



## 606:How to Build a Successful In-house Dispute Resolution Program for Companies of All Sizes

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**Melanie Lewis**

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**F. Peter Phillips**

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## Faculty Biographies

### Frank W. Jackson

Frank W. Jackson is assistant general counsel of Blue Cross Blue Shield of Michigan. In this position, he leads the employee relations section of the office of general counsel. He provides advice and counsel to leadership at all levels of the company on all matters relating to labor and employment discrimination law. He also supervises two attorneys and various outside counsel. He represents the company, company officers, and employees in trial, in arbitration, and before state and federal tribunals and agencies.

Prior to this position, Mr. Jackson was director of litigation for the City of Detroit law department, where he had supervisory responsibility for all of the litigation activities of more than 45 attorneys, as well supervisory responsibility for the litigation activities of outside counsel. As an employee of the City of Detroit, he was also supervisor of assistant corporation counsel, assistant corporate counsel, and legal intern. Mr. Jackson was in the U.S. Army Reserve and obtained the rank of Major.

Mr. Jackson is on the board of directors of ACCA's Michigan Chapter, and is a member of the State Bar of Michigan's ethics committee. He is on the board of trustees of John Wesley AMEZ Church and the board of directors of Life Directions Inc. in Detroit.

Mr. Jackson received his BA from Wayne State University and his JD from the University of Michigan Law School.

### Melanie Lewis

Melanie Lewis is corporate manager of conflict management and the solutions program director for Coca-Cola Enterprises Inc. in Atlanta. As such, Ms. Lewis has designed an integrated conflict management system for internal conflicts, developed conflict skills training courses for employees, and developed internal and external mediation and arbitration programs.

Prior to her current role, Ms. Lewis worked as liaison for the board of directors for Coca-Cola Enterprises Inc. and in human resources handling employee relations matters for clients.

Ms. Lewis is a regular speaker regarding organizational conflict management systems and a mediator providing pro-bono mediation services in community and court programs. She currently serves on the board of the Association for Conflict Resolution, Georgia Chapter and has been a member of the Association for Conflict Resolution since its inception. She is also a member of The Ombudsman Association and the CPR Institute for Dispute Resolution.

Ms. Lewis received a BA from Tulane University in New Orleans and a MBA from Kennesaw State University in Kennesaw, Georgia.

## F. Peter Phillips

F. Peter Phillips is senior vice president of CPR Institute for Dispute Resolution, in New York City. He is responsible for convening committees of CPR's members to devise protocols and tools for the use of alternative dispute resolution ("ADR") procedures in specific industries and practice areas. He also heads efforts to work with CPR members and ADR institutions outside of North America.

Mr. Phillips has assisted in the creation and administration of ADR programs in the property casualty insurance industry, employment disputes, anticipated Year 2000 commercial disputes, the franchise industry, business-to-business e-commerce, and other areas. He was associated with the law firms of Cahill Gordon & Reindel and Schulte Roth & Zabel, both of New York City. While in private practice he was engaged in a wide scope of litigation matters, including employment, securities, commercial contract, corporate governance, and insurance insolvency disputes.

Mr. Phillips has appeared on programs offered by the ABA, Fulcrum Information Services, the Society of Human Resource Managers, the Practising Law Institute, and numerous corporations and law firms in the United States, England, Argentina, Hong Kong, and Russia. He is the author of several articles on business applications of ADR in such contexts as insurance coverage disputes, employment disputes, electronic commerce, and franchise disputes. He has also written law review articles on various topics in labor and employment law and is the main author of the recent CPR book, *How Companies Manage Employment Disputes*.

Mr. Phillips is a *cum laude* graduate of Dartmouth College and a *magna cum laude* graduate of New York Law School.

**REQUEST FOR ARBITRATION  
BLUE CROSS BLUE SHIELD OF MICHIGAN  
TERMINATION ARBITRATION FOR NON-BARGAINING UNIT EMPLOYEES**

**Note carefully:** You are required to submit a copy of the Request for Arbitration to both American Arbitration Association (AAA) and the BCBSM Regional Center which your job was located, at the address on the reverse side of this form and to notify both AAA and BCBSM of any change of address for you or your attorney during the arbitration proceeding.

I request arbitration under the BCBSM Termination Arbitration Procedure for Non-Bargaining Unit Employees. I acknowledge receiving a copy of BCBSM's Arbitration Procedure and that any termination-related claims I may have will be decided under it. I understand that the arbitration will be administered by the American Arbitration Association in accordance with its rules governing the resolution of employment disputes, except as otherwise provided in BCBSM's Arbitration Procedure; that I may be represented by an attorney of my choosing; that I am entitled to reasonable discovery as part of the arbitration process; that I may be responsible for certain costs and fees; and that the arbitrator's award will be exclusive, final and binding, subject to standards of review established by law or if the arbitrator has committed an error of law. I further understand that by submitting to arbitration, I am waiving the right to adjudicate all legal and equitable claims and theories, including claims of discrimination, retaliation, and violation of public policy, in a judicial forum. However, I understand that I have the right to file a claim or charge with any state or federal agency, including the U.S. Equal Employment Opportunity Commission and the Michigan Department of Civil Rights.

EMPLOYEE'S NAME:

ADDRESS:

TELEPHONE NUMBER:

SOCIAL SECURITY NUMBER:

LAST POSITION AND MAIL CODE OR REGION:

TERMINATION DATE:

**PLEASE ATTACH ADDITIONAL PAGES, IF NECESSARY, IN RESPONSE TO THE FOLLOWING THREE QUESTIONS:**

DESCRIBE IN DETAIL, AND TO THE BEST OF YOUR ABILITY, THE FACTUAL BASIS ON WHICH YOUR CLAIM IS MADE:

DESCRIBE IN DETAIL, AND TO THE BEST OF YOUR ABILITY, THE STATUTORY PROVISION OR LEGAL THEORY UNDER WHICH YOUR CLAIM IS MADE:

DESCRIBE IN DETAIL THE NATURE AND EXTENT OF ANY REMEDY OR RELIEF YOU BELIEVE SHOULD BE AWARDED TO YOU:

**IF YOU INTEND TO HAVE AN ATTORNEY REPRESENT YOU, PLEASE PROVIDE THE FOLLOWING INFORMATION:**

ATTORNEY'S NAME:

ADDRESS:

TELEPHONE NUMBER:

SIGNATURE:

DATE:

White Ply:AAA

Canary Ply: BCBSM Regional Center

Pink Ply: Claimant

**SUBMIT WHITE COPY OF THE REQUEST FOR ARBITRATION TO:**

American Arbitration Association (AAA)  
One Towne Square - Suite 1600  
Southfield, Michigan 48076

**SUBMIT CANARY COPY TO THE BCBSM REGIONAL CENTER**

**WHERE YOUR JOB WAS LOCATED:**

Human Resources Regional Center - Detroit  
Mail Code #0111  
600 Lafayette East  
Detroit, Michigan 48226

Human Resources Regional Center – Metro  
Mail Code #B401  
27000 W. 11 Mile Road  
Southfield, Michigan 48034

Human Resources Regional Center – Grand Rapids  
Mail Code #B223  
5540 Glenwood Hills Parkway Southeast  
Grand Rapids, Michigan 49512

Human Resources Regional Center – Lansing  
Mail Code #B133  
1403 South Creyts  
Lansing, Michigan 48917

## TERMINATION ARBITRATION PROCEDURE FOR NON-BARGAINING UNIT EMPLOYEES

**SCOPE:** *All employees except as precluded by specific contracts or labor agreements.*

### GENERAL POLICY

Our company is an at will employer. As a result, either the employee or BCBSM may terminate the employment relationship in their discretion at any time. This Arbitration Procedure does not detract from that at will status. Termination decisions can accordingly be made and carried out by BCBSM or the employee without challenge under a theory that an express or implied contract of employment was breached. BCBSM is committed to the concept of equal employment opportunity, and wishes to ensure that termination decisions are not influenced to any degree by discrimination or retaliation that would violate state or federal civil rights laws.

To that end, BCBSM has certain internal review mechanisms in connection with a decision to terminate an employee. Additionally, BCBSM hereby establishes an Arbitration Procedure through which a terminated employee (referred to here as a "claimant") may challenge, on various grounds, before an impartial arbitrator, the decision to terminate the claimant's employment. This Arbitration Procedure is intended to be exclusive, final, and binding. It provides the sole mechanism for a terminated employee to assert a legal claim against BCBSM, thereby displacing time-consuming and expensive litigation.

### PRACTICES AND PROCEDURES

#### **Scope of Arbitration Procedure**

This Arbitration Procedure applies only to employee terminations, including claims of constructive termination, and not to lesser forms of discipline or other disputes concerning an employee's terms or conditions of employment. Constructive termination is defined, for purposes of this Arbitration Procedure, as a claim by an employee (hereinafter referred to as a "claimant") that he or she was forced to resign or quit involuntarily because his or her working conditions had deliberately been made so intolerable by BCBSM that a reasonable person would have felt compelled to resign or quit.

The scope of this Arbitration Procedure extends to all termination-related legal claims or theories including discrimination, retaliation, violation of public policy, and tort claims, including any claims that could be made under any state or federal civil rights laws such as the Michigan Elliott-Larsen Civil Rights Act, the Michigan Person's With Disabilities Civil Rights Act, the Michigan Whistle Blower's Protection Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, 42 U.S.C. §1981, the Equal Pay Act, or under any other employment-related statute or legal theory. This Arbitration Procedure is applicable to all BCBSM employees except those precluded by specific language contained in a contract or labor agreement.

Any legal claim or theory that a claimant's termination breached an express or implied contract of employment also comes within the scope of this Arbitration Procedure. However, because

any such claim is almost certainly inconsistent with and precluded by BCBSM's at will employment policy, such a claim will be subject to pre-hearing disposition by the arbitrator if raised in the Request for Arbitration.

### **Initiating the Arbitration Procedure**

Any terminated claimant, who believes that the termination decision by BCBSM was discriminatory, retaliatory, tortious, violative of public policy or any federal or state civil rights law, or improper in any other way that comes within the scope of this Arbitration Procedure, may request arbitration by writing to the American Arbitration Association (AAA), One Towne Square, Suite 1600, Southfield, Michigan 48076 and asking AAA to appoint an arbitrator in accordance with its rules governing the resolution of employment disputes.

BCBSM has prepared the attached "Request for Arbitration" form that may be utilized for this purpose. Copies of the form are available at BCBSM's Human Resources and Administration Division. A copy of the Request shall, at the same time it is submitted to AAA, be sent to BCBSM's Human Resources and Administration Division Regional Center. AAA's rules governing the resolution of employment disputes may be obtained by request from AAA, or may be obtained from BCBSM's Human Resources and Administration Division.

The claimant shall, to the best of his or her ability, specify in the Request for Arbitration; (a) the factual basis on which the claim is made; (b) the statutory provision or legal theory under which the claim is made; and (c) the nature and extent of any remedy or relief sought by claimant. If the Request for Arbitration does not adequately specify these things, the arbitrator shall, upon request, direct the claimant to provide further detail.

The Request for Arbitration shall also include the claimant's (or his or her attorney's) address where mail or notices are to be sent by AAA and BCBSM during the arbitration proceeding. The claimant shall be responsible for notifying AAA and BCBSM of any change of address during the proceeding.

After the Arbitration Procedure has been initiated, AAA shall administer the arbitration proceeding in accordance with its rules governing the resolution of employment disputes, except as otherwise provided in this Arbitration Procedure.

### **Time Limits**

To request arbitration under this Arbitration Procedure, a claimant's written request for arbitration must be received by AAA within the limitation period for filing that would apply to the claimant's claim if it were asserted in a court of law.

**NOTE: THIS TIME LIMIT MUST BE ADHERED TO AND WILL BE STRICTLY ENFORCED.**

A claimant's failure to act within the required time will constitute a failure to exhaust the Arbitration Procedure and will be deemed an acceptance of BCBSM's termination decision with respect to any claim within the scope of the Arbitration Procedure.

**Arbitrator's Jurisdiction and Authority**

The Arbitrator shall act as adjudicator of any claim that comes within the scope of this Arbitration Procedure. To the extent not inconsistent with this Arbitration Procedure, the arbitrator shall have powers and authority as provided for by the rules of AAA governing employee disputes and the statutes or laws under which a claim is made. For example, if a statutory provision under which a claim is made allows for a particular remedy, such as back pay, front pay, other forms of damages, interest, costs, actual attorney's fees, or reinstatement, the arbitrator shall have the power and authority to include that remedy in the award. In addition, the arbitrator shall apply the elements of proof, burden of proof formulation, mitigation duty, interim earnings offsets, and other legal rules or requirements under the statutory provision under which a claim is made. The arbitrator shall also have the power to issue subpoenas.

The arbitrator shall not have power or authority to change BCBSM's lawful personnel policies, or to substitute his or her own business judgment for the lawful business judgment of BCBSM.

**Pre-Hearing Discovery**

The claimant and BCBSM shall be entitled to reasonable discovery as part of the arbitration proceeding. In this regard, the claimant and BCBSM will attempt to agree to pre-hearing discovery that will provide fair access to relevant information and, at the same time, maintain the inexpensive and expeditious character of the arbitration proceeding. As a general matter, the claimant and BCBSM shall each be entitled, without special permission of the arbitrator, to conduct two discovery depositions of persons identified by them. Upon written application to the arbitrator and a showing of compelling justification, the arbitrator may grant special permission for one or more additional limited depositions, or may specially direct that additional information be provided to the other party.

**Pre-Hearing Disposition**

The arbitrator is authorized, following his or her appointment and prior to a hearing, to render a special opinion and award summarily disposing of a claim or claims. The arbitrator shall do so only if, after considering either party's request for summary disposition and any response submitted by the opposing party, the arbitrator determines that there are no factual issues requiring a hearing and that the requesting party is clearly entitled to an award in its favor. For example, if a claimant makes a claim that his or her termination breached an express or implied contract of employment, that claim may be subject to summary pre-hearing disposition because it is almost certainly inconsistent with and precluded by BCBSM's at will employment policy.

**Arbitration Costs and Fees**

The administration costs charged by AAA and the fees of the arbitrator shall be borne by BCBSM. However, if the arbitrator finds that a claim was frivolous, the arbitrator may award reimbursement of these costs and fees to BCBSM if such reimbursement is authorized by the statutory provision (if any) under which the claim is made.

The claimant and BCBSM may be represented by counsel of their choosing at their own expense. Counsel fees may be awarded to the claimant after an arbitration award in his or her favor if such an award is authorized by the statutory provision under which the claim is made.



### **Award and Available Relief**

Within 30 days following the conclusion of the hearing and submission of the case, or as soon thereafter as practicable, the arbitrator shall issue a written opinion and award, signed by the arbitrator, which shall include findings of fact and conclusions of law.

If the arbitrator finds in the claimant's favor, the arbitrator shall fashion a remedy that is consistent with his or her authority under the statutory provision under which the claim is made and takes into account the best interests of the parties and other potentially affected individuals. In this regard, the arbitrator shall have the discretion to render an award of front pay damages in lieu of reinstatement in the event the arbitrator determines that such alternative relief is appropriate and objectively warranted under all of the circumstances. However, an award of front pay damages in excess of one year shall not be rendered by the arbitrator without first scheduling a supplemental hearing before the arbitrator with respect to front pay damages and mitigation issues and permitting limited additional pre-hearing discovery. The decision of the arbitrator shall be final and binding; provided, however, that limited judicial review may be obtained in a court of competent jurisdiction; (a) in accordance with the standards for review of arbitration awards established by law; or (b) on the ground that the arbitrator committed an error of law.

If any monetary award is made, the arbitrator shall specify the elements and factual basis for calculating the amount. In no event shall the arbitrator award monetary relief greater than that sought by the claimant.

The arbitrator's award and the relief determined therein shall be final and binding upon the claimant and BCBSM, subject only to the limited judicial review described below.

### **Judicial Enforcement and Review**

This Arbitration Procedure and proceedings hereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq., as well as the Michigan Arbitration Act, 27 MSA §5001 et seq. An arbitrator's award rendered pursuant to this Arbitration Procedure shall be enforceable, and a judgment may be entered thereon, in a court of competent jurisdiction sitting in Michigan.

The decision of the arbitrator shall be final and binding; provided, however, that limited judicial review may be obtained in a court of competent jurisdiction; (a) in accordance with the standards for review of arbitration awards established by law; or (b) on the ground that the arbitrator committed an error of law.

### **Exclusivity of Arbitration Procedure**

This Arbitration Procedure is intended to be the sole and exclusive forum and remedy for all claims that fall within its scope, inasmuch as the inexpensive and expeditious character of arbitration makes it preferable to litigation in a judicial or administrative forum.

**NOTE: By opting to submit to arbitration, the claimant is waiving the right to adjudicate all legal and equitable claims and theories, including claims of discrimination, retaliation, and violation of public policy, in a judicial forum. However, the claimant maintains the right to file a claim or**

**charge with any state or federal agency, including the U.S. Equal Employment Opportunity Commission and The Michigan Department Of Civil Rights.**

Exhaustion of this Arbitration Procedure is mandatory. In the event a court were to determine that this Arbitration Procedure is not the sole and exclusive forum and remedy, or that an arbitration award rendered under this Arbitration Procedure is not final and binding between the parties, it is nevertheless intended that exhaustion of this Arbitration Procedure be a condition precedent to the institution of any judicial or administrative litigation by a claimant with respect to claims that come within the scope of the Arbitration Procedure.

**Request For Arbitration**

Request arbitration by writing to the American Arbitration Association (AAA), One Towne Square, Suite 1600, Southfield, Michigan 48076 with a request that AAA appoint an arbitrator in accordance with its rules governing employee disputes. The claimant may obtain a "Request for Arbitration" form from Human Resources Regional Center.

**Submission of Request for Arbitration**

Submit one copy of the Request for Arbitration form to:

American Arbitration Association (AAA)  
One Towne Square - Suite 1600  
Southfield, Michigan 48076

and one copy to the BCBSM Human Resources Regional Center where your job was located:

Human Resources Regional Center – Detroit  
Mail Code #0111  
600 Lafayette East  
Detroit, Michigan 48226

Human Resources Regional Center – G.R.  
Mail Code #B223  
5540 Glenwood Hills Parkway, Southeast  
Grand Rapids, Michigan 48512

Human Resources Regional Center – Metro  
Mail Code #B401  
27000 W. 11 Mile Road  
Southfield, Michigan 48034

Human Resources Regional Center - Lansing  
Mail Code #B133  
1403 South Creyts  
Lansing, Michigan 48917

**RESPONSIBILITY**

**BCBSM**

- Make copies of Request for Arbitration form available in Human Resources offices.
- Attempt, along with claimant, to agree to pre-hearing discovery.
- Entitled to conduct two pre-hearing discovery depositions.
- Share administration costs charged by AAA equally with claimant.
- Pay fees of the arbitrator, in the first instance.
- Entitled to representation by an attorney of BCBSM's choosing at the company's expense.

### Arbitrator

- Administer the arbitration proceeding in accordance with its rules governing labor arbitrations, except as otherwise provided in this Arbitration Procedure.
- Act as adjudicator of any claim that comes within the scope of this Arbitration Procedure. To the extent not inconsistent with this Arbitration Procedure, the arbitrator shall have powers and authority provided for by the rules of AAA governing labor arbitrations and the statutes or laws under which a claim is made
- Apply the elements of proof, burden of proof, formulation, mitigation, duty, interim earnings offsets and other legal rules or requirements under the statutory provision under which a claim is made.
- Has the power to issue subpoenas.
- Shall not have power or authority to change BCBSM's lawful personnel policies or to substitute his or her own business judgment for the lawful business judgment of BCBSM.
- May grant special permission for one or more additional limited depositions or may specially direct that additional information be provided to the other party -- if written application has been made to the arbitrator and there has been a showing of compelling justification.
- Authorized, following his or her appointment and prior to a hearing, to render a special opinion and award summarily disposing of a claim or claims. (This provision shall apply in instances where the arbitrator determines that there are no factual issues requiring a hearing and that BCBSM is clearly entitled to an award in its favor.)
- If the arbitrator finds that a claim was frivolous, he or she may award reimbursement of arbitration costs and fees to BCBSM if authorized by the statutory provision under which the claim is made.
- Within 30 days following the conclusion of the hearing and submission of the case, the arbitrator shall issue a written opinion and award, signed by the arbitrator, which shall include findings of fact and conclusions of law.
- If finding is in the claimant's favor, the arbitrator shall fashion a remedy which is consistent with his or her authority under the statutory provision under which the claim is made and takes into account the best interests of the parties and other potentially affected individuals.
- Has the discretion to render an award of front pay damages in lieu of reinstatement in the event the arbitrator determines that such alternative relief is appropriate and objectively warranted under all of the circumstances.
- Shall not issue an award of front pay damages in excess of one year without first scheduling a supplemental hearing before the arbitrator with respect to front pay damages and mitigation issues and permitting limited additional pre-hearing discovery.
- If any monetary award is made, the arbitrator shall specify the elements and factual basis for calculating the amount. In no event shall the arbitrator award monetary relief greater than that sought by the claimant.
- Has authority to make decisions that are final and binding upon the claimant and BCBSM, subject only to the limited judicial review described herein this policy.

### Claimant

- Request arbitration by writing to the American Arbitration Association (AAA), Oakland Towne Square, One Towne Square, Suite 1600, Southfield, Michigan 48076 with a request that AAA appoint an arbitrator in accordance with its rules governing labor

arbitrations. Or the claimant may obtain a "Request for Arbitration" form from the Human Resources Department.

- Submit a copy of the "Request for Arbitration" form to BCBSM's Human Resources offices and AAA. Upon request, AAA will provide a copy of its rules governing labor arbitrations, or claimant may pick up a copy of the AAA rules at BCBSM's Human Resources offices.
- Specify in the Request for Arbitration: the factual basis on which the claim is made; the statutory provision or legal theory under which the claim is made; the nature and extent of any remedy or relief sought; the address of the claimant's attorney (The claimant is responsible for notifying AAA and BCBSM of a change of address during the proceeding.) NOTE: If the Request for Arbitration does not adequately specify these things, the arbitrator shall, upon request, direct that the claimant provide further detail.
- Ensure "Request for Arbitration" is made in writing and received by AAA within the time limitations identified in this policy. Failure to act within the required time will constitute a failure to exhaust the Arbitration Procedure and determined as an acceptance of BCBSM's termination decision with respect to any claim within the scope of the Arbitration Procedure.
- Shall attempt, along with BCBSM, to agree to pre-hearing discovery.
- Recognize that claimant is entitled to conduct two pre-hearing discoveries. Identify persons deemed relevant to claimant's case to participate in pre-hearings.
- Share administration costs charged by AAA equally with BCBSM.
- Entitled to representation by an attorney of claimant's choosing at claimant's expense. (An arbitrator may award counsel fees to claimant after an arbitration award in his or her favor if authorized by the statutory provision under which the claim is made.)

*Revised December 2000*

## EMPLOYEE COMPLAINT FORM

Employee Name:	ID#:
Job Title:	Pay Grade:
Department:	Office Telephone Number:
Supervisor:	Mail Code/Location:

**PLEASE ATTACH ADDITIONAL PAGES, IF NECESSARY, IN REPOSENSE TO THE STATEMENTS BELOW.**

Describe in detail and to the best of your ability the policy alleged to have been violated.
Describe in detail and to the best of your ability the factual basis on which your complaint is made.
Describe in detail the proposal for resolution of complaint.

Signature of employee	Date

For questions in regarding the Employee Complaint Policy, please click on link below.  
<http://blueslink.bcbsm.com/hr/policies/images/EmployeeComplaintPolicy.pdf>

## EMPLOYEE COMPLAINT POLICY

**SCOPE:** *All employees except as precluded by specific contracts or labor agreements.*

### GENERAL POLICY

The employee complaint procedure provides a review process for employees who believe the Employee Policies and Procedures of BCBSM have been applied in an unfair, arbitrary or inconsistent manner. It is intended to help employees resolve any and all issues at the most immediate level of leadership, to the extent possible.

*BCBSM, as an "at-will" Employer, reserves all legal and contractual rights to discipline or demote at any time for any reason with or without cause or notice. See Employment-at-Will Policy.*

### PRACTICES AND PROCEDURES

Employees who have complaints and/or concerns are encouraged to discuss the issue with their immediate leadership. If the matter remains unresolved, the employee should discuss with the next level leadership.

Employees may file complaints if their issue is not resolved after review with their leadership or if for some reason the employee is not able to discuss the issue with their leadership. The complaint process is initiated by the employee completing an Employee Complaint form and sending it to Human Resources within 10 working days after the incident that caused the complaint. The employee must include all relevant information on the Employee Complaint form and attach any supporting documentation. The employee should note on the Employee Complaint form the policy alleged to have been violated and the proposed resolution. The forms cannot be revised by the employee after they have been submitted unless new information becomes available. Group complaints and issues will be addressed and resolved on an individual basis. Each individual must submit a separate employee complaint.

Human Resources will determine the appropriate manner in which to handle the complaint based on its nature. This may include but not be limited to interviews with witnesses, discussions with leadership, proposals for resolution, meetings between leadership and the employee, etc. If appropriate, Human Resources may forward the complaint to the employee's immediate leadership and next level leadership for review and discussion. Leadership is required to provide any and all material related to the issue.

Once the complaint is received, a Human Resources representative will meet with the employee to discuss the complaint. The employee's leadership will be advised that the employee has filed a complaint. To the extent possible, the complaint process will be handled expeditiously and confidentially.

Human Resources will investigate the situation and write a report including recommendations about how to handle the situation. Depending on the nature of the complaint, recommendations may include discipline up to and including termination of any employee found to have violated corporate policy. The findings and recommendations are discussed with leadership. The report is confidential and will not be reproduced or released.

Human Resources will work with management on completing any action necessary to finalize the Employee Complaint. The employee will receive a written response related to his/her complaint.

There will be no retaliation against an employee for filing such a complaint. An employee who feels that they have been retaliated against for exercising their right to complain should immediately contact the Human Resources representative who handled his/her complaint.

If a bargaining-unit employee files a grievance on the same issue, Human Resources will review the nature of the issue and determine whether the complaint process should continue. The grievance will be handled pursuant to the Master Labor Agreement.

If an employee engages the assistance of legal counsel after filing a complaint, the complaint process may be terminated, and any responses thereafter made by the company will be through the Office of General Counsel.

## **RESPONSIBILITY**

### Leadership

- Attempt to resolve employee problems fairly, quickly and confidentially.
- Provide all necessary information relevant to the complaint.
- Review and discuss Human Resources' recommendations.
- Take appropriate action at the conclusion of the complaint process based on the recommendation.
- Maintain a fair, courteous and business-like relationship with the employee; do not give any reprisals due to the filing of the complaint.

### Human Resources

- Attempt to resolve complaints by providing investigation, policy interpretation, documentation, counsel and advice to management, as needed.
- Maintain confidentiality and fairness.
- Maintain the only permanent file of employee complaints.
- Consult with the Employee Relations Law section of the Office of the General Counsel as appropriate.

### Employee

- Provide all necessary information relevant to the complaint.
- Cooperate in all efforts to resolve the complaint.

*Revised December 2000*

<p><b>Gotta Have A Dream</b></p>
<p><b>W H A T</b></p> <p><b>W H Y</b></p> <p><b>H O W</b></p> <p><b>W H O</b></p>

<p><b>BCBSM's Dream Was To:</b></p>
<p><b>Minimize The Number</b></p> <p><b>Of Law Suits</b></p>



**BCBSM's Why:**

**Avoid Runaway Juries**

**Reduce Expenditure Of  
Resources**

**BCBSM's How:**

**Binding Arbitration  
On Terminations,  
With Burden Of Proof  
On Employee**

**BCBSM's How *(continued)*:**

**Internal Fact Finding By  
Human Resources On All  
Other Complaints**

**BCBSM's How *(continued)*:**

**Office Of The General Counsel  
and Human Resources Are  
Empowered To Cut Deals  
When Advisable**

**BCBSM's Who:**

**General Counsel Handles  
All Arbitrations**

**BCBSM's Who (*continued*):**

**Human Resources  
Provides Internal  
Fact Finding Service  
For All Other Complaints**

**Gotta Have A Dream**

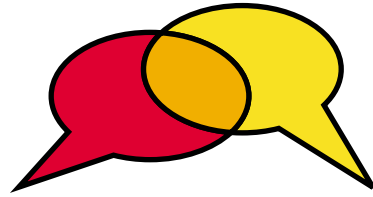
**“We Must Always Remember  
That This All Started  
With A Mouse.”**

*Walt Disney*

## **TERMS OF EMPLOYMENT**

I certify that the information contained in this application is correct to the best of my knowledge and understand that if I am employed and this information is found to be false, I will be subject to discharge. I authorize my former employers, educational institutions and references to give you any and all information, including records concerning my previous employment, and any pertinent information they may have, personal or otherwise, and release all parties from all damage that may result from furnishing that information. I agree to submit to a physical exam or other medical testing if requested by the Company either after a conditional offer of employment has been made or during my employment. I understand that the contract of employment I have with the Company is at will, namely either party, the Company or myself, may end the employment at any time, with or without a reason, or with or without notice of cause. This contract is made in consideration for employment and is not entered into any specific period of time, further, it is an agreement wherein, I agree to conform to the rules and policies of Blue Cross Blue Shield of Michigan, including their prohibitions against non-disclosure of confidential information, and prohibitions against conflict of interest. I understand that this contract cannot be changed by any oral statement or any other promise or assurance of any employee of the Company other than one made in writing from the President and Chief Executive Officer of the Company or the Sr. Vice President and Chief Administrative Officer. I understand and agree that, if I am employed in a non-bargaining unit position, any termination related claims I have, of any nature, will be decided on an exclusive, final, and binding basis under the Blue Cross Blue Shield of Michigan Arbitration Procedure for Non-Bargaining Unit Employees. The Arbitration Procedure and proceedings thereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq., as well as the Michigan Arbitration Act, 27 MSA §5001 et. seq. I understand that in the event I receive overpayments for expenses, wages, or any other compensation, that the Company has all the rights of any Creditor and may withhold from my earned wages the amount due to repay any such debt.

*Coca-Cola Enterprises Inc.*



**SOLUTIONS**

Working Together To Work It Out

## SOLUTIONS: “WORKING TOGETHER TO WORK IT OUT”

**C**oca-Cola Enterprises recognizes the importance of putting people first, which is why a group of employees across our Company worked together to create Solutions. It will assist us in our journey to make our Company an even better place to work.

### WHAT IS SOLUTIONS?

Solutions is a program that offers a range of ways for us to work through our workplace conflicts. From a simple misunderstanding to a violation of rights, we can put Solutions to work on our behalf. For more information, refer to the Solutions Summary Program Description.

### WHY DOES SOLUTIONS EXIST?

Workplace disagreements happen. But if they aren't handled well, these disagreements can create an unpleasant work environment for the individuals involved. Solutions helps us find constructive answers that encourage a positive atmosphere and improved relationships.

### HOW DOES SOLUTIONS IMPROVE OUR LIVES?

- It trains us to communicate more effectively.
- It catches issues early – the best time to work things out.
- It supports us in sharing our thoughts and ideas.
- It includes a policy prohibiting retaliation.
- It offers the Ombuds Office as a confidential resource.
- It includes a legal benefit reimbursing employees for certain expenses.
- It offers a variety of options for handling all types of conflict.
- It gives us flexibility to choose among those options.
- It helps our Company continue to become an even better place to work.

### OUR MUTUAL COMMITMENT.

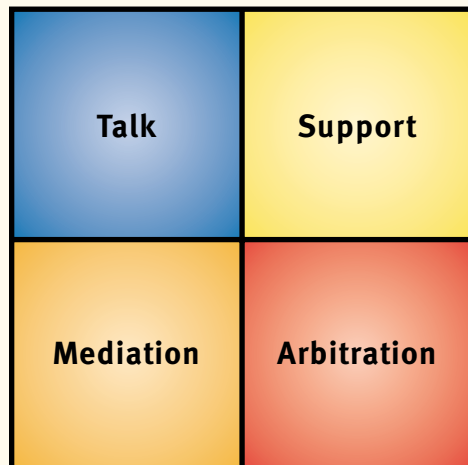
Solutions gives us the tools we need to resolve our conflicts while preserving and respecting our rights under the law. Therefore, the Company has adopted Solutions as the exclusive means of resolving workplace conflicts. This means the Company and all employees who accept or continue employment with the Company agree to resolve all legal claims against the Company or an employee through Solutions rather than through court.

With Solutions, we are “working together to work it out.” When that happens, we all win.

## **SOLUTIONS: OPTIONS FOR HANDLING CONFLICT**

Solutions provides the following options:

- Talk
- Support
- Mediation
- Arbitration



### **TALK**

Talk allows us to resolve problems early, when and where they occur. We all experience problems from time to time in our daily lives at work. Sometimes the problems are small annoyances and sometimes they are life-changing events. Through training and ongoing support, Talk encourages us to use skills such as communication, active listening, and creative thinking.

#### **Advantages of Talk:**

- **Informal, direct, and inexpensive way to resolve issues early**
- **Encourages an open environment**



## **SUPPORT**

Support offers us resources to resolve conflict. By using these resources, we can get assistance in using Solutions and resolving conflict. We can use any of the following resources:

### **HUMAN RESOURCES (“HR”)**

Local HR professionals are trained to assist us with workplace concerns.

### **MANAGEMENT**

Managers may be good resources because they know our work situations and others who may be involved. The Company has an open door policy allowing us to bring any problem or complaint to any level of management.

### **OFFICE OF THE OMBUDS**

The Ombuds are skilled conflict resolution professionals who are confidential, neutral, and independent. The Ombuds can be reached at 888-272-COKE (2653) and may help in many ways—to listen, to coach, and to act as a go-between.

### **EMPLOYEE HOTLINE**

We can call the Company's Employee Hotline at 800-437-0054, to report violations of Company policy, or acts or practices that are unethical or illegal. Most divisions also offer a hotline, connecting us directly with the division general manager.

### **EMPLOYEE ASSISTANCE PROGRAM (“EAP”)**

The EAP, which can be used by calling 800-793-4162, offers confidential counseling to work through personal challenges.

#### **Advantages of Support:**

- Easily arranged
- Works with existing people and processes
- Can result in quick resolutions

## **MEDIATION**

Mediation is an informal and flexible process in which a trained mediator will meet with the individuals involved in conflict to help them reach their own agreement. In Solutions, there are two kinds of mediation: internal and external. Internal mediation is for any type of conflict and uses a fellow employee as the internal mediator. External mediation, which uses an outside mediator, is only for disputes involving legally protected rights or potential violations of law.

### **Advantages of Mediation:**

- Flexible and often yields 'win-win' results
- Fair and impartial
- Preserves and helps repair relationships
- Fosters open communication

## **ARBITRATION**

Arbitration is a process in which people explain their disputes involving legally protected rights or potential violations of law to a trained arbitrator, usually an attorney or a judge. After hearing from both sides, the arbitrator will make a final and legally binding decision to resolve the conflict. Arbitration is like a courtroom trial, but it is not as formal and takes less time than court. All substantive rights and remedies available in court are also available in arbitration. Again, under Solutions, all unresolved disputes involving legally protected rights or potential violations of law will be resolved through arbitration rather than court.

### **Advantages of Arbitration:**

- Fair and impartial
- Quicker than court
- Provides same remedies as a court
- Private
- Less costly

## **Q&A**

### **Why are we introducing Solutions?**

Results from employee surveys and discussions across the Company made it clear that we needed a new approach for handling conflict. Solutions helps us deal with conflict so we have a work environment where each of us feels like a valued and respected member of the team.

### **How does Solutions fit in with Putting Our People First?**

The principles of Putting Our People First guided the development of Solutions. Note the similarities between the Putting Our People First principles and the Solutions mission:

#### **Putting Our People First Principles**

- being honest, open, and fair
- listening, learning, and valuing
- recognizing and rewarding
- embracing diversity
- having zero tolerance for discrimination and retaliation

#### **Solutions Mission**

- equip employees with skills to communicate effectively
- address conflict as early as possible
- provide an effective approach for handling conflict
- welcome employee suggestions and feedback
- track trends of conflict and solicit feedback

### **How was Solutions developed?**

Solutions was developed by and for employees of all levels in divisions throughout the Company. From the feedback, guidance, and hard work of these employees, Solutions emerged as the way to address the types of conflicts we experience.

### **What types of conflicts should I bring to Solutions?**

Solutions helps resolve a variety of workplace conflicts ranging from a simple disagreement to a potential violation of the law. Examples may include a personality conflict with a co-worker, a lost opportunity for promotion, a suspicion of discrimination, or a concern about sexual harassment.

### **Does Solutions replace the Company's open door policy?**

No. This policy remains in place and is an important part of the Support option in Solutions. Our open door policy encourages all members of management to make themselves available to discuss conflicts and concerns.

### **Can I be fired, demoted, denied a promotion, or otherwise retaliated against for using Solutions?**

No. Solutions includes a strict policy against retaliation. If you feel that you are experiencing retaliation for using any option in Solutions, you should report your concern to Human Resources, the Ombuds, the Employee Hotline, or your division GM's hotline.

### **Am I considered a bad manager if my employees use Solutions?**

No. Solutions is built on the premise that conflict is inevitable and that dealing effectively with conflict leads to a more satisfying and productive work environment. You and your employees are encouraged to use Solutions to resolve your conflicts. Encouraging use of Solutions is a sign of a supportive manager.

**What is the difference between Mediation and Arbitration?**

In mediation, people in conflict sit down with a neutral third party, a mediator, to discuss the situation and to try to reach their own agreement to resolve their conflict. In arbitration, people in conflict tell their sides of the story to an arbitrator, who makes a final and binding decision to resolve their dispute. Mediation is a discussion that is assisted by a person not involved in the dispute. Arbitration is more like a trial, with the arbitrator acting like a judge. If you use one of these options, you and the other people involved will select the mediator or arbitrator.

**What can the Ombuds do?**

An Ombuds is a trained professional who provides independent, confidential, and neutral assistance. The Ombuds can assist you by listening, coaching you to handle the situation yourself, acting as a go-between, helping you to identify and review your options, or gathering information. An Ombuds can also help by opening doors to other resources or by referring you to other options in Solutions. To contact the Ombuds, call 888-272-COKE.

**How does the legal benefit work?**

While you're working through options in Solutions, you may want some advice or counsel from an attorney of your choice. The legal benefit reimburses you for up to \$1,000 of legal expenses annually to pay an attorney to work through issues in Solutions. To use this benefit, you pay a \$50 deductible and have 10% co-payment. This benefit ensures that Solutions is always fair, impartial, and respectful of your rights.

Example:

Your attorney's fee .....	\$650
Your deductible .....	<u>-\$50</u>
	\$600
Your 10% co-payment .....	<u>-\$60</u>
Your reimbursement .....	\$540

**What does it mean that Solutions is the exclusive means for resolving workplace conflicts?**

**It means that workplace conflicts will be addressed and resolved only through Solutions. Disputes which are not resolved in Talk, Support or Mediation will be finally solved in Arbitration rather than in court. If an employee files a lawsuit against the Company, the Company will ask the court to dismiss the lawsuit and refer it back to Solutions.**

**As an employee working under a bargaining agreement, can I use Solutions?**

Yes and no. Options such as Talk and Support are available to you. However, some of the options in Solutions may conflict with the grievance procedures outlined in your collective bargaining agreement. In that case, the collective bargaining agreement controls. If you have any questions, please contact your bargaining unit or Human Resources representative.

**For more information**

For more information concerning the Solutions program, contact your local Human Resources representative or:

Coca-Cola Enterprises Inc.  
 Solutions Program Director  
 PO Box 723040  
 Atlanta, GA 31139-0040  
 phone: 800-334-1067  
 fax: 770-989-3619

# Overview: Managing Employment Disputes

F. Peter Phillips

CPR Institute for Dispute Resolution

**American Corporate Counsel Association**

October 9, 2003

## Overview

- ◆ Methodology of Corporate Study
- ◆ Measuring Success (Objectives)
- ◆ Features of Design
- ◆ Implementation
- ◆ Special Considerations
- ◆ Empirical Results and Trends

## Methodology

- ◆ Twenty Companies' Programs
- ◆ Review of Program Descriptions (I.e., Booklets)
- ◆ Interviews With 6 Designers/  
Administrators

## Stated Goals of Programs

- ◆ Reduce Litigation Cost
  - ◆ Compliance (With Settlement or Law)
  - ◆ Create Managerial Certainty
  - ◆ Create Competitive Employee Benefit
  - ◆ Reduce Turnover and Disruption
  - ◆ Increase Morale, Loyalty and Productivity
- ...**NOT** "AVOID JURIES"

## Measuring Success

- ◆ Cycle Time
  - ◆ Management Time
  - ◆ Legal Costs
  - ◆ Rate of Formal Claims
  - ◆ Employee Turnover
  - ◆ Utilization/Participant Satisfaction
  - ◆ Trends toward Early Resolution
- ... **NOT** "NUMBER OF WINS"

## Design Features

- ◆ Three-Step Program (Philip Morris, Anheuser-Busch, Credit Suisse First Boston)
  - ☞ Management/HR Review
  - ☞ Non-Binding Mediation
  - ☞ Final and Binding Arbitration

## Modified Three-Step Programs

- ◆ **Johnson & Johnson:** "Open Door," "Facilitation," "Mediation"
- ◆ **CIGNA:** Manager, Higher Management, Peer Review (binding on Company), Arbitration
- ◆ **GE:** Informal Problem-Solving with HR/Ombuds, Written Submission/Response, Formal Higher Management Meeting, Mediation, Arbitration
- ◆ **Halliburton:** Open Door, Internal Conference (Ombuds/Management), Mediation, Arbitration (No Required Sequence)

## Design Choices

- ◆ Pre-Dispute or Post-Dispute?
- ◆ Arbitration: Binding on Both?
- ◆ Arbitration: Mandatory?
- ◆ Mediation: Mandatory? Internal or External?
- ◆ What Incentive to Usage?



## Deciding Whether to Require Waiver of Legal Rights

- ◆ **Shell:** Mediation is a condition of employment; Arbitration is optional. "The intent is not to take away any rights but to provide the parties every opportunity and incentive to resolve problems without costly and disruptive litigation."
- ◆ **Johnson & Johnson:** No arbitration (if mediation fails, "you are free to pursue legal action on court")
- ◆ **Texaco:** Arbitration binding at employee's option ("if you are not satisfied with the arbitrator's decision and you reject that decision, you are free to pursue the matter through other legal avenues.")

## U.S. Postal Service: REDRESS

- ◆ Unionized Work Force
- ◆ Immediate Mediation of EEO (i.e., non-grievance) Claims
- ◆ "Transformative Mediation"
  - Resolve the relationship, not the dispute
  - Create ongoing process to improve the workplace
  - Train supervisors to be skilled in managing the working relationships through iterative mediations

## Other Design Decisions

- ◆ Scope of Participants
- ◆ Scope of Claims
  - Exclusions: ERISA, Workers' Comp, NRLA, FLSA
  - "Legally Cognizable Remedies"
  - Distinguish Pre- and Post-Mediation Stages
- ◆ Cost
  - Cost of Mediators/Arbitrators
  - Attorney Fees
- ◆ Range of Available Remedies

## Implementation

- ◆ Upper Management Support (Air Force, Halliburton, Philip Morris)
- ◆ The Challenge of Consensus-Building
  - Middle Management
  - HR
  - Rank & File
  - Immediate Supervisors
- ◆ Using Converts in the Roll-Out

## Special Considerations

- ◆ EEOC, *Waffle House*
- ◆ Class Actions
- ◆ Informed Consent
- ◆ Trust

## Empirical Results and Trends

- ◆ Few Mediations
- ◆ **Very** Few (<1%) Arbitrations
- ◆ Identifying Neutrals
- ◆ Employee Skepticism/Retaliation
- ◆ Management Participation
- ◆ HR/Legal
- ◆ Proactive/Reactive
- ◆ **Interests, Not Rights**

## STEP-BY-STEP MAINSTREAMING GUIDE

This guide enumerates the steps a Company must take to systematize ADR use in employment disputes. It addresses the options to consider in structuring the program and the steps to alert, sensitize and encourage all employees to use the processes. A Company should use the guide to select overall ADR options and foster routine use of the Employment Dispute Program that has been selected.

### Step 1. Does the Employment Litigation Docket Warrant ADR Consideration?

Analyze the Company's employment disputes experience to assess the potential to reduce costs and realize the other benefits of ADR. Assess direct and indirect costs of employment disputes:

- number of cases and venue (e.g., court, administrative agency)
- types of claims asserted (e.g., discrimination, defamation)
- damage claims asserted
- percentage of cases settled, tried to judgment, dismissed or appealed
- percentage of cases won and lost
- type of judgments awarded
- money damage amounts
- reinstatement
- compensatory damages
- punitive damages
- settlement amounts and point at which settlement occurred in the resolution process
- defense and court costs
- in-house attorney and management time involved

### Step 2. Design Option: Will the Company Employ Mediation?

- (a) What pre-Mediation steps will be designed in order to identify and resolve problems before they mature into disputes?
- (b) Will the Mediation Component Be Adopted?
  - i. Will the Company employ mediation on a voluntary basis that enables both employer and employee to agree to use the process on a case-by-case basis when a dispute arises?
  - ii. Will the Company adopt a mediation procedure? If so, which one?
- (c) Mediation: What Disputes Are Likely to Be Included and Excluded?
  - i. What dispute categories would be listed in a Company policy statement as potentially subject to mediation to demonstrate the Company's interest in using mediation? Categories include:
    - all employment claims
    - only termination claims
    - claims above a threshold amount of asserted damages
    - status, wages, bonuses and compensation only
    - statutorily regulated claims (e.g., discrimination via sex, race, age, disability, etc.)
    - constitutional claims
    - common law claims

- defamation claims
  - contractual claims
  - employer's counterclaims against an employee
  - other
- ii. What claims would be excluded in the Company policy statement on mediation? Categories include:
- claims under a modest threshold amount
  - worker's compensation
  - unemployment insurance
  - breach of restrictive covenants re: confidentiality and non-compete clauses
  - trade-secret disputes
  - intellectual property or misappropriation
- (d) What Start-up Date Will Apply to Mediation Program?
- for new hires
  - for existing employees
- (e) Mediation: What Non-Union Employees Will Be Covered?
- all current employees
  - employees terminated by the Company who assert a claim
  - new hires after a start-up date
  - specified categories of new or existing employees
  - executives
  - managers
  - employees at specific geographic locations
  - employees entitled to specified benefits only (e.g., stock option plan)
  - employees above specified compensation levels
  - employees at subsidiaries
- (f) Mediation: What Type of Employee Submission Agreement Will Be Required When Disputes Arise?

In a voluntary mediation program that employees opt to use when a dispute arises, what type of information should be contained in the submission agreement when the employee decides to use mediation:

- employee voluntarily agrees to use mediation regarding (specify claim)
- 
- employee specifies the claim and damages sought
  - employee has received, read and understood the mediation procedures and agrees to use, except as expressly modified by the parties
  - employee had opportunity to discuss the procedure with counsel or representative of employee's choice
  - employee specifies the name of any representative
  - the name of the impartial party-selected mediator is included
  - the employee understands the costs to the employee to use mediation (see Step 4 below)
  - signed by employee, employer and any representatives

### **Step 3. Design Option: Will the Company Employ Arbitration?**

- (a) Will an Arbitration Component Be Adopted?
- Will the Company adopt an arbitration procedure? If so, which one?
- (b) Will Arbitration Be Voluntary or Mandatory or a Combination thereof?

- voluntary for employer & employee at time dispute arises
  - mandatory for employer & employee
  - mandatory for employer & employee, but employee not bound by result
- (c) Arbitration: What Claims Are Likely to Be Included and Excluded?
- In a voluntary program, what disputes will be listed in the Company policy statement or employee memorandum as likely to be included or excluded?
- (d) Arbitration: What Non-Union Employees Will Be Covered? (See Step 2(d) above.)
- (e) Mandatory Arbitration: Will a Pre-Dispute Agreement to Use Arbitration Be Employed?
- i. If arbitration will be used on a mandatory basis, will employees be asked to sign a pre-dispute agreement to use the process? Pre-dispute agreements generally require that, in exchange for continued employment, and/or for other consideration, employees will use the program as an exclusive remedy to resolve disputes.
  - ii. Will the Company merely impose the program by including it in a personnel manual or policy statement disseminated to all employees:
    - with an employee memo explaining the program
    - with an affidavit of service signed by the person who distributes the memo
    - with signed acknowledgment of receipt by the employee
  - iii. Will new hires be requested to sign agreements to use the process?
- (f) Mandatory Arbitration: What Legal Consideration, if Any, Will Be Required?
- i. In a mandatory arbitration program, an employee's pre-dispute agreement to use arbitration should recite any required consideration. The legal department should determine whether applicable law requires any particular consideration to assure enforcement. If good, valuable and separate consideration ("sufficient consideration") is legally required to forego rights to judicial litigation, what will suffice:
    - new employment
    - continuation of present at will employment immediately after program adoption
    - continuation of present at will employment for a specified time period subsequent to program adoption
    - provision of salary increase, bonus or participation in incentive program expressly linked to application of arbitration program
  - ii. To assure employee acceptance, should the employer provide consideration when it is not required by law?
- (g) Voluntary Arbitration: What Type of Employee Submission Agreement Will Be Required When Arbitration Is Sought (either after unsuccessful mediation or without any mediation step)? In a voluntary arbitration program that employees and the employer opts to use when a dispute erupts, what type of statement will be required from the employee:
- employee voluntarily agrees to use arbitration as exclusive remedy for a dispute regarding (specify dispute) \_\_\_\_\_
  - employee has received, read and understood the arbitration procedures and agrees to their use except as expressly modified by the parties
  - employee had opportunity to discuss the procedure with counsel or representative of the employee's choice

- employee specifies claim and damages
- employee understands agreement is a waiver of statutory or other rights to seek a judicial remedy or governmental administrative agency remedy unless that right is expressly preserved by law
- the name of the arbitrator, if selected
- the employee understands the costs to the employee to use arbitration.

(See Step 4 below.)

(h) What Start-up Date Will Apply to Arbitration Program?

- for new hires
- for existing employees
- In a mandatory program:
  - 90 days after receipt of notice of program for existing employees
  - on receipt of notice of program for new hires

#### **Step 4. Will the Company Use Incentives to Encourage Employee Use?**

- i. What initial filing cost?
- ii. What treatment of mediator/arbitrator cost?
- iii. What treatment of salary during proceedings?
- iv. What encouragement/discouragement re: legal representation?

#### **Step 5. Will a Pilot Program Be Used to Test ADR Use?**

Some companies have successfully utilized pilot programs at a certain location or for a class of employees or disputes to test the ADR options before broader adoption.

Determine whether a pilot program will be used.

- i. If so, determine:
  - which disputes will be submitted
  - which employees will be subject:
    - employees at certain locations
    - a class of employees
    - duration of pilot
- ii. If so, determine criteria to track results (See Step 13 below.)

#### **Step 6. Will the Company Involve Constituents in Design?**

Will the Company involve constituents who will use the program in planning program options to encourage ownership and tailoring to Company culture such as:

- Human Resources
- counsel
- managers
- employees
- ombuds
- others

If so, prepare presentations to explain rationale, process benefits, drawbacks, options and constituent concerns.

#### **Step 7. Who Must Approve and Finalize Program?**

- CEO
- Senior Management
- General Counsel
- Human Resources

### **Step 8. Will the Company Appoint an Employment Program ADR Point Person or ADR Counsel?**

Will Company appoint a high-level manager/director to oversee and direct the ADR program:

- to develop Company policies, procedures, forms and information booklets
- to communicate policies and explain program in-house and externally
- to articulate guidelines for use in voluntary programs
- to plan and conduct training for employees about the program
- to provide information and counsel to users
- to recommend Company incentives to encourage use
- to track and monitor results
- to consider changes in Company practices to discourage disputes
- to develop ADR clauses for insertion in hiring agreements

### **Step 9. Will the Company Promulgate a Company Policy Statement on Employment Disputes ADR?**

Company Policy Statements on ADR serve to alert management employees to a Company's serious commitment to employ ADR in the disputes specified.

(a) Will Company Issue a Company Policy Statement about the Adoption of the ADR Program?

(b) To Whom Will the Company Distribute the Company Policy Statement on Mediation and Arbitration:

- all executives
- all managerial personnel
- all Human Resources personnel
- all in-house counsel
- all employees
- opposing counsel when needed.

(c) Will the Policy Statement Be Included in New Hire Materials?

### **Step 10. Will the Company Distribute an Employee Memo to Explain the Program?**

An employee memo sets forth the selected program options in lay terms including employee obligations.

(a) If a Memo Will Be Used, It Should Explain the Program Clearly to Employees, including:

- the ADR processes selected for the program (e.g., mediation, and/or arbitration (voluntary or mandatory))
- reasons for program and benefits
- summary of ADR processes and steps
- start date of program
- disputes covered and excluded
- costs to employee for each process
- right to counsel or other representative
- person/department to contact to initiate an ADR process or for additional information
- period of time after dispute arises to start an ADR process
- rights that are waived by use of arbitration, if the arbitration option is



adopted

- impact on pending or contemplated litigation or agency investigation via use of mediation or use of arbitration and any exceptions to arbitration finality preserved by law or statutory rights

(b) How Will the Company Circulate This Employee Memo?

- distribute to all current employees including executives and managers
- incorporate in relevant new hiring material
- insert in Company Personnel Manual
- alert attorneys to program

(c) Will Pre-Dispute Agreements to Use Arbitration Be Included in Memo?

If advance pre-dispute employee agreements to use mandatory arbitration will be used, will they be circulated for signature along with copies of the Employee Memo?

- will the Company employee in charge of distribution execute an affidavit of mailing to each affected employee?
- will employees be asked to sign a receipt?
- will employees be afforded \_\_\_ days to return the signed agreement? (CPR recommends 5 days.)

### **Step 11. Will the Company Engage in an Education Effort to Inform Employees about the Program?**

- distribute company-wide Memorandum to Employees
- conduct seminars for managers, counsel, etc.
- create a video for repetitive use
- provide opportunities to discuss program with Human Resources
- distribute information to management employees regarding program success, with statistics on use, cost-savings and time saving (but maintain case confidentiality)

### **Step 12. What Implementation Steps Will Be Used For Each Dispute?**

CPR has created checklists for implementing a mediation or an arbitration process when a particular dispute arises.

### **Step 13. Will the Company Evaluate Program Use?**

Refinement and sharpening of the program should be expected. To properly evaluate, consider use of a computerized system to track cases and analyze results.

(a) What Criteria Will Be Used to Track Results?

- number of cases eligible for mediation or arbitration
- number of employees who opted for voluntary mediation or arbitration
- number of cases submitted to mediation or arbitration
- number of cases settled in mediation
- duration of mediation sessions
- costs of mediation sessions
- parties' level of satisfaction with mediation

(b) What Worked and Did Not?

(c) Evaluate Neutrals Used and Sources Providing Neutrals.

(d) Refine Program.