



## EMPLOY MILWAUKEE POLICY 20-07: ALTERNATE DISPUTE RESOLUTION

POLICY: 20-07

SUBJECT: ALTERNATE DISPUTE RESOLUTION

ISSUANCE DATE: 12/3/20

EFFECTIVE DATE: 12/3/20

### REFERENCES:

29CFR§1614.102 (b)

Title VII of the Civil Rights Act of 1964

The Age Discrimination in Employment Act

The Equal Pay Act and the Americans with Disabilities Act

The Administrative Dispute Resolution Act (ADRA)

### POLICY SCOPE

- EMPLOY MILWAUKEE AGENCY
- WIOA WDA 2 SYSTEM
- WIOA TITLE I-B PROGRAM(S)
  - ADULT PROGRAM
  - DISLOCATED WORKER PROGRAM
  - YOUTH PROGRAM
- NON-WIOA ADULT PROGRAMS
- NON-WIOA YOUTH PROGRAMS

## I. BACKGROUND

Employ Milwaukee, Inc., “the agency,” is firmly committed to using alternative methods for resolving disputes in all of its activities, where appropriate and feasible. Used properly in appropriate circumstances, Alternative Dispute Resolution (ADR) can provide faster, less expensive and contentious, and more productive results in eliminating workplace discrimination, as well as in agency operations.

The use of ADR is fully consistent with the US Equal Employment Opportunity Commission’s (EEOC) mission as a law enforcement agency. It is squarely based in the statutes creating and enforced by the Commission Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act and the Americans with Disabilities Act. The use of ADR is also predicated on the Administrative Dispute Resolution Act (ADRA), pursuant to which this policy is being adopted, Executive Orders 12778 and 12871, and the National Performance Review.

## II. PURPOSE

This policy statement outlines the agency’s policy on Alternative Dispute Resolution.

## III. POLICY

### A. Furthering the Employ Milwaukee Mission

First and foremost, an effective ADR program must further the Employ Milwaukee’s EEO Plan: vigorously enforcing federal laws prohibiting employment discrimination and resolving employment disputes. ADR will complement current systems in operation by facilitating early resolution of disputes where agreement is possible, thereby freeing up resources for identifying, investigating, and settling other matters. These improvements in our enforcement efforts should, in turn, enhance the agency’s credibility, encourage victims to come forward, and make the process of filing a complaint less daunting.

### B. Fairness

Any ADR enterprise developed and implemented by the agency must be fair to the participants, both in perception and reality. Fairness should be manifested throughout

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all agency ADR proceedings by incorporating each of the core principles identified in this policy as well as by providing as much information about the ADR proceeding to the parties as soon as possible. Fairness requires that the agency provide the opportunity for assistance during the proceeding to any party who is not represented.

Fairness also requires that any ADR procedure include the following elements:

**1. Voluntariness**

Because the uniquely important laws against employment discrimination requires that a federal forum always be available to an aggrieved individual (e.g. the complainant shall always maintain the right to contact the EEOC directly), ADR procedures must be voluntary for the parties.

Employ Milwaukee believes that parties must knowingly, willingly and voluntarily enter into an ADR proceeding. Likewise, the parties have the right to voluntarily opt out of a proceeding at any point prior to resolution for any reason, including the exercise of their right to file a lawsuit in federal district court. In no circumstances will a party be coerced into accepting the other party's offer to resolve a dispute. If the parties reach an agreement, the parties will be allowed to settle as long as the proposed agreement is lawful, enforceable, and both parties are informed of their rights and remedies under the applicable statutes.

**2. Neutrality**

ADR proceedings will rely on a neutral third party to facilitate resolution of the dispute. ADR proceedings are most successful where a neutral or impartial third party, with no vested interest in the outcome of a dispute, allows the parties themselves to attempt to resolve their dispute. Neutrality will help maintain the integrity and effectiveness of the ADR program.

Employ Milwaukee will commission a third-party mediator through vetted legal resources for these purposes. The facilitator's duty to the parties is to be neutral, honest, and to act in good faith. Those who act as neutrals under Employ Milwaukee's auspices should possess a thorough knowledge of EEO law and must be trained in mediation theory and techniques.

**3. Confidentiality**

Maintaining confidentiality is a vital component of any successful ADR program. Subject to the limited exceptions imposed by statute or regulation, confidentiality in any ADR proceeding must be maintained by the parties, Employ Milwaukee employees who are involved in the ADR proceeding, and any outside neutral or other ADR staff. This will enable parties to ADR proceedings to be forthcoming and candid, without fear that frank statements may later be used against them. To accomplish this purpose, Employ Milwaukee will be guided by the nondisclosure provisions of Title VII and the confidentiality provisions of ADRA, which impose limitations on the disclosure of information. To encourage participation in an Employ Milwaukee sponsored ADR program, Employ Milwaukee will include confidentiality provisions in all of its ADR proceedings, and will notify the parties to the dispute of the protection offered by confidentiality provisions.

To ensure confidentiality, those who serve as neutrals for Employ Milwaukee should be precluded from performing any investigatory or enforcement function related to charges with which they may have been involved. The dispute resolution process must be insulated from the investigative and compliance process.

**4. Enforceability**

Any agreement reached during an ADR proceeding must be enforceable. An allegation that an ADR settlement agreement has been breached should be brought to the attention of the Employ Milwaukee

official responsible for those ADR proceedings. Employ Milwaukee will review and investigate the allegation and determine whether it will utilize its authority and resources to seek enforcement of the agreement.

#### **G. Flexibility**

The ADR program must be flexible enough to respond to the variety of challenges Employ Milwaukee faces. Employ Milwaukee recognizes that one ADR model will not work for all circumstances. Within the parameters set by EEOC standards, Employ Milwaukee staff may adapt ADR techniques to fit specific needs.

#### **IV. CONTACT**

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**RECISSIONS:** ADMINISTRATIVE MEMO 18-03: ALTERNATE DISPUTE RESOLUTION

**BOARD APPROVAL DATE:** 12/3/20

