

## Licensee Sponsored ADR Program>>>

Parties are not required to use mediators provided by Cornell or use the NRC's Early ADR program to fall within the scope of the NRC's ADR program. Employers are encouraged to develop internal dispute resolution processes similar to the NRC's Early ADR program. In a Licensee Sponsored ADR process, parties may or may not use a mediator. If the parties settle an allegation of discrimination under any ADR process at their own expense and if either party provides a copy of the settlement agreement to the NRC before the NRC's Office of Investigations has initiated an investigation, the NRC's Office of the General Counsel will review the settlement agreement solely to ensure that the agreement does not prohibit the employee from engaging in a protected activity. Provided there is no such prohibition on engaging in a protected activity, **the NRC will not investigate** the allegation of discrimination or take enforcement action.

Note, if a settlement agreement is provided to the NRC after it has initiated an investigation into the allegation of discrimination, the settlement agreement will not fall within the scope of the NRC's ADR program and the investigation will continue.



## Department of Labor Process>>>

The U.S. Department of Labor (DOL) has the authority to order personal remedies in the event it substantiates an allegation of discrimination (whereas the NRC does not have the authority to order a personal remedy). Unlike the NRC, DOL has a **180-day deadline** for filing a discrimination complaint under Section 211 of the Energy Reorganization Act of 1974 (Section 211) (there are shorter deadlines for other laws pursuant to which similar complaints may be filed). While participation in the NRC's ADR program may result in negotiation of the same discrimination complaint that may be filed with DOL under Section 211, the timeliness requirement for filing a discrimination complaint with DOL is not altered by filing an allegation with the NRC or participating in the NRC's ADR program.

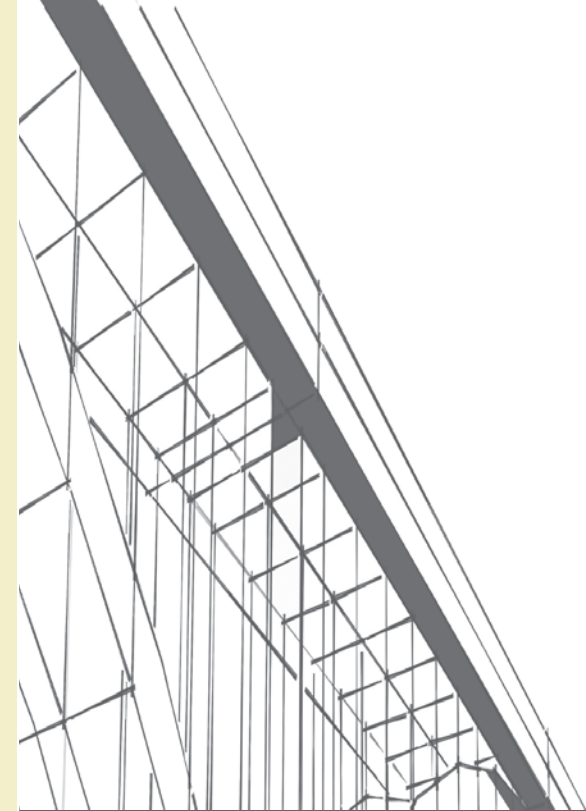
For this reason, if DOL's filing deadline has not already expired, the individual should consider filing a discrimination complaint with DOL at the same time he or she is considering using the NRC's ADR program. In order for an employee to protect his or her right to file a discrimination complaint with DOL, the employee must file a written complaint with DOL within 180 days of the date of the alleged discriminatory action or the date he or she received any notice, in writing or otherwise, of the discriminatory action, whichever occurred first. Any such complaint can be filed with the applicable DOL regional office for the Occupational Safety and Health Administration.

(See <http://www.osha.gov/dep/oia/whistleblower/index.html>)

## Additional Sources of Information>>>

Further information about the NRC's ADR program is available from:

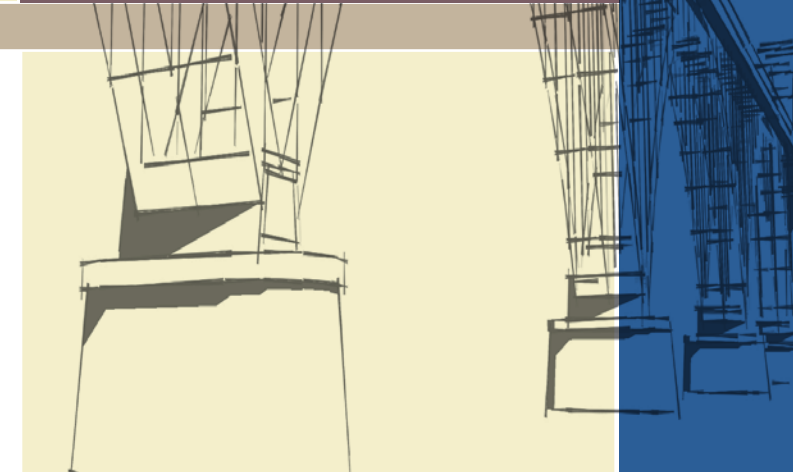
- Cornell University's Scheinman Institute on Conflict Resolution  
**Toll-free Number:** (877) 733-9415
- The NRC's website at  
<http://www.nrc.gov/about-nrc/regulatory/enforcement.html>
- The NRC's ADR Program Manager in the Office of Enforcement  
**Toll-free Number:** (800) 368-5642 or (301) 415-2741



## Pre-Investigation Alternative Dispute Resolution Program

Similar to the NRC's Early ADR program, the resolution of technical safety concerns or other allegations (e.g., "chilling effect" or wrongdoing type concerns) may not be the subject of the settlement agreement. If an individual has a concern other than an allegation of discrimination, such other allegation(s) may be filed with the NRC by calling (800) 695-7403 or visiting [www.nrc.gov](http://www.nrc.gov).

If the parties do not settle the allegation of discrimination that falls within the NRC's jurisdiction, the NRC's Office of Investigations will initiate an investigation into the allegation of discrimination.



## The Program>>>>

Following the congressional endorsement of the use of alternative dispute resolution (ADR) by Federal agencies, the Nuclear Regulatory Commission (NRC) established the pre-investigation ADR program (commonly called the NRC's "Early ADR" program) in 2004. The NRC's Early ADR program provides an individual and his or her employer (or former employer) the opportunity to resolve the individual's allegation of discrimination through mediation rather than fully litigate the discrimination allegation or have the NRC initiate an investigation into the allegation of discrimination. Mediation is an informal and voluntary process between an individual and his or her employer (or former employer) in which a trained mediator works with the parties to help them settle their dispute. Early resolution of discrimination allegations tends to preserve relationships and generally promotes a safety conscious work environment by facilitating timely and amicable resolution of discrimination concerns without resorting to prolonged litigation and unnecessary expenses. **The resolution of technical safety concerns or other allegations (e.g., "chilling effect" or wrongdoing type concerns) are not within the scope of the NRC's Early ADR program and cannot be the subject of any settlement agreement. If an individual has a concern other than an allegation of discrimination, such other allegation(s) may be filed with the NRC by calling (800) 695-7403 or visiting [www.nrc.gov](http://www.nrc.gov).**

## The Mediator>>>>

The mediator is neutral. In other words, he or she has no stake in the outcome of the mediation and does not have any power to make decisions that may bind either party. Instead, the mediator's role is to facilitate open communication between the parties and provide an environment where the parties can more effectively address their differences. The mediator uses consensus building and negotiation skills to help the parties find ways to overcome any misunderstandings and reach a common understanding on issues. The mediator does not act as legal counsel or provide legal advice to any party. Each party should consult an attorney or other professional if any questions arise regarding the law, the content of a proposed agreement, or other issues.

## Costs>>>>

The NRC (through Cornell) will pay the fees and expenses of the mediator whom the parties mutually select from a list of mediators provided by Cornell. Parties who choose to select a mediator not identified by Cornell may do so at their own expense. The parties are also responsible for their own expenses such as travel, lodging, meeting room and legal fees, if any.

## Mediation Location and Duration>>>>

The parties may select any location for mediation although parties usually agree to hold the mediation near the employee's workplace. Mediation sessions usually last no longer than 1 day. In some cases, the mediation may take longer than 1 day with the mutual consent of the parties.

## Confidentiality>>>>

With limited exceptions (e.g., court order), the mediation process is confidential regardless of the mediation outcome. The mediator is prohibited from discussing the details of the mediation proceedings or testifying on anyone's behalf concerning the mediation.



## The Program Administrator>>>>

Cornell University's Scheinman Institute on Conflict Resolution (Cornell) is under contract with the NRC to serve as the neutral program administrator. Cornell manages the program's day-to-day operation, including the logistics associated with the mediation process and working with parties to select a mediator. Cornell uses a network of independent mediators who help the parties find ways to reach a common understanding and settle their disputes.



## The Mediation Process>>>>

After the NRC receives an allegation of discrimination that falls within the NRC's jurisdiction, the employee will be offered a chance to resolve the dispute through mediation instead of the NRC initiating an investigation. If the employee agrees to engage in mediation with the company, Cornell will then contact the company. If the company also agrees to engage in mediation with the employee, Cornell will help the parties jointly select a mediator. After the parties agree on a mediator, the parties, in coordination with the

mediator, set a date and place for the mediation. Typically, the mediator holds a premediation teleconference with the parties to discuss logistical matters or any special needs of either party.

During the mediation, the mediator will give each party an opportunity to explain the issues. Often, the mediator will meet privately with each party to develop a clear understanding of the parties' perspectives and explore and assess options. The mediator may ask questions intended to aid the parties in assessing the merits of their

positions, help them converse in a respectful atmosphere and identify potential settlement options.

If the parties reach a settlement, they may sign the settlement agreement at or after the mediation session, depending on the parties' preference. After both parties sign the settlement agreement, the agreement must be provided to the NRC for review for credit under the program. The NRC's Office of the General Counsel will review the settlement agreement solely to ensure that the agreement does not prohibit the employee from engaging in a

protected activity. Provided there is no such prohibition on engaging in a protected activity, **the NRC will not investigate** the allegation of discrimination or take enforcement action. For purposes of the NRC's Early ADR program, a settlement agreement will not become binding until 3 days after the parties sign it to allow each party a final opportunity to review it.

If either party declines mediation at any time, or if the parties do not reach a settlement agreement, the NRC's Office of Investigations will initiate an investigation.