

CORPORATE IN-HOUSE MEDIATION PROGRAMS

Employment disputes inside corporations are inevitable. Even with strong human resource oversight, companies cannot avoid the likelihood of claims arising from their employees, whether they are wage related or rise to the level of discrimination or ADA violations.

Due to the increased cost of court litigation, many companies have turned to offering in-house alternative dispute resolution options. Many companies believe that this solution can create a better and more positive forum to handle employment claims at earlier stages, with a positive tone toward resolution. Such an attitude can avoid long, drawn out court battles that often result in financial impacts to the companies involved.

An in-house ADR program can present an initial option for non-binding mediation, to be administered either by an in-house staff mediator or an outside provider who is familiar with the policies of the company involved as well as the relevant employment law at issue in the dispute. An outside provider can be, and usually is, an attorney, but certainly there are mediators who are not attorneys that have the training needed to facilitate the ADR process.

It is thought that by having these in-house programs available, employees are more comfortable bringing an issue to light as compared to letting the matter fester. Again, early communication and possible resolution of a dispute on the early side may help avoid a larger issue down the road if not addressed. Further, if a supervisor or manager is responsible for improper actions, the issues may only affect one employee initially, but later, if not addressed, could later involve multiple employees.

Generally, these in-house ADR programs start with an offer at non-binding mediation and, if not resolved, the option can then include binding arbitration. These options, since they are in-house, can limit the expense involved to the company, especially since the law often requires the company, not the employee, to pay for the mediator or arbitrator's time and expenses.

Certainly, the culture of offering such a resolution program is crucial to its success. Employees should be encouraged to come forward with their disputes and there should be significant penalties against anyone who retaliates against an employee who brings a claim. A company may decide to make these ADR programs required as part of their employment rules. The Courts have generally upheld an employer's rights to require ADR if it is part of an employee's contract or handbook. Other companies simply offer ADR as an option, without making it mandatory. In such a case, an employee may be more willing to participate instead of believing that the process is required and possibly "rigged".

Since in-house ADR mediation and arbitration programs are not new, there is considerable data available to demonstrate its success. And even though many of the companies that utilize these programs are larger, even smaller companies should consider implementing this approach to workplace dispute resolution. Again, the cost in the long run is far lower than disputes which exist in the court and involve long term discovery, extensive trial time and possible appeals.

For thirty years, Scott Zucker has acted as outside legal counsel to a variety of privately held and publicly traded businesses involved in multiple industries. His legal services have ranged from employment, real estate, construction and corporate consulting to representation of companies in the litigation of their financial and business disputes. Scott's goal is to utilize his legal and business experience to foster the use of Alternative Dispute Resolution to help parties reach resolutions without the time, effort and cost of court litigation. Scott can be reached at Scott@wzlegal.com or 404-364-4626