



WILLIAM L. DUDLEY, JR., Chairman  
VIRGINIA R. DIAMOND, Commissioner  
ROGER L. WILLIAMS, Commissioner

JAMES J. SZABLEWICZ  
CHIEF DEPUTY COMMISSIONER  
Marjorie Platt, CLERK

## COMMONWEALTH of VIRGINIA

### Workers' Compensation Commission

1000 DMV Drive  
Richmond, Virginia 23220

## MEDIATION CONSENT FORM

FULL CASE NAME:

VWC CLAIM NUMBER:

MEDIATION DATE:

MEDIATION FORMAT:         IN PERSON         CONFERENCE CALL

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I/We, the undersigned, understand and consent to the following:

- Definition of Mediation:* Mediation is a voluntary and free process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and reach a mutually agreeable resolution to their dispute. Any party or the mediator may terminate a mediation at any time.
- Role of the Mediator:* The mediator acts as a facilitator, not an advocate, judge, jury, counselor, or therapist. The mediator assists the parties in identifying issues; reducing obstacles to communication, maximizing the exploration of alternatives, and helping parties reach voluntary agreements. The mediator has no vested interest in the outcome of the mediation. The parties should immediately raise any concern they have regarding the impartiality of the mediator.
- The Mediation Process:* The process will include at a minimum, an opportunity for all parties to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if the parties so desire, the development of a Memorandum of Understanding or Agreement.
- Confidentiality:* All memoranda, work product and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties agree otherwise in writing.

We agree that the following information is not to be confidential: the fact that a mediation is in the process of being scheduled or has been scheduled; the date and time of a mediation; the fact that a mediation took place, was continued, or cancelled; and whether an agreement was reached or not reached.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the mediation agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation, (iii) statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the mediator by a party to the mediation or by a third party, to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in Section 8.01-576.26 in a proceeding to vacate a mediated agreement or (ix) as provided by law or rule.

5. The mediator(s) does not provide legal advice. Parties are encouraged to seek the advice of independent counsel at any time.
6. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.
7. *The Mediation Style:* The Workers' Compensation Commission offers two styles or approaches to mediation. Please designate the mediator's style and approach to mediation to which you have agreed:

\_\_\_ Neutral Evaluation - A process in which the parties present their case to a neutral mediator. This mediator may provide an objective, non-binding assessment, if requested, of the strengths and weaknesses of a claim or defense, or the value of a claim settlement. With an objective evaluation, the parties may have a realistic view of their respective positions or settlement value.

\_\_\_ Neutral Facilitation - The mediator uses a more facilitative approach. The mediator guides the parties' conversation and discussion of issues that are important to them, without providing an opinion or judgment regarding the merit of the claim or the likely judicial outcome. The mediator will assist the parties' in assessing the strengths and weaknesses of their case. The mediator will not tell the parties what to do or suggest a particular outcome.

_____	_____
Claimant	Date
_____	_____
Attorney for Claimant	Date
_____	_____
Carrier Representative	Date
_____	_____
Carrier Attorney	Date
_____	_____
Employer	Date
_____	_____
Employer Attorney	Date
_____	_____
Other	Date

\_\_\_\_\_  
Mediator