**MEDIATION AS THE OPTIMAL METHOD FOR RESOLVING LABOR DISPUTES**

# **What is Mediation?**

Mediation is an alternative, out-of-court dispute resolution aimed at amicably resolving the dispute with the help of an impartial third person, a mediator. Key features of mediation include voluntariness, cooperation, flexibility, confidentiality, speed, and cost-effectiveness. It is a versatile method suitable for resolving disputes and disagreements of almost any nature and complexity.

# **Labor Disputes and Mediation**

Labor disputes typically arise from disagreements between employees and employers. These disputes can involve issues such as delayed or unpaid wages, denial of vacation time, recalling an employee from vacation recalling an employee from leave in violation of established procedures, firing the employee or improper performance of duties by the employee.

Given the characteristics of employment relationships, mediation emerges as the best method for resolving disputes in this area. Judicial practice also showcases that mediation is the most effective method for resolving labor disputes.

# **Arbitration and Mediation Center of Armenia**

Let us briefly examine the process for resolving workplace disputes through mediation under the rules of the Arbitration and Mediation Center of Armenia (the “AMCA”).

Consider an example where an employer has imposed a disciplinary measure on an employee. The employee requests that the penalty be lifted, but the employer refuses. When the parties fail to resolve the disagreement, it legally becomes a labor dispute once one applies to a competent authority to resolve the issue.

In this scenario, one of the disputing parties may propose submitting the dispute to the AMCA by sending a written inquiry. If there is a prior mediation agreement between the parties to settle the dispute through mediation at the AMCA, the mediation process is initiated upon the submission of a written request to the AMCA by one or both parties.

Subsequently, the parties to the mediation may nominate a mutually acceptable mediator. In case of no nomination of a joint candidate for a mediator, the AMCA presents to the parties a list of potential mediators for the given case.

After their approval by the AMCA, the mediator, following consultations with the parties to mediation, schedules the first mediation session. Normally, it is during this meeting that the parties resolve their dispute by reaching a settlement agreement.

The advantages of mediation in the effective resolution of labor disputes become particularly evident when compared to court proceedings.

# **Maintaining Relationships**

In litigation, the primary objective for disputing parties is to substantiate their claims and secure a favorable ruling. Unlike litigation, the purpose of mediation is not to favor or dismiss one party's claim over the other's, but rather to achieve an amicable resolution of disputes. This allows the parties to resolve their differences in a cooperative and compromising atmosphere, avoiding tensions at the workplace.

The public nature of court proceedings can further strain relationships between parties. In contrast, mediation offers confidentiality, which helps to prevent additional strain on these relationships.

# **Flexibility and Participation**

Mediation is highly flexible, allowing parties to develop their own methods for resolving disputes and maintaining substantial control throughout the process. Unlike litigation, parties can tailor mediation to fit their schedules and the unique circumstances of their case.

Under Article 16(1) of the Mediation Rules of the Center (“[Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)”), the mediator and the parties to the mediation are free to decide the preferable format and procedure for the conduct of the mediation.

Moreover, under Article 17(2) of the Rules, with the agreement of the parties to the mediation and the mediator, the mediation or a part of it may be conducted online.

The informal procedures of mediation are another significant characteristic, allowing parties to choose the location, timing, and format of meetings, enabling them to freely express their positions—an option not available in formal trials. Ultimately, through active participation in the entire process, parties develop a sense of ownership and involvement, making them more willing to adhere to the agreements and settlement terms they have reached.

In mediation, the parties choose their own mediator. Through this important feature, parties get to select a specialist they trust based on their professional skills and experience.

# **Confidentiality**

Confidentiality is fundamental to mediation. Unlike litigation, mediation is a private process, and any information related to it pertains solely to the parties involved in the mediation.

Under Article 24(1) of the Rules,mediation is a private and confidential process. The parties to mediation, the mediator, the AMCA and other persons engaged in mediation shall in all cases maintain the confidentiality of any information related to the entire mediation process. Under Article 24(2), any information disclosed during mediation, including documents, communications, correspondence, position expressed by a party, proposal or statement made, including that the latter is ready to accept any proposal for mediation, or acceptance (recognition) of any fact, any position expressed or recommendation made by the mediator may not be used as evidence or in any way affect the rights of the parties to mediation in any subsequent arbitration, litigation or other dispute resolution proceeding, except as required by applicable law or as otherwise agreed by the parties.

In labor disputes, confidentiality is crucial because disclosing the disagreement between an employer and employee(s) can harm both the employee's performance and the organization.

# **Cost Efficiency and Experience**

Litigation is often lengthy and stressful, as evidenced by court practice in labor dispute cases. Labor disputes are typically reviewed and resolved in the first instance court of general jurisdiction within three months of accepting the claim. However, various factors can lead to significant delays in the process. For instance, the court may return the claim, and court decisions and judgments are subject to appeal, further extending the re-examination process (for instance, refer to cases [here](https://datalex.am/?app=AppCaseSearch&case_id=33495522228676070) and [here](https://datalex.am/?app=AppCaseSearch&case_id=49258120924415045)). As a result, the resolution of disputes inevitably takes a longer time.

At any rate, even the prescribed three-month period is significantly longer than the mediation process, which can be over in just a week, with mediation sessions typically lasting around four hours on average.

The duration of the labor dispute resolution process directly impacts the outcome and costs. For instance, in one case, the court ordered the respondent to compensate the claimant as follows:

1. Payment of the average salary for the entire period of forced layoff, from September 8, 2023, until the legal entry into force of the judgment on April 1, 2024 (6 months and 24 days), to be determined based on case-specific details.
2. Payment of a reasonable attorney’s fee amounting to AMD 200,000.
3. Payment of a state duty of AMD 20,000.

It is crucial to emphasize that the longer the court proceedings last, the greater the duration of forced downtime and its associated financial impact.

# **Enforcement of the Settlement Agreement**

Typically, the parties voluntarily follow the settlement agreements reached through mediation. However, each party involved in the mediation has the right, within six months of signing the agreement, to request court approval of the settlement agreement from the court in their place of residence.

Thus, the parties involved in mediation can formalize their settlement agreement to make it legally binding.

# **The Mediation Process at the AMCA**

Mediation at the AMCA can be initiated both in the case of the existence of a prior mediation agreement between the parties to refer the dispute to the AMCA, and in the absence of such an agreement (Article 4(1) of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)).

The parties to mediation may nominate a mutually acceptable mediator for the AMCA’s approval, indicating that in their written request or inquiry for mediation (Article 9(1) of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)).

In the event that the parties reach an agreement to refer their dispute to the AMCAr, the starting date of the mediation at the AMCA shall be considered the day when the Secretariat sends a written confirmation to the parties that such an agreement has been reached, simultaneously providing the mediation budget and other required documents (Article 6(2) of the [Rules).](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

[The first session of mediation shall be scheduled as soon as possible after the approval/appointment of the mediator by the AMCA, but not later than within ten days (Article 19(1) of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)).](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

[The administration of each case of mediation, including the communication, is carried out by the Secretariat. The Mediation case manager ensures the proper and timely implementation of the case administration (Article 21(1) of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)).](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

[In the case of terminating the mediation process amicably, an agreement is signed between the parties to amicably settle the dispute. At the request of the parties to mediation, the AMCA may provide the parties with an opinion on the settlement agreement. In addition to the parties, the settlement agreement concluded as a result of the mediation process is also signed by the mediator, noting that the agreement has been concluded as a result of mediation (Article 23 of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)).](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

# **[Conclusion](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)**

[Mediation allows parties to comprehensively address underlying issues, leading to stable and lasting resolutions. It offers systematic and flexible approaches to settling labor disputes. Judicial practice further confirms that mediation is the most effective method for resolving labor disputes.](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

# **[Appendix](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)**

[The following amounts serve as a guideline for the calculation of costs and fees related to mediation](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

* 1. [Mediation administrative fee - AMD 70,000 (including taxes and other mandatory fees defined by law);](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)
  2. [Mediator(s)’s remuneration - AMD 150,000 for a mediation lasting up to four hours, after which an hourly rate of AMD 50,000 shall apply (excluding taxes and other mandatory fees under the law) (Article 3 of the [Rules](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf))](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)

[This tariff serves as a guideline, and the AMCA can apply reduced fees depending on the nature, complexity, and other relevant circumstances of the mediation case.](https://amca.am/wp-content/uploads/2024/01/Mediation-Rules-English.pdf)