

MEDIATION & SETTLEMENT IN EMPLOYMENT CASES

What mediation is, what the employee-plaintiff actually does, why negotiations can move slowly, and what signing a settlement means.

THE ONE-SENTENCE RULE Mediation is a confidential settlement process in which a neutral mediator helps the parties evaluate risk and negotiate; attending mediation does not require an employee to settle, but a signed agreement can permanently resolve claims.

THE MEDIATION DAY ROADMAP

Stage	What usually happens	Plaintiff role	Meaning
Preparation	Counsel prepares facts, damages, legal issues, settlement strategy.	Review goals, risk tolerance, must-have terms, and open questions.	Know the case before the pressure of negotiation starts.
Opening / orientation	Mediator explains process; parties may meet jointly or separately.	Listen, ask questions, stay focused on objectives.	The mediator does not decide who wins.
Caucuses	Mediator moves between sides, testing facts and offers.	Provide factual context and evaluate advice with counsel.	Long gaps are normal; the mediator is working the other room.
Negotiation	Offers and counters may move in uneven steps.	Decide whether each proposal meets your objectives and risk assessment.	Settlement value is negotiated, not announced by the mediator.
Agreement / no deal	If resolved, material terms are documented; otherwise litigation continues.	Read terms carefully before authorizing signature.	Settlement is final business; no agreement means the case proceeds.

FIVE RULES ABOUT MEDIATION AND SETTLEMENT

1. California mediation communications are broadly confidential. Evidence Code section 1119 protects statements, writings, negotiations, and settlement discussions made for or in the course of mediation, subject to statutory exceptions. Evidence Code section 1119 2. Your lawyer must give a mediation-confidentiality disclosure in covered cases. Evidence Code section 1129 requires specified disclosure and acknowledgment about mediation confidentiality. Evidence Code section 1129	3. The mediator is not the judge. The mediator can evaluate risk, carry offers, identify obstacles, and push both sides, but does not issue a verdict. 4. Settlement decisions include non-cash terms. Release scope, tax characterization, payment timing, reference language, confidentiality, non-disparagement, benefits, and other terms can matter alongside dollars. 5. Mediation may occur more than once. Cases sometimes mediate before depositions, after key discovery, after summary-judgment rulings, or close to trial as information and leverage change.
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NEGOTIATE WITH A PLAN - NOT JUST A NUMBER

Know before mediation	Decide during mediation	Confirm before signing
• Best and worst facts • Damages model • Litigation risks • Personal priorities • Alternative to settlement	• Cash amount • Payment timing • Non-cash terms • Tax questions • Whether to keep litigating	• Exact claims released • Reference / announcement • Confidentiality terms • Deadlines and conditions • Entire written agreement

THE MEDIATION PREPARATION FILE

- ☐ Current damages calculation
- ☐ Recent pay and mitigation / job-search information
- ☐ Key documents and deposition testimony
- ☐ Your settlement priorities ranked in advance
- ☐ Tax and benefits questions to raise before final agreement
- ☐ Reference, announcement, confidentiality, and non-disparagement goals
- ☐ Authority to make decisions without outside distractions

WHAT THE EMPLOYER WILL TEST	WHAT THE EMPLOYEE SHOULD SHOW
A mediator is not a judge with a secret gavel. No one can order a settlement because lunch is getting cold. Ask what document, witness, analysis, or contemporaneous explanation should exist if the company's position is genuine.	Know the case before the pressure of negotiation starts. • The mediator does not decide who wins. • Long gaps are normal; the mediator is working the other room.
WHEN PROMPT LEGAL REVIEW MAY MATTER An administrative, arbitration, or court deadline is approaching. • You receive discovery, deposition, mediation, motion, or trial papers. • Evidence must be preserved or a witness, document, account, or device may disappear.	

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- [Twelve Elements That Make a Strong Employment Lawsuit](#)
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CALIFORNIA STATUTES / REGULATIONS • Evidence Code section 1115 • Evidence Code section 1129	PUBLISHED CALIFORNIA CASES • Cassel v. Superior Court, 51 Cal.4th 113 (2011) • Rojas v. Superior Court, 33 Cal.4th 407 (2004) • Simmons v. Ghaderi, 44 Cal.4th 570 (2008)
 SCAN TO READ Can My Lawyer Tell Me What My Lawsuit Is Worth? RugglesLawFirm.com	OFFICIAL RESOURCES Evidence Code 1119 Evidence Code 1129 Gov. Code 12965

"In order to encourage the candor necessary to a successful mediation, the Legislature has broadly provided for the confidentiality..."

— Cassel v. Superior Court, 51 Cal.4th 113 (2011)

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