



MEDIATOR RECOMMENDATIONS

This fact sheet explains how a recommendation from a mediator may be used to resolve a workplace employment relationship problem and the process that is followed.

■ Mediation and recommendations

Parties to mediation can request a mediator to make a recommendation on how they might resolve an employment relationship problem. You may ask the mediator to provide a written recommendation before, during or after mediation. Alternatively, the mediator might offer to provide a written recommendation to parties.

A recommendation can offer a prompt resolution and so reduce delays and costs. It is not intended that it replaces your right to reach agreement amongst yourselves or to have your case decided by the Employment Relations Authority.

■ What is a recommendation?

A recommendation is a written suggestion from a mediator on how a dispute might be resolved. A recommendation is not a last resort but an option for prompt resolution of the problem. A recommendation may be offered at any stage of the process. For example, a mediator recommendation could be offered in the early stages of resolving a problem or as an alternative to a mediated meeting between both parties, or it could recommend procedural steps to assist you to resolve your problem.

■ The recommendation process

- To receive a recommendation both parties must agree in writing. You do this by using the Consent for a Mediator Recommendation form which the mediator will provide.
- Parties agree on a date on which the recommendation will become final and binding, if not rejected and this is recorded in the consent form. As a general rule this date will be 5 to 10 working days from the receipt of the recommendation.
- The written recommendation will set out the proposed resolution and will be given to you either:
 - at the conclusion of the mediation meeting, or
 - at a time agreed with the mediator - usually within 3 working days of the parties completing the consent form.

- You must advise the mediator within the specified timeframe if you do not wish to accept the recommendation. You should also advise the other party. If you do not notify the mediator before the agreed date the recommendation will become final and binding and enforceable on you both. This means there are *two* important dates for you to note:
 - the date you must notify the mediator that you don't accept the recommendation
 - the date of settlement – the following day, when the recommendation becomes final.
- Notification of rejection of a recommendation must be sent to the Department:
 - by registered mail, or
 - by fax, or
 - by email, or
 - another notification method agreed by the parties.
- Once a recommendation becomes final and binding it cannot be appealed but may be enforced through the Employment Relations Authority.

■ Letting you know when a recommendation is rejected

If the recommendation is rejected within the timeframe agreed the mediator will send you a letter that states the recommendation has been rejected and that you may seek further mediation services.

■ Confidentiality status of recommendations

Normally documents created or made for the purpose of mediation are confidential to the mediator and the parties (under s148 of the Employment Relations Act 2000), unless the matter relates to a collective bargaining problem. This provision means that unless you agree otherwise, a mediator's recommendation is confidential to you and the other party.

