

## **Mediation the Pathway to Employment and Workplace Dispute Resolution**

Modern workplaces are complex and comprise people from diverse backgrounds who have different opinions, values, and expectations. In addition, there has been significant changes in the workplace due to the Covid pandemic with a growing trend for employees seeking to change their work-life balance. These changes can lead to more workplace conflict and a higher demand for dispute resolution through the Workplace Relations Commission (WRC) or through litigation

Mediation is one of a number of dispute resolution mechanisms used, in Ireland and other jurisdictions to resolve employment conflicts.. Mediation of workplace disputes can take place within the WRC mediation framework or through the appointment of an independent mediator by the parties.

In addition to the WRC Mediation service, parties often agree to appoint a qualified independent mediator to mediate their dispute. Many members of the Bar of Ireland are qualified mediators and regularly act as independent and impartial mediators in such disputes.

### **Mediation as an effective method of dispute resolution.**

Mediation is often a more constructive mechanism for resolving conflict in the workplace than adjudication or litigation. Mediation is voluntary and confidential. Following the Supreme Court judgment in *Zalewski*<sup>1</sup>, hearings before the WRC are no longer in private and party names are anonymised only in limited circumstances. Mediation is accordingly a more attractive option to some parties in dispute as opposed to an adjudication in a public hearing. Where trust has broken down in a workplace, it can sometimes be re-built within a workplace mediation, especially if mediation is used to deal with workplace conflicts promptly .

### **Barristers in Workplace Mediation**

While parties may attend mediations unrepresented by lawyers, having legal representation can greatly assist in the resolution of workplace disputes. The availability of legal advice from a barrister who regularly attends before the WRC, can be key to a party when considering the best alternative to a mediated resolution of the dispute. While the mediation is party led rather than lawyer led, the parties are best placed to consider resolution options when sound legal advice is available to them. This is particularly important, where the parties reach a mediated agreement, which is required to be reduced to writing. Drafting a mediated agreement, at the conclusion of a mediation, which will be robust and enforceable is one of the most important skills that a barrister brings to a mediation whether representing a worker or an employer.

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<sup>1</sup> *Zalewski v. Adjudication Officer and the Workplace Relations Commission (WRC), Ireland, and the Attorney General*. [2021] IESC 24

## **Conclusion**

The advantage in offering mediation prior to proceeding to adjudication or litigation is to ensure a fair solution, guarding against the effects of any imbalance of power between the participants. Barristers engaged in the process of mediation in workplace and employment disputes are trained to reserve their own judgment and guide parties toward their own confidential mutually agreed resolution, that is legally binding and enforceable.