

ADR programs can save dollars and time

An increasing number of employers face costly and protracted litigation related to employment disputes.

Since 2002, Ohio juries have returned verdicts as large as \$25.7 million and \$7.8 million against employers in single plaintiff discrimination cases. Such staggering numbers raise a red flag in the eyes of wary employers fighting to survive in a struggling economy. As a result, many companies have implemented mandatory alternative dispute resolution (ADR) programs to avert the soaring legal costs and morale-draining effects of lengthy lawsuits.

ADR programs provide employers, both large and small, and their employees with quick and effective solutions to workplace problems. ADR programs offer a cost-efficient forum in which employers and employees can resolve their differences. Mandatory ADR programs require employees and employers to waive the right to have their disputes heard in court. A typical ADR program may include the following:

Step 1: An employee (or former employee) files an internal complaint with the employer. The employer then determines whether the complaint has any merit. If the employer denies the complaint or the remedy requested, the employee remains free to ap-

Of Counsel

peal the employer's decision.

Step 2: A neutral mediator attempts to bring the employer and employee to a mutually satisfactory resolution. Because mediation is nonbinding, either party may choose not to resolve the dispute at this step.

Step 3: A neutral arbitrator listens to the evidence and renders a decision that binds both the employer and the employee. Enforceable ADR programs empower the arbitrator to award any damages available in a court of law. Rarely can a party overturn an arbitrator's decision.

Employers and employees can experience several benefits from the implementation of an ADR program.

For employers, ADR offers the obvious advantage of reducing litigation costs. The cost of a full-blown arbitration is often less than half the cost of a jury trial. That is not to say that ADR programs are free. To the contrary, ADR programs require employers to bear the cost of arbitrators' fees as well as startup, training, administrative and legal costs to establish and maintain an en-

forceable program. However, such costs pale in comparison to litigation.

In addition to decreased legal costs, ADR programs often result in improved employee morale due to the absence of protracted litigation in which both parties stand to lose. ADR programs preempt employee-employer "winner take all" face-offs by seeking middle ground. Employers also can customize ADR programs (e.g., internal review, peer review, ombudsman review, mediation, arbitration, etc.) to meet their particular needs.

By eliminating the formalities of traditional litigation, ADR programs generally result in faster dispute resolution. Alternatively, typical court actions last much longer, allowing employers and employees to become more emotionally attached to their respective positions. ADR programs, particularly arbitration, offer parties a relatively quick process and efficient forum to resolve employment-related disputes, to reach closure and to move on with their lives.

ADR programs also eliminate the wildcard in employment litigation — juries.

Juries often react unfavorably to large corporations and employers in general. Emotions lead ju-



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ries to award large verdicts in favor of employees based on nothing more than sympathy. In place of juries, ADR programs appoint a neutral arbitrator. Many arbitrators spend their entire legal careers practicing in employment and labor law. They understand intricate

legal and emotional issues for both sides in employment disputes. Rarely do arbitrators render decisions based solely on sympathy or emotion.

Properly drafted, ADR programs save employers and their employees a considerable amount of time and money. Before implementing a program, however, employers must consider a program design that is substantively fair and that best fits the employer's workplace. By tailoring a program for the necessities of a particular work environment, an employer can provide an effective forum for resolving employment disputes without the inconvenience of a day—or years—in court.

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