

Rule 27.000 -- Mediation

27.1000. These rules establish the workers' compensation claim dispute mediation process required by 21 V.S.A. 663a. The goal of the mediation process is to resolve workers' compensation claim disputes without requiring a formal administrative hearing.

27.2000. These rules apply to all workers' compensation claim disputes involving injured workers and their employer/workers' compensation insurer(s). The rules **do not** apply to:

27.2100 administrative fraud or penalty proceedings brought pursuant to Workers Compensation Rule 45.

27.2200 disputes over whether a business is required to provide workers' compensation insurance coverage of person's performing work for the business.

27.2300 disputes between employers and their insurers.

27.3000. Determining when a W.C. dispute is appropriate for mediation. (See 21 V.S.A. 663a(a)).

27.3100. Unless the Commissioner's designee expressly approves a claimant's or employer/insurer's specific written request to not participate in mediation (see **27.3400** below), or expressly determines that mediation is not appropriate, no disputed claim shall be heard in the formal hearing process until after the claimant and the employer/insurer have made good faith efforts at mediation.

27.3200. Voluntary mediation. The parties to a workers' compensation dispute may voluntarily agree to mediate the dispute at anytime in the dispute resolution process.

27.3300. Order to mediate. The commissioner's designee may order the parties to participate in mediation if:

27.3310. The claimant is represented by legal counsel and the employer/insurer(s) is represented by legal counsel or a Vermont licensed adjuster, or,

27.3320. The claimant has been informed of his/her rights and responsibilities under the W.C. Act and the commissioner's designee determines that the claimant is capable of representing him or her self, and

27.3330. The parties to the workers' compensation claim have participated in at least one informal conference and a party has requested a formal hearing.

27.3400. Request to not participate in mediation. A party that does not wish to participate in mediation of a dispute shall submit a written request, explaining the reasons why it believes mediation of the dispute is not appropriate. The commissioner's designee may grant the request if he or she determines:

27.3410. No relevant facts are in dispute and the issue only involves a question of law, or

27.3420. The amount in dispute is small in comparison to the cost of a mediation session, or

27.3430. The parties have not developed and shared a sufficient evidentiary record so as to make mediation appropriate, or

27.3440. The requesting party submits sufficient evidence/argument to establish that mediation would not be likely to resolve the disputed issues, or

27.3450. The claimant can not afford the cost and it is impractical to pay the mediation cost out of any likely settlement or subsequent award, or

27.3460. Mediation is otherwise demonstrated to not be appropriate.

27.4000. Persons qualified to mediate (See 21 V.S.A. §663a(c)).

27.4100. Any person desiring to serve as a mediator shall submit his or her name to the commissioner, along with an explanation of his or her qualifications, familiarity with Vermont workers' compensation decisions, statutes and rules, and practical mediation experience.

27.4200. The commissioner shall publish a list of approved qualified mediators. A qualified mediator may be a Vermont licensed attorney; or a person who demonstrates to the satisfaction of the commissioner that he or she is knowledgeable and experienced with Vermont Workers' Compensation Law, and mediation practice. Non-attorneys who may be eligible for approval include

Vermont licensed workers' compensation adjusters; former department employees familiar with workers' compensation law; Vermont licensed physicians familiar with workers' compensation law and mediation; and existing mediators who demonstrate familiarity with the Vermont Workers' Compensation Law.

27.4300 A mediator may demonstrate familiarity with Vermont Workers' Compensation Law by offering evidence that he or she has represented parties before the department, or attended Vermont workers' compensation training programs offered or sponsored by the department, the Vermont Bar Association, or other entities, or submitting other appropriate evidence demonstrating familiarity.

27.5000. Selection of a mediator

27.5100. The parties may mutually agree on a qualified mediator.

27.5200. If the parties can not agree on a qualified mediator within 14 days of being ordered to mediate, the commissioner's designee shall assign a qualified mediator from the approved list.

27.6000. The mediation process

27.6100. Once a mediator is chosen, the mediation shall be scheduled as soon as practicable, but at least 30 days prior to any scheduled formal hearing.

27.6200. The mediation process shall conform to the Vermont Uniform Mediation Act (12 V.S.A. §5711 et seq)

27.6300. Any discussions or admissions made in the course of the mediation process are confidential and may not be used in the formal hearing process.

However, this confidentiality shall not relieve any party from its obligation to fully and promptly disclose and share all medical and factual evidence relevant to the claim, as required by the existing Workers' Compensation Rules.

27.7000. Good Faith participation required. Result of Mediation Report Form. All parties are required to make good faith efforts to participate in the mediation process, and endeavor to resolve some or all of the contested issues.

27.7100. All parties to the mediation shall be fully prepared to discuss the legal and factual bases of the disputed claim.

27.7200. The employer/insurer representative participating in mediation shall have full authority to settle a disputed claim. A representative of the employer/insurer which may be the employer/insurer's attorney, shall be present and participate in the mediation, but need not be the person with full, final settlement authority if the person with such authority also participates by telephone for the duration of the mediation session.

27.7300. If, following a complaint, the commissioner's designee determines that a party failed to participate in good faith, the designee may order the offending party to pay for all or an additional portion of the cost of the mediation. In addition, if the offending party is the claimant, any benefits being paid and further action on the claim may be suspended until

participation in good faith occurs. If the offending party is the employer/insurer, the designee may issue an interim order to pay benefits pending formal hearing.

27.7400. At the conclusion of the mediation, the mediator shall file a report using the mediation report form attached.

27.7500. Under no circumstances shall a mediator be called on to testify or otherwise participate in any workers' compensation proceeding.

27.8000. Payment of mediator

27.8100. Unless the parties have otherwise agreed, the cost of mediation shall be split equally by the parties.

27.8200. Mediation fees shall conform to the mediation fee schedule established by the commissioner in **Rule 27.9000** below.

27.8300. In the event mediation is not successful and the matter proceeds to a formal hearing, the claimant may recover his/her share of the mediation expenses as a cost, if the claimant is found to have substantially prevailed at the formal hearing.

27.9000. Mediation Fee Schedule

27.9100. Unless the parties and a mediator agree to a different fee, the fee shall be **\$600.00** per half day session. A half day shall be considered to be 4.5 hours.

**STATE OF VERMONT – Department of Labor
Workers’ Compensation Alternative Dispute Resolution Report
Report due from mediator within 15 days of completion of mediation**

Claimant name		State File No.:	
Defendant name			

Date of ADR Session		Starting Time		Finishing Time	
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1. Please indicate the names and addresses of all persons participating in the ADR Session. (If additional space is needed, please attach an additional sheet.) If any party is a corporation or other entity, please indicate the name and title of the representative. Identify with an asterisk the representative of each party who had decision-making authority.

Participants	Name	Mailing Address	City, State & Zip Code
Claimant			
Claimant’s Counsel			
Defendant/Insurer			
Defendant/Insurer Counsel			
Employer representative			
Interested party			
Interested party			

2. Were all appropriate parties in attendance? _____. If not, who failed to appear? List and summarize any substitute arrangement made regarding attendance at the ADR Session.

3. Was full or partial settlement reached at the session? _____
If so, please summarize and append any agreement of the parties.

Mediator

Date