

NLRB Expands Its Alternative Dispute Resolution Program

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The National Labor Relations Board has announced it will begin a pilot program to encourage parties to use its Alternative Dispute Resolution program.

Under the pilot program, the NLRB's Office of the Executive Secretary will proactively engage parties with cases pending before the Board to determine whether the case is suitable for ADR. The process is voluntary.

The ADR program began in 2005 as an alternative means for parties to resolve cases pending before the Board. According to the NLRB, since its inception, mediators have assisted parties in reaching settlements in approximately 60 percent of the cases in the ADR program.

The program is available to any party with an unfair labor practice or compliance case pending before the Board. Once the parties enter the program, the ADR Program Director arranges for a neutral to assist the parties. The neutral will conduct a conference, normally in person, to assist the parties in reaching a settlement. The neutral has no authority to impose a settlement; whether or not to settle remains voluntary. NLRB rules provide that all settlement discussions during the ADR process are confidential and that evidence as to what transpired during the ADR process may not be used in any administrative or court proceeding.

The ADR program results in only a minimal delay in the case proceedings. Although entry into the ADR program places all case deadlines on hold, a case may only remain in the ADR program for 28 days, unless the parties and the ADR Program Director agree otherwise. The parties are not responsible for any costs or expenses associated with the program.

Employers should weigh carefully whether ADR may be appropriate in their cases. For example, where a charging party has overvalued its case, an NLRB mediator who is seen by the charging party as a neutral may be helpful. Although not every case is suitable for the ADR program, the program may be a viable alternative to continued litigation.

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