



U.S. Equal Employment Opportunity Commission

ADR Questions and Answers

I understand that all agencies are required to have an ADR program available in the EEO process. Does this mean that an agency must offer ADR in every case?

No. Agencies are not required to offer ADR in every case. There may be cases where ADR is not appropriate or feasible.

When will an agency offer ADR?

Agencies may be flexible in designing their ADR programs to fit their environment and workforce. The offer may be made either at the pre-complaint phase of the process, or after the formal complaint has been filed. In this regard, agencies have the discretion to determine whether a given dispute is appropriate for ADR.

Agencies may decide to offer ADR on a case-by-case basis, by issue, and/or by geographic location. However, agencies may not decline to offer ADR because of the bases involved in a particular case (i.e., race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or retaliation).

Can an employee file a complaint against an agency if it refuses to offer ADR in a particular case?

No. An agency's decision not to offer ADR for a particular case cannot be made the subject of an EEO complaint.

Can an employee who has elected ADR withdraw from the process?

Yes. The ADR process is voluntary and the aggrieved party can withdraw at any time.

Can the EEO Counselor be a "neutral" in the ADR program?

The EEOC discourages, but does not prohibit, EEO Counselors from acting as neutrals in ADR programs. This is due, in part, to the EEOC's concern that a complainant may be confused as to the role being played by the Counselor (e.g., is the Counselor/neutral engaged in informal resolution, or is this an ADR process in which a strict standard of confidentiality will apply?). If an agency chooses to have its EEO Counselors serve as neutrals, EEOC has stated clearly that the EEO Counselors may not serve as neutrals in a dispute for which they have provided counseling.

If ADR fails, what is the role of the EEO Counselor?

Should ADR fail to resolve the matter, the case is referred back to the EEO Counselor for the issuance of a notice of final interview. No further informal resolution efforts should be made by the EEO Counselor.

Can agencies utilize binding arbitration as an ADR technique under Part 1614?

No. ADR programs cannot diminish an individual's right to pursue his or her claim under the 1614 process. Binding arbitration is not an appropriate ADR technique in the EEO process because it would require an individual to waive his/her right to a hearing or to appeal the matter to the EEOC. This requirement, however, does not prevent agencies from using binding arbitration in their grievance process.

I understand that ADR is a confidential process. What exactly does this mean?

If a party tells the neutral something in private and asks the neutral to keep the matter confidential, the neutral is bound by law not to disclose this information voluntarily. There are some exceptions to this rule. For example, if a party confesses to the commission of a criminal offense, or to an act of fraud, waste, or abuse, or that the party plans to commit a violent physical act, the neutral may be required to share this information with appropriate authorities. If a judge determines that disclosure of private confidential discussions is necessary to prevent a manifest injustice, establish a violation of law, or prevent harm to the public health or safety, the neutral may be required by a court to disclose the private discussions.

Are settlement agreements confidential?

No. Neither the ADRA nor MD-110 require settlement agreements to be confidential. Even when the parties specifically agree to keep the terms of their settlement agreement confidential, the details of the resolution must still be given to specific

offices with a need to have that information, such as those offices which will implement the settlement.

What role does the responsible management official have in ADR?

Once the agency has determined that a matter is appropriate for ADR, it can decide who should represent the agency and can require the responsible management official (RMO), or the agency official directly involved in the case, to cooperate in the ADR process.