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## **Florida Workers' Compensation Mediations**

Under Florida workers' compensation law, a mediation is required before any dispute about workers' compensation benefits can be presented to the judge of compensation claims (workers' compensation judge) to decide at a hearing. When a workers' compensation claimant (injured worker) believes he is entitled to a workers' compensation benefit that the employer and its workers' compensation insurance carrier (employer/carrier) have not provided, the claimant files a Petition for Benefits. The petition is sent to the judge of compensation claims to hold a final hearing (trial) after which the judge rules on whether the claimant is entitled to the benefits claimed. Before the judge schedules the final hearing, Florida law requires the parties to attend a mediation and discuss the benefits in the Petition for Benefits.

### **1. What is a mediation?**

A mediation is a meeting of the parties in which a mediator acts to encourage and facilitate the resolution of disputes prior to those disputes being decided by a judge. The mediator brings the parties together with the hope that they can informally discuss the benefits at issue and resolve any disputes. The mediation is an informal discussion. There is no formal questioning or testifying. The judge is not allowed to know the substance of any of the discussions that occurred during mediation. The mediator facilitates the discussion but does not have any authority to decide the issues or to force either party to agree to anything.

### **2. When does the mediation occur?**

A mediation is scheduled by either the parties' attorneys or by the state mediator's office and must be held within one hundred and thirty (130) days after the filing of a Petition for Benefits.

### **3. Who is the mediator?**

The mediator is a neutral party who attempts to help the parties talk out any disputes they have. The mediator may be either a lawyer employed by the Florida Division of Workers' Compensation or a private mediator selected by the parties to act as the mediator.

**4. Who attends the mediation?**

A representative of each party and each party's lawyer must attend the mediation. The employer/carrier may bring one or more representatives from the employer or the insurance carrier.

**5. Who pays for the mediation?**

There is no charge to either party for a mediation with the state mediator. If the mediation is with a mediator chosen by the parties because there was no available opening with a state mediator, the employer/carrier pays for the mediation.

**6. Where is the mediation held?**

A mediation with the state mediator is held at the state mediator's office, which is next door to the office of the judge of compensation claims. For accidents occurring in Pinellas and Pasco Counties, that is 501 1st Avenue North, Suite 300, St. Petersburg. For accidents occurring in Hernando and Hillsborough Counties, that is 1000 North Ashley Drive, Suite 309, Tampa. A mediation with a private mediator chosen by the parties is held wherever the parties agree to hold it.

**7. How does the claimant dress for mediation?**

There is no formal dress requirement. The claimant should dress tastefully in casual clothes.

**8. What does the claimant bring to the mediation?**

The claimant is not required to bring anything to the mediation unless his attorney specifically instructs him otherwise.

**9. What happens at the mediation?**

A mediation is an informal meeting so there is no formal agenda. Usually, the mediator gathers all the parties together in one room and explains the basics of mediation, such as most of the items in this outline. The parties then may discuss the benefits at issue while they are all together, or may separate into separate rooms with their respective attorneys and use the mediator to shuttle the parties' positions back and forth. The parties are only required to discuss the benefits actually in the pending Petitions for Benefits. However, the parties may discuss any other aspects of the case if all parties agree to do so. Frequently, the employer/carrier may wish to discuss an overall settlement in which the claimant accepts a lump sum of money to give up all rights to past and future workers' compensation benefits. Settlement and discussing overall settlement is purely voluntary and the claimant does not have to settle or discuss settlement if he does not want to.

**10. How long does a mediation last?**

There is no time limit to a mediation. The parties continue to discuss the issues until they either have resolved all the issues or they reach the conclusion that they will not be able to resolve the issues.

**11. What happens at the end of the mediation?**

If the parties have resolved all the issues, the mediator sends a form to the judge noting that all issues have been resolved and therefore no final hearing will be needed. If any issues are left unresolved, the mediator sends a form to the judge stating that the parties did not resolve all the pending issues so that the judge knows to schedule a final hearing on the unresolved issues.

**12. If all the issues are not resolved, when does the final hearing occur?**

The date of the final hearing is scheduled by the judge of compensation claims, and is to occur within 210 days from the date the Petition for Benefits was filed.