

Making the Most of a Half-Day Employment Mediation

By Hon. Gail A. Andler (Ret.)

Parties opt for half-day mediations in employment cases for a variety of reasons. Such mediations are often scheduled in close proximity to hearing dates for summary judgment motions, class certification motions or even arbitrations or trials. Of course, there are other reasons to set a half-day rather than full-day mediation, such as calendaring or travel logistics, finances and strategy.

Pre-mediation telephone conferences between the neutral and counsel can be very helpful in making the most of the half day you will actually spend in session. Ideally, the call will take place after the mediator has had a chance to read the mediation briefs of both the employer and the employee. Separate calls allow for a candid and confidential conversation where the mediator can ask whether there are any client control issues or unusual party dynamics. The mediator can also find out if everyone necessary to a successful resolution will be there. Other areas for exploration in the pre-mediation call may be the presence or absence of insurance and whether there are issues relating to coverage, policy limits, SIRs, etc. The mediator may also want to confirm the amount of the last offer and demand and whether non-monetary relief is being sought.



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The duration of the call will likely depend on the amount of detail provided in the pre-mediation brief. Taken together, a good brief and candid phone conversation can help the mediator determine in advance the approach best suited to resolving that particular employment case within the specified time frame. For example, one mediation might need to provide a forum for a client to tell their story to a judge, while another case might warrant a direct, evaluative approach from the start of the session. Still other mediations just need to continue the progress already made toward settlement before the session.

Finally, counsel can make the most of a half-day mediation by bringing a draft term sheet or template for a Memorandum of Understanding

(MOU) to the session, especially in those employment cases in which the sample forms provided by JAMS for more traditional settlements and releases might not be ideal.

With this advance preparation, the likelihood of a successful resolution at a half-day mediation can be increased, leaving the participants with not only a settlement, but also a feeling that their time was well-spent.



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