to ask me. Mediators are trained in the art of negotiation, and how to help parties overcome impasse. Lawyers are strong advocates for their clients, but oftentimes cannot see the other side's perspective, or see the difficulties in their clients' cases. Negotiations between lawyers sometimes looks like a game of "chicken," with each side afraid to "blink first." A good mediator is trained in how to handle those situations and keep the lines of communication and flow of information going, to increase the likelihood of resolution. In short, while lawyers can always negotiate between themselves, the use of a good mediator can oftentimes increase the chances of settlement.

So, even if I attend a mediation, I am still in charge of deciding whether or not I settle?

Absolutely. This is why mediation is usually the best forum for resolving disputes. It provides the opportunity to resolve your dispute, but does not require you to do so. Through litigation and trial, there will inevitably be a winner and a loser. But due to the cost of litigation, even the winner sometimes feels like they've lost. But in mediation, you get to make the decisions. If you are the aggrieved party, you can decide if the amount of money being offered is right for you. If you are being accused of wrongdoing, you make decisions on how much money you are willing to pay to resolve the conflict (instead of continuing to replenish your lawyer's trust account in litigation).

How Do I Prepare for Mediation?

Tip: You need to prepare for mediation mentally as much as anything. Here are some tips that I think will set you up for the best chance of success at mediation.

If you are represented by a lawyer, your lawyer will likely do the heavy lifting as far as preparing a mediation brief and gathering documents/exhibits for mediation. However, it is never a bad idea to ask your lawyer if she/he needs anything from you to help prepare for mediation.

But let's talk a little about how you, yourself, can prepare for mediation.

There really is no right or wrong way to prepare for mediation. Personally, I think that you help set the stage for a successful mediation by identifying your interests and goals. This will help navigate the mediation in the direction you need it to go.

Another way to prepare for mediation is to make a promise to yourself that you will be willing to listen at mediation. The only way mediation can be successful is if there is active listening and open communication. You must be willing to listen to the other party's perspective without becoming defensive or dismissive.

You can also set yourself up for the best chance of resolution at mediation if you spend the days leading up to mediation considering alternatives. This doesn't mean considering alternatives to mediation, but instead thinking about viable solutions or compromises that you might be willing to accept or make. Flexibility is the key to mediation, and being open to alternatives can facilitate progress.

Lastly, the best way to prepare for mediation is to promise yourself that you will be open-minded. You should approach the mediation with an open mind, and be willing to consider different perspectives and explore creative solutions to the problems.



CONFLICT

MEDIATOR

CONFLICT

What Can I Expect at Mediation?

This is probably the question that I am most frequently asked by first-time participants. People often express anxiety about having to participate in a mediation. However, there is no reason to be afraid of mediation. Think of mediation as your friend (as cliché as that may sound). It is a useful tool that can help you resolve the biggest stressors in your life: litigation and conflict.

If a party expresses too much angst, I'm always willing to have a pre-mediation call with each side, including the attorney and the client. This helps the client quickly realize that I'm nothing to fear. I find that often takes away any anxiety a party may be feeling.

As for the actual mediation, the process itself can take many steps, and no two mediations are exactly the same. A long time ago, the parties used to meet in a joint meeting at the beginning of mediation. As a participant, that meant you had to sit across the table from the person you had a disagreement with, and had to listen to their lawyers say terrible things about you. I do not use the joint session, unless both parties request once, since it is oftentimes counterproductive.

So, you can expect your mediation to start with a simple "hello" from the mediator and a brief overview of the mediation process. You will be in a separate room with your attorney, and the other side will not be present in your room with you. The mediator will likely ask some questions

about the dispute, just to make sure she/he has a clear understanding of the facts.

From there, the party who is asserting the claim will be asked to make an opening settlement offer. This usually consists of a monetary amount, but may also include a non-monetary

component (e.g., reinstatement to a job, return of personal property, etc.). Once that opening offer is made, the mediator will visit with the other side in their respective room, and will obtain a counteroffer. Throughout the day, there will be a continual back and forth with "offers." Along with that back and forth will be the exchange of information supporting each side's position and "moves." This exchange of information can be crucial to working toward resolution.

If things begin to "stall out" during the mediation, you can expect your mediator to utilize creative tools to switch things up and try to avoid reaching an impasse. This is where I, as the mediator, show my value in negotiations. This is what separates a mediation from informal negotiations between parties. I know how to pivot when things get tough, to make sure you keep moving toward resolution.

At the end of the mediation, there will either be a point where you reach an agreement to resolve your dispute, or you don't. And what happens if you don't settle? Well, that's a topic for the next page.

What if We Do Not Settle At Mediation?

So, you spent the entire day in mediation and did not get your case settled. Is that the end of negotiations? Are you destined for trial?

Of course not.

Just because you were not able to resolve your case at mediation does not mean you are destined for trial. Even if a formal mediation session does not lead to an agreement, it oftentimes leads to settlement, nonetheless. A key to mediation is the exchange of information. Through that exchange of information, cracks can often form where the light can get in. The parties start to see a full picture of the case, including the difficulties that the case may present at trial for either side. This can sometimes lead to a settlement shortly after mediation.

To be honest, some cases are just not ripe for settlement. There may be some formal discovery that needs to be completed so that the parties can discover the other side's position. This doesn't mean that your case won't settle eventually, it just means that it is not ready to settle at that time. And you have to know that it is okay to not settle your case at mediation. Not

setting your case at mediation does not mean that the mediation was a failure. There will be progress made at mediation that will set you up for a higher chance of resolution later, which is progress.

I like to think that when a matter does not settle at mediation, it gives each side the ability to "reflect and reassess." Remember, an important part of mediation is active listening and being open minded. If your case does not settle at mediation, you should take time to reflect on the

discussions at mediation, and consider any insights from the mediator. This reflection period may cause you to reconsider your position, or come up with creative and alternative resolutions that were not explored at mediation.

Lastly, you are always welcome to seek out another mediation session, or use the mediator to make more informal follow-up attempts. Resolution sometimes takes time, and sometimes it is not enough to devote only one day to mediation. There is no way to rush the process or to "cut to the chase." So don't be disappointed if you're not able to resolve your conflict in one day; but instead, look at the progress that was made and decide if devoting some additional time to another session would be helpful (and if certain things need to be done before investing that additional time into another mediation session).



Because Experience Matters

For more than a decade, Corey Hanrahan has been immersed in employment law. Licensed in California since 2008, he has litigated workplace disputes across the state, including sexual harassment, discrimination, Equal Pay Act violations, wrongful termination, whistleblower retaliation, unpaid wages, and more.

He now focuses his practice on mediation, bringing sharp legal insight and real-world courtroom experience to every case. As a professionally trained employment law mediator, Corey is dedicated to helping you resolve your dispute with clarity, efficiency, and confidence.

Find out more at www.hanrahanmediation.com

Contact Corey at corey@hanrahanmediation.com

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