

How **Alternative Dispute Resolution** Can Help You and Your Company

Have you ever had conflicts with employees, partners, vendors, or suppliers and wondered whether there was a better way to handle those issues? While conflict is a natural occurrence and you can't always prevent it, you can put systems into place to deal effectively with different kinds of disputes in order to get concrete results.

Alternative Dispute Resolution (ADR) is an umbrella term for a variety of different processes, which are designed to handle different kinds of conflicts without going to trial. ADR is sometimes referred to as Appropriate Dispute Resolution. Common methods of ADR include arbitration, mediation, fact-finding, and early neutral evaluation. All ADR processes share the following characteristics:

1. **Privacy**
2. **Confidentiality**
3. **Greater control**
4. **Faster results**

These features are the main reason a business owner would choose to use an ADR process over filing a lawsuit.

The various ADR processes are very different, so here are some definitions to help you become familiar with each one. For example, mediation and arbitration are often referred to synonymously, but there are significant differences between the two.

- **Mediation** is a process whereby the mediator facilitates the dialogue between each party and helps them make their own decision. Mediation is normally a very flexible process.
- **Arbitration**, by contrast, has the arbitrator functioning like a judge and issuing a decision on the dispute before him or her, which is based on the law and/or the contract, which established the arbitration requirement. Arbitration is generally binding and final.
- **Fact finding** requests that a neutral third party reviews documents, conducts interviews, and writes an assess-

ment of the issues. Fact-finding is used often in the labor and employment arena, such as when there has been disciplinary action taken or a proposed removal of an employee.

- **Early neutral evaluation** is a preliminary assessment of the issues in the case, along with the expected outcome, and is usually conducted by someone who has some expertise in the subject matter of the dispute.

So how can you, as a business owner, use some of these tools to deal effectively with conflict?

First, don't shy away from dealing with conflict in your company. Many managers and supervisors avoid conflict, which often creates bigger problems in the future. Instead, analyze the conflict. Look at where the disputes are taking place, with whom and over what issues. Ask yourself questions like, "Who is handling various types of conflicts?" and "What kind of decisions are being made?"

Second, review your documentation and make sure there is appropriate dispute resolution language in all of your contracts and agreements. Are there provisions for addressing conflicts over issues that might arise with your top customers or your reliable vendors? Do you have an employee handbook? What does it say about handling personnel problems and disputes?

Third, pick one area of your business to really focus on dispute resolution. For example, if you have had numerous issues with vendor or customer disputes, then look more deeply at those problems and try to determine why you are experiencing those disputes.

Once you decide what business dispute resolution area to focus on, conduct a thorough analysis of the issues in those particular disputes along with the consequences of those disputes. Are you losing business or have high employee turnover because of these problems? What are your goals in making a change to the existing

dispute resolution method? If there is no specified language or process in place, what do you want to accomplish by adding mediation, arbitration, or fact-finding? Here are some considerations when determining what type of ADR process would be best to use:

- While arbitration is binding, it can sometimes be quite expensive and almost as lengthy as litigation. There are local arbitration programs, such as one run by the Montgomery County Maryland Bar Association (www.montbar.org) that has reduced fees and abbreviated procedures. If you need a quick and final decision, sometimes arbitration is the best route.
- On the other hand, if there are key on-going or long-term relationships at stake, or issues with teamwork and key employees, you might decide to implement some kind of mediation program where the parties make the decision, all within a much more flexible framework.
- Fact-finding is helpful as part of a process for resolving employment issues or getting a neutral outside analysis of a complex issue. When the fact finding is done by a neutral outside party, it can have more credibility than if it is conducted by the company's HR department.

With this knowledge, you may be able to put some of these new processes into place. Start small with a pilot project and, after six months to a year, test and evaluate whether the new system is working. As many companies can attest, correctly managed conflict is an opportunity for change and growth. Address it head on and you and your firm will be a winner.

Ellen Kandell, Esq. is President of Alternative Resolutions, a dispute resolution and training company that is dedicated to redefining the way organizations handle conflict. She can be reached at ek@alternativeresolutions.net.