# **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**

### **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