

Why Wait for the Lawsuit?

Alternative Dispute Solutions for Employers



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Why Use ADR?

- Most disputes do not need or warrant litigation.
- Litigation is too expensive, slow, inefficient, and inflexible for many such disputes.
- Nonetheless, litigation is a necessary alternative (perhaps, a "last resort") when other mechanisms to avoid or resolve a dispute have failed.
- The availability of litigation, of course, is sometimes essential to spur parties to engage seriously in ADR procedures

Wayne Outen
Plaintiff Attorney



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Why Use ADR?

- Allows disputes to be settled quickly and close to the source of dispute, particularly with grievance procedures
- Employee perception of the fairness of the process provides greater satisfaction than the outcome;
- Availability of ADR may be a measure of organizational effectiveness.

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When to Use Alternative Dispute Resolution?



- Whenever there is a dispute
- Parties may agree to mediation or arbitration
- Parties have the opportunity to fashion how they will resolve the dispute

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Legal basis for ADR



Congress

- Americans with Disabilities Act (1990)
- Section 118 of the Civil Rights Act of 1991

Supreme Court

- *Gilmer v. Interstate / Johnson Lane*, 500 U.S. 20, 111 S. Ct. 1647 (1991)
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Limitations on ADR

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- Contractors or subcontractors with contracts over \$1MM must agree not to enter into or take any action to enforce any agreement requiring arbitration, as a “condition of employment,”



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Benefits of ADR – to employer



- Cost savings
- Timeliness of resolution
- Ability to fashion remedy
- Ability to fashion process
- Less publicity
- Confidential
- More control over outcome
- Less disruption
- Less adversarial
- Helps repair relationships

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Benefits of ADR – to employer

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Who uses ADR?

The Coca-Cola Company

citi® Citi never sleeps®

DARDEN
RESTAURANTS.

Darden

Hooters

Coca-Cola Enterprises

Citi-Corp

Bridgestone/Firestone

Amerada Hess

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Benefits of ADR – to employee

Timeliness of resolution

More control over
outcome

Less adversarial

Less stress

Preserves private /
sensitive facts



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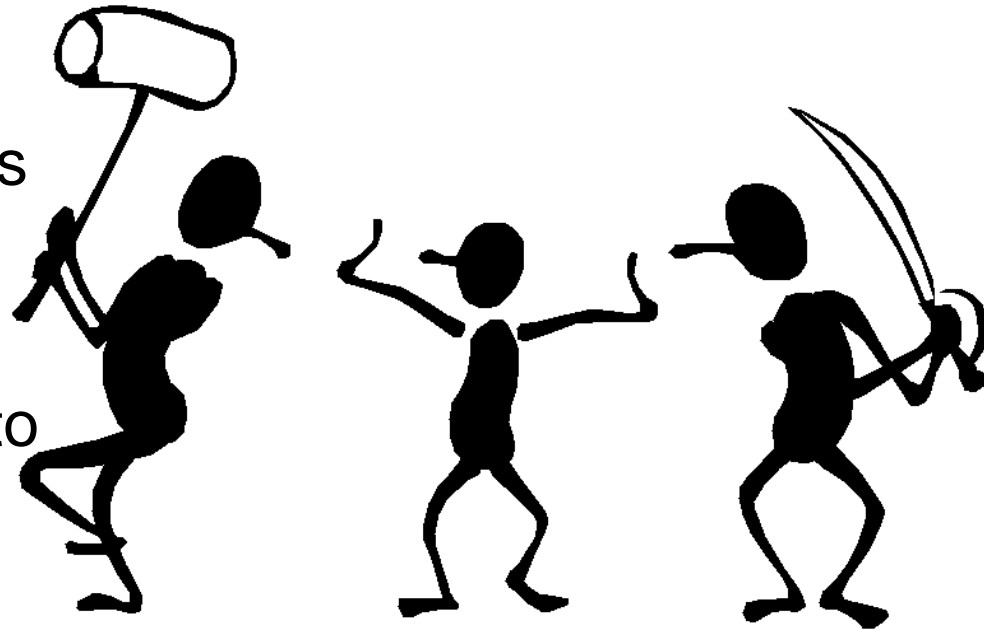
Mediation

- Probably the most popular ADR procedure for employment disputes.
- No direct negotiations between the parties or their attorneys.
- Mediation involves negotiation facilitated by a neutral third party.
- Voluntary and non-binding. The parties can design the process to suit the dispute, can choose the mediator, and can retain control over whether and how to settle.

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Arbitration

- Adversarial proceeding
- A neutral third party, selected by parties, decides the dispute, instead of a judge.
- Binding arbitration entails surrendering the authority to resolve the dispute to the third-party neutral.
- Arbitration is discussed more below



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Internal Dispute Resolution Procedures



- Must be fair in fact & perception
- Open door policies
- Ombuds
- Peer review
- Internal mediation
- See *Resolving Employment Disputes: A Practical Guide*

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Open Door Policy

Employees are encouraged to meet with their immediate manager or supervisor to discuss problems arising out of the workplace environment.



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Fact-Finding

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It is generally defined as the submission of disputes to one or more impartial persons for final and binding determination. It can be the final step in a workplace program that includes other dispute resolution methods. There are many possibilities for designing this final step.



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Arbitration Fairness Act

- Still pending
- How will it affect future arbitrations?



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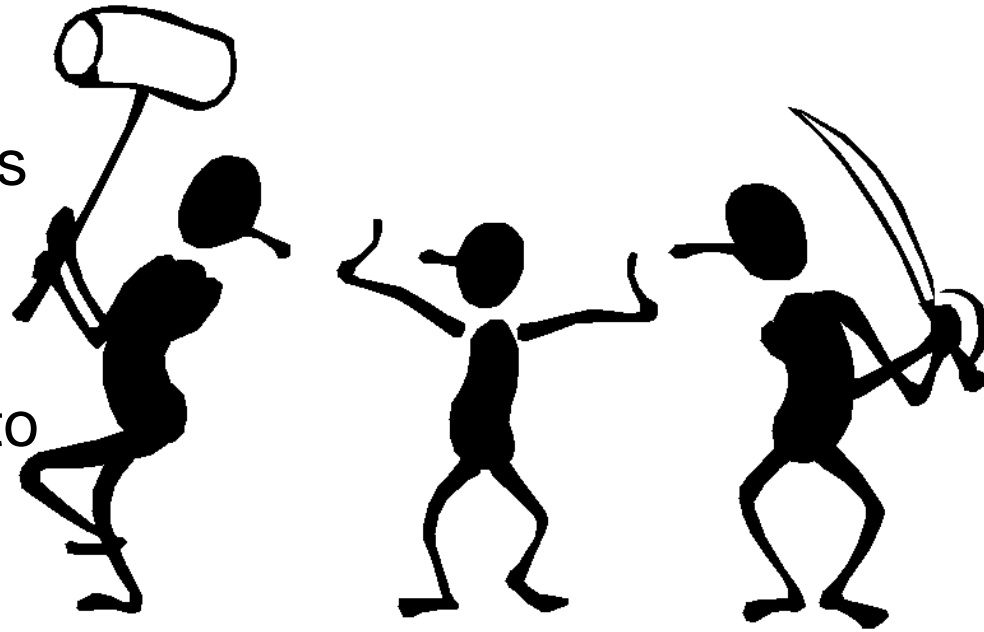
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