

What to Expect from Mediation



UCWCP

Union Construction Workers' Compensation Program
Administered by Wilson-McShane Corporation
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You will be participating in the mediation process. This informational handout describes the process: what to expect, how to prepare, and how to effectively participate.

What is mediation?

Mediation is an informal meeting guided by a mediator. It provides an opportunity for people to voluntarily resolve a dispute or claim. A mediator provides valuable assistance during the meeting.

Who is the mediator?

The mediators are private attorneys appointed to a panel by the trustees of the Union Construction Workers' Compensation Program. The trustees represent both labor and management. The mediators are selected for their knowledge of workers' compensation laws and mediation principles. In their private practice, they may represent employees, employers, or a combination of both. The mediator assigned to your mediation will tell you more about their experience and practice.

Who will participate?

Mediation usually takes place in the mediator's office. People with authority to resolve disputed issues are required to attend. The employee and insurer must attend. You can choose to hire an attorney if you believe that you will need legal advice during the session.

What is the mediator's role?

The mediator serves as a source of information, and will answer questions regarding the types of claims and defenses available under the Workers' Compensation Act, the prospects of prevailing on claims or defenses, and the reasonableness of positions taken during the mediation. A mediator will never give legal advice or advocate for a claim or defense. The mediator allows the parties to make their own decisions regarding the terms of settlement, subject only to requirement that the terms of the settlement are fair, reasonable and in conformity with the provisions of the Minnesota Workers' Compensation Act.

How to prepare for mediation

You should bring everything you think will help the participants and the mediator to understand your point of view. Any evidence that supports your claims and defenses will assist in getting a resolution.

The mediation never involves "cross examination" questions. The mediator may ask questions. The participants may also ask questions. You should make notes of any questions you want to ask the mediator or the other participants. Questions that seek to verify or clarify information are the only types of questions allowed.

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What might be discussed?

If your mediation is by appeal from facilitation, the discussion will generally be on the same issues involved in the original dispute. If you believe that new issues not discussed at facilitation will need to be addressed, you should notify the mediator as soon as possible. The mediator will then notify the other participants of the new issue so that everyone will have an opportunity to be properly prepared. For example, if the original disputed issue is a claim for permanent partial disability benefits, but a full, final and complete settlement of all claims will be proposed, the participant who intends to make this type of proposal should notify the mediator.

Your mediation may not be the result of an appeal. If the mediation is to explore settlement with the assistance of a mediator, the discussion will be the issues to which everyone agrees. Sometimes settlement discussions will take place before the mediation. This allows the participants to determine if a mediation session will be necessary or useful.

Settlement at mediation

If a settlement is reached, a written agreement called a "Stipulation for Settlement" might be prepared for everyone's signature. The signed agreement is then sent to the mediator for review. The mediator will only approve a settlement agreement that is fair, reasonable and in conformity with the provisions of the Minnesota Workers' Compensation Act.

If an injured worker chooses not to be represented by an attorney at the mediation, and if the mediator believes that it is in the best interests of the participants to have the settlement reviewed by an attorney selected by the injured worker, the mediator may authorize payment of attorney's fees for the limited purpose of the Stipulation for Settlement.

If you still have questions or concerns about the Program's mediation services please contact the Program directly at (952) 851-5943