## Index

#### **AGREEMENT TO MEDIATE, 60-61, 67-69, 40**

## ATTENDANCE

corporate representative, 95-96 family, 84-85 proper parties, 102

## CAUCUS

session, 129-30

## CHECKLISTS

client, preparation of, 86 process, 135-36 setting up mediation, 65 workplace dispute policy, development of, 45-48

#### CLIENT

corporate representative, 95-97 emotions of, 85-86, 97-98, 103 explaining mediation process to, 74-75 involvement of, 78-79 legal fees, 77 mediation fees, 77-78 multiple parties, 164-66 preparation for mediation, 79-86 case studies, 87-90 checklist, 86 private sessions, involvement in, 78-79 representation, whether client requires, 75-77

#### **CO-MEDIATION**

acrimonious situation, 166 generally, 132 multiple parties, 164-66

## **COMPROMISE MEDIATION, 3**

#### CONFIDENTIALITY

facts, of, 94 human rights mediation, of, 159 result, of, 16

# **CONFLICT OF INTEREST** mediator, 54

#### **CONSTRUCTIVE DISMISSAL, 37-38**

#### COUNSEL

caucuses, preparation for, 99 circumstances where involvement preferred, 40 ethical issues, 104-106 negotiation strategies, 99-101 opening statement, preparation of, 97-98 private sessions, preparation for, 99 professional issues, 104-106 role of coach, 92 communicator, 92 educator, 93 protector, 93 strategist, 92 skills, 91-92

## **DEMAND LETTER, 155**

#### DISABILITY

awards court, 150 mediated, 150-51 generally, 10-11 human rights issues, 34-35 medical documentation, production of, 95 multiple parties, 165 termination of employment, allegations made subsequent to, 43-44

#### DISCLOSURE

documents, of, 94 facts and evidence, of, 102

## DISCRIMINATION

claims of, 5 co-mediation, use of when discrimination alleged, 133 presentation of case, order of, 116 public-interest considerations, 163-64 shuttle mediation, use of when discrimination alleged, 130 termination of employment, allegations made subsequent to, 43

#### **EMPLOYMENT RELATIONSHIP**

disciplinary measures, 30-32 employment contracts, 9, 39 letter from employee to employer, 66 performance issues, 30-32 workplace dispute policy, 27-30, 45-48, 57 workplace disputes, resolution of, 16, 26-27, 152-53

## **EVALUATIVE MEDIATION**

acrimonious situation, 166 counsel, role of, 92 definition of, 4 issues, exploration of, 118-19 judicial mediation, as component of, 128-29 mediator choice of, 52 role of, 61-63

#### EVIDENCE

third party statements, 98

#### FACILITATIVE MEDIATION

acrimonious situation, 166 counsel, role of, 92 definition of, 2, 3 issues, exploration of, 118-19 mediator, role of, 61-63 use of in employment disputes, 11, 12

#### HARASSMENT

generally, 11, 43 policy, 37 sexual. *See* SEXUAL HARASSMENT

## HUMAN RIGHTS

complaint, 159-61 considerations, 10 damages, 152 disability. *See* DISABILITY discrimination. *See* DISCRIMINATION harassment. *See* HARASSMENT mediation process, 159-61 setting up of, 58 mediator, experience of in human rights dispute, 52 pregnancy-related issues, 35-36 resolution of human rights dispute, 152 remedies, 152 sexual harassment. *See* SEXUAL HARASSMENT

## HYBRID MEDIATION, 131-32

## **INFORMAL MEDIATION**

selection process, 57 setting up, 57 use of, 31

## JUDICIAL MEDIATION, 128-29

#### MANDATORY MEDIATION

advantages of, 17, 18 disadvantages of, 17, 18 generally, 17, 18 pre-mediation materials, 108-11 rules, 12, 17, 57-58 setting up, 57-58

#### **MEDIATION**

agreement to mediate, 60-61, 67-69, 70 benefits of, 14, 15

checklist for setting up, 65 collaborative mediation, 134 co-mediation. See CO-MEDIATION compromise mediation, 3 continuing employment relationship, 26-27 court mandated. See MANDATORY MEDIATION evaluative. See EVALUATIVE MEDIATION facilitative. See FACILITATIVE MEDIATION human rights, 159-61 hybrid process, 131-32 informal mediation. See INFORMAL MEDIATION judicial mediation, 128-29 location, selection of, 59-60 med-arb process, 131-32 models compromise, 3 evaluative. See EVALUATIVE MEDIATION facilitative. See FACILITATIVE MEDIATION results-based. 3 settlement, 3 transformative, 2, 12 pre-mediation materials, 73, 93-95, 108-11 preparation for, 79-86 defining issues and gathering facts, 80-81 identifying interests and goals, 81-82 settlement options, reviewing, 83-84 strengths and weaknesses, reviewing, 81 preparation of client. See CLIENT results-based, 3 separate sessions, 129-30 settlement mediation, 3 shuttle mediation, 130 acrimonious situation, 166-67 human rights mediations, in, 161 transformative, 2, 12 voluntary, 17, 60-61

#### **MEDIATION PROCESS**

checklist, 135-36 client, explanation to, 71-75 problem-defining stages, 113-18

agenda, setting, 118 introduction, 114-16 opening statement, 116-18 pre-session preparation, 114 problem-solving stages, 118-22 caucus sessions, 129-30 closing session, 122-24 issue exploration, 118-19 private sessions, 129-30 settlement options, 119-22 strengths and weaknesses of, 14 suitability of, 23, 24-25 timing of, 23-25

#### MEDIATOR

approaching mediator, 60 availability of, 55-57 background, 51-52 characteristics of, 59 conflict of interest check, 54 evaluative approach, 61-63 experience of, 52-53 human rights, 160-61 facilitative approach, 51-53 fee schedule, 55 methods and style, 54 perspectives of mediators, 171-94 role of mediator --introduction process, 114-16 power imbalances, 161-63 selection of, 51-57 process, 55-57 styles of, 54, 63-64 training, 53-54

#### MINUTES OF SETTLEMENT. See SETTLEMENT

#### MITIGATION

expenses, 147 obligation, 7-8

## **NEGOTIATION STRATEGIES**

collaborative negotiation, 100 interest-based negotiations, 100-101 positional bargaining, 99-100

## PARTIES

acrimonious relations, 166-67 multiple parties, 164-66

## POWER IMBALANCES, 161-63

**PUBLIC INTEREST** human rights mediations, and considerations of, 163-64

## **PUNITIVE DAMAGES**

bad faith conduct, 148 court award, 148 mediated resolution, 148-49

## **REASONABLE NOTICE**

awards court, 138-39 mediated, 139-40 termination of employment, 6-8, 40

#### REMEDIES

bonus payments court award, 144 mediated resolution, 144-45 car allowance court award, 146 mediated resolution, 146-47 costs and interest court award, 151 mediated resolution, 151 disability court award, 150 mediated resolution, 150-51 fringe benefits court award, 140 mediated resolution, 140-41

human rights disputes, 152 internal employment disputes, 152-53 mental distress apology, 149 court award, 149 mediated resolution, 149-50 mitigation expenses court award, 147 mediated resolution, 147 overtime and vacation pay --court award, 143 mediated resolution, 143-44 pension losses court award, 141-42 mediated resolution, 142-43 punitive damages bad faith conduct, 148 court award, 148 mediated resolution, 148-49 reasonable notice ---court award, 138-39 mediated resolution, 139-40 stock options court award, 145-46 mediated resolution, 146

## **REPRISALS,** 48

**RESOLUTIONS.** See REMEDIES

## **RESTRICTIVE COVENANTS, 9-10, 44**

## **RESULTS-BASED MEDIATION, 3**

#### **RULES OF PROFESSIONAL CONDUCT, 22, 50**

**SETTLEMENT,** *see also* REMEDIES agreement, written, 14-15, 101-102, 122-24 mediation, 101-102, 122 minutes of, 101-102 nature of, 14-15

#### SEXUAL HARASSMENT

allegations of in the workplace, 32-34 case presentation, order of, 116 caucus sessions, 129-30 closing session, 122-24 overview of in employment relationship, 11 power imbalances as obstacle to mediation process, 152, 161, 162 separate sessions, 129-30

#### SHUTTLE MEDIATION

acrimonious situation, 132, 133 generally, 130 human rights mediations, in, 166

## **TERMINATION**

allegations arising after disability, 43-44 discrimination, 43 harassment, 43 employment relationship, of, 6-11, 23, 24, 26 just cause case presentation, order of, 116 disclosure, importance of, 93-95 documentation sample, 108-11 performance review, negative, rebuttal of, 30-32 with, 6, 42 without, 41 letter, 154 reasonable notice, 41 sexual harassment. *See* SEXUAL HARASSMENT

#### **TRANSFORMATIVE MEDIATION, 2, 11, 32**

#### WORKPLACE DISPUTE POLICY

checklist for developing policy, 45-48 general, 27-30 mediation, setting up pursuant to, 57

## WORKPLACE MEDIATION,

general, 16, 26-27 mediation process, 125-28 resolution of disputes, 152-53 setting up, 57