

Mandatory mediation in labour disputes – an overview

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On 1 January 2018 applying to a mediator was made a prerequisite when filing a lawsuit concerning monetary claims by employees or employers arising out of employment contracts, collective labour agreements or reinstatement claims. As a result, parties must now apply for mediation before filing a lawsuit; otherwise, the lawsuit will be rejected due to the absence of a prerequisite.

Mandatory mediation was introduced to accelerate legal proceedings and lower the costs in employment disputes. Mediators must finalise the mandatory mediation process within three weeks from the date of appointment with a one-week discretionary extension. As a result, the timeframe is much shorter than a case filed before the courts. Mediator fees are also lower when compared with attorney fees in disputes that take place before the employment courts.

Another appealing and innovate feature of mandatory mediation is confidentiality. The mediation process should be kept confidential by law and both parties must adhere to a strict confidentiality obligation unlike in public trials. If one of the parties or the mediator breaches the confidentiality obligation, they can be punished with imprisonment of up to six months as per the Mediation Act. This makes mediation a useful tool for parties that do not wish to be referred to in a court case and disputes where the subject matter requires confidentiality.

Statistics published for 2 January 2018 to 27 May 2018 show that 65% of disputes resulted in an agreement after mandatory mediation negotiations.⁽¹⁾ Within the same period, the number of applications made for discretionary mediation regarding different kinds of dispute (eg. other employment disputes, contractual claims and disputes regarding ownership on immovable property) was 15,655, 97% of which were concluded with consensus and only 421 did not reach an agreement.

Although these numbers are promising in terms of establishing a reconciliatory culture, some conceptual misunderstandings remain between parties. For example, while some employers are open to the mediation process, prepare before participating in negotiations and want to end disputes on good terms, others participate procedurally and want to end the process by participating only in the first meeting. In general, negotiations are concluded with agreement if they are approached with a consensual attitude and the parties have reasonable demands.

Alternative dispute resolution methods should be widespread for quick and effective trials. Statistics show that despite the fact that application to discretionary mediation is favoured by a small number of people, it is concluded positively. Mandatory mediation brought in terms of employment suits can be regarded as an important development with regard to acquiring the habit of applying to alternative dispute resolution methods.

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Endnotes

(1) Statistics published on the official website of Ministry of Justice.

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