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**A Mediation Model: A Tool for Achieving
Equal Opportunities on the Labor Market**



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A Mediation Model



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1. Introduction

These guidelines for using mediation as a method of resolving disputes and a tool for achieving equal opportunities on the Slovenian labor market were developed based on the legislative framework, experiences with mediation in Slovenia and other countries, and the findings of a study conducted in Slovenian organizations in 2008 and 2009.

As an amicable method of resolving disputes, mediation is based on the principles of **equality and mutual respect** between parties to a dispute. It is based on the method of communicating and seeking solutions, which is in line with the principles of respecting differences and ensuring a safe and non-discriminatory work environment.

In Slovenian companies, mediation is not yet used as a separately developed procedure or method of resolving disputes or issues connected with discrimination and labor disputes. However, in some work environments, elements of mediation procedures do exist (e.g., resolving problems through conversation, or superiors and/or trade union representatives intervening between the parties to a dispute). We believe that in developing **new and innovative mechanisms of trade union** operation that aim to help establish non-discriminatory employment and work conditions, it is worth considering how to create an **organizational environment that enables the use of mediation procedures**. In doing so, existing good experience can be used to build an organizational environment characterized by a **culture of trust** – that is, jointly accepted values and rules of behavior and functioning of the organization's members, based on which they feel safe and respected. In such an environment, employees trust their colleagues and superiors, and evaluate their organization as just. A comprehensive approach to building trust must be used in a company: various levels and participants must be taken into account to develop a suitable framework that secures organizational fairness (both procedural and distributional: the fairness of the decision-making systems, and fairness in allocating funds and incentives) and support (taking into account employees and their work, and ensuring their welfare).

Building a culture of trust will have an automatic preventive effect in the sense of preventing problems and disputes. If problems or disputes nonetheless arise, organizations must clearly define the **principles, procedures, and organizational roles** required to perform mediation, and appropriately inform all of the organization's members of this.



2. Organizational environment appropriate for introducing mediation

- Putting the equality principle and problems connected with various forms of discrimination on the agenda, and providing support to employees/victims in handling problems (communication, counseling, support, equal-opportunity advisor, and other employee-empowerment mechanisms);
- Raising awareness about the possibilities for preventing problems and disputes and resolving them amicably, and the damage caused to individuals and the organization if problems and disputes are not resolved or are resolved inappropriately (e.g., employee turnover, absenteeism, presenteeism, health problems, business damage, and the employer's compromised reputation);
- Establishing a culture of trust and using mediation or principles for amicably resolving problems and disputes at various stages of these issues.

In the early stages, revealing and addressing problems connected with discrimination can have preventive effects; this sometimes prevents inappropriate responses to problems (avoidance, running away), escalation of problems and disputes, and/or their inappropriate resolution. Problems and disputes at an organization develop through several stages, presented in Table 1 below.

Table 1: Phases and signs of problems/disputes at an organization

Dispute/problem stage	Signs, behaviors
Beginning	Problems: feeling of discrimination, inability to function, feeling of mistrust, problems at work Disputes: incompatible goals, open or hidden conflicts, avoiding conflicts, first signs of tensions in communication, work and cooperation problems
Escalation	Strained relations, polarization of positions, confrontation, seeking allies
Culmination/deadlock	Conflict at its peak, blaming, communication ceases between parties, withdrawal, leaving the organization, official complaint, lawsuit/court proceeding
Seeking a way out of the conflict	Acceptance that the problem needs sorting out
Seeking solutions together or independently	Collaboration and consensus or Continuation of the previously started behavior

Source: Adapted from the mediation guide by the Chartered Institute of Personnel and Development (www.cipd.co.uk)



Many **problems connected with discrimination on the basis of sex** or other personal characteristics (e.g., age, ethnicity, and sexual orientation) **do not develop into a dispute** because victims of discrimination feel that a public debate about the problem would not provide a solution or could even worsen the situation. In such cases, the victims resolve the problem by withdrawing; they suppress the dispute, they avoid the situations and persons causing the problem, and they are often absent from work or even leave the organization. To a great extent they do this because they feel powerless and do not receive sufficient support. They regard certain organizational problems (e.g., inadequate organization of work) as personal (e.g., work-family balance) and feel responsible for resolving them, without expecting any organizational support or assistance. This kind of behavior can have many negative effects on the victim and the organizational environment. Unresolved problems can lead to frustration, stress, and poor employee performance. In such cases, adequate support can help employees resolve the problem. Employees should have appropriate information (e.g., Intranet information, thematic information brochures, trade union or management staff that are willing to convey information), and the opportunity to confidentially talk with and consult someone (e.g., an elected employee advisor, a management representative responsible for equal opportunities, or another person) that could propose a mediation procedure for resolving a dispute/problem.

In some cases, problems **escalate into disputes within an organization** – that is, between employees, between employees and managers, or with customers. Communication in the work environment becomes strained, and the environment becomes unpleasant and inappropriate to work in for both of the parties to the dispute and other members of the organization. Escalated problems may be resolved through **lawsuits and time-consuming court proceedings**; they may also be discussed in the media. Even in these cases, it would be welcome to establish an environment with open and respectful communication, accessible information, and the presence of mechanisms for resolving tensions, problems, and disputes. An important condition of a trust-based organizational structure is defining and accepting **common norms and values**. To this end, the organization should think about adopting documents in which it explicitly states which values form the consensually adopted (e.g., at an employees' assembly) basis of the organizational culture (e.g., respect for diversity, equality of everyone in the organization regardless of their personal circumstances, and absence of any kind of discrimination). It is very important that what is adopted also be known and respected by and acceptable to everyone. To this end it is necessary to regularly draw attention to the values adopted (e.g., through activities related to achieving goals connected with these values, such as decreasing salary differences between the sexes, taking measures that facilitate the work-family balance and reporting on the results of these activities, presenting organizational values to new employees, etc.). Unambiguous messages raise employees' awareness and reduce the possibility of problems and disputes connected with gender-based discrimination (or discrimination based on other personal circumstances)



arising due to a lack of knowledge and information. Jointly accepted norms oblige the organization management to create conditions and develop rules, mechanisms, and procedures that will make it possible to implement the values adopted. In doing this, the trade union can serve as an active partner to management, launch initiatives, and help find solutions.

Problems connected with absenteeism, reduced performance, and organizational disputes can have negative effects on organization, such as poorer business results, and material costs and other expenses caused by court proceedings (e.g., compromised public reputation). It can thus be expected that the organization's management will be interested in creating a suitable organizational culture that prevents these problems or in mechanisms that resolve them appropriately. In this, the trade union can play an important role; it can realize its basic mission (i.e., protecting employees' interests) in a different manner – that is, through activities aimed at changing the organizational culture. An economic crisis period can additionally aggravate discrimination-related problems by handling them inappropriately (in a period of ever increasing unemployment, employees will be less willing to expose themselves). Therefore, it is important that organizations create a culture of trust as an appropriate framework for amicable resolution of problems and disputes based on the principles of equality.

Table 2. Examples of discrimination-related problems/disputes and their resolution

Example of a dispute/problem connected with discrimination/unequal opportunities	Inappropriate response/resolution method	What can help resolve the dispute/problem?	What can the trade union do?
Gender-based differences in salary	This problem is not addressed because there is no official information and the victims often believe these differences occur for non-discriminatory reasons beyond anyone's control. Victims believe they are not entitled to information.	Informedness of all participants. Transparency of all employment, remuneration, and promotion criteria and procedures. The organization decides to address and eliminate the problem.	Provides information about reasons for and forms of gender-based discrimination. Works together with the employer in planning and implementing projects aimed at eliminating payment differences. Proposes that the employer monitor information on salaries by gender.



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	Victims believe salary differences reflect poorer quality of their work.		
Impossible to achieve a good work-family balance	Employees see this problem as their personal problem, for which they must take responsibility and find answers on their own.	Flexible work organization (time and place). Understanding environment/management.	Develops programs/projects to facilitate work-family balance together with the employer (e.g., acquiring a Family-Friendly Company certificate). Promotes “small solutions” (e.g., reaching agreements within work teams on resolving problems/tensions, and on how to make work easier)
Discrimination based on sex or sexual orientation in employment and promotion or Sexual harassment or Discrimination based on age, ethnicity, religion, sexual orientation, and work status	Victims do not reveal the problem because they are afraid of being exposed and that the environment will not understand them; they withdraw, do not communicate, or leave the organization. The harasser continues his or her inappropriate behavior.	Awareness about rights to equal treatment, legislation, and procedures. Creating a non-discriminatory and safe organizational environment that respects diversity.	Raising awareness about the presence of discrimination and providing advice in cases of discrimination. Encouraging education about discrimination and ways of eliminating it. Proposing new organizational roles (e.g., an equal-opportunity advisor : a person that provides information and support to employees, listens to them, and serves as a mediator if needed) or documents (e.g., a charter on organizational values).



3. The appropriateness of mediation for resolving labor disputes and discrimination-related problems/disputes

- When does mediation make sense given the characteristics of the participants?
- When is mediation not justifiable (criminal acts, mandatory rights)?
- How severe must a dispute be to justify mediation?
- Appropriateness of mediation in disputes with third parties (buyers, customers, and other persons)?
- Is mediation possible between groups of employees and not merely between individuals?

Mediation can be used for disputes between coworkers at the same hierarchic level and even for disputes between employees and their superiors. In exceptional cases, it can also be used for resolving disputes between work groups or trade unions or employees on the one hand, and management on the other. In Slovenian organizations, cases have been observed in which superiors have served as successful informal mediators in disputes between employees and customers.

In principle (as mentioned above), mediation can be used at any stage of a dispute, but it should be used as soon as possible, before the dispute escalates, or even as a way of preventing a dispute. Mediation can also be used after the dispute has already been formally settled in order to reestablish appropriate interpersonal relations between the parties to the dispute.

Mediation is appropriate for resolving various disputes, such as in interpersonal relations that have broken down, incorrect interpretations of verbal and behavioral messages, personal conflicts, communication problems, harassment, and chicanery. It may happen that certain behavior is perceived as discriminatory, harassing, or disrespectful, although that was not its intent. In this case, mediation can help the aggrieved person see the other person's perspective and for the other person to see how his or her behavior affects the coworker. Of course this is only possible if such behavior stops after a certain period of mediation. Otherwise the mediator must suggest other forms of resolving the problem/dispute. However, due to the confidentiality of the mediation process, the mediator must not reveal the attempts already made and past experiences to a third person. It must be emphasized that in serious cases of harassment and clear cases of discrimination and violation of employees' mandatory rights, formal procedures of resolving disputes/problems are more recommended.



Mediation is also appropriate when the manager's intervention might become biased or his or her position does not allow the dispute to be appropriately resolved, and of course when the manager does not have sufficient skills to handle disputes or others' intense emotions.

In some organizations, mediation is provided as part of disciplinary and grievance procedures. Although mediation is more often perceived as a suitable form of early dispute intervention, it can also be used in cases in which we wish to establish appropriate relations between members that have already undergone a disciplinary procedure.

Mediation is especially appropriate in dealing with diversity because it can help improve interpersonal relations and establish the optimal conditions for career development and promotion of job performance.

There are situations in which mediation is not the best option. However, because this is not always entirely clear, the decision lies in the hands of the mediator or the person or institution that supervises the mediation process. It is definitely inappropriate to use mediation as a substitute for necessary procedures, processes, and roles within the organization (e.g., a substitute for appropriate communication in the organization, a substitute for the work and responsibilities of managers, or when an aggrieved person that feels discriminated against and harassed demands thorough investigation or for the case to be addressed in court).

In order to use mediation successfully, ongoing evaluation of its effects is necessary both from the viewpoint of the organization and the aggrieved participants. A precondition for success is that the employees, managers, and trade union representatives be aware that mediation is one of the options for settling disputes. In this, trade unions play an important role because they lend the mediation process credibility and establish trust among employees. Mediation must not be used in order to resolve sex discrimination problems in haste. Its advantages must be appropriately accepted and evaluated by all those that will use it; appropriate staff, financial resources, and a timeframe must be provided for its implementation in practice.



4. Mediation principles and process

- **PRINCIPLES**

- Voluntariness
- Equality and autonomy of participants, and impartiality of the mediator
- Speed
- Informality
- Confidentiality

- **PROCESS**

- Stages and course of mediation
- Rules, procedures, and familiarization
- Mediator: internal or external? Where to find one? Mediator training
- Mediation costs

4.1 Mediation principles

There is currently only one legal basis governing mediation in Slovenia: the Mediation in Civil and Commercial Matters Act (ZMCGZ), which entered into force on 21 June 2008 and defined mediation as “a procedure in which parties voluntarily and with the assistance of a neutral third party (a mediator) try to amicably settle a dispute that arises or is connected with a contractual or other legal relationship, regardless whether the terms mediation, conciliation, resolution, dispute intervention, or other similar terms are used for this procedure.” This act also lays down the **general principles** of the mediation process:

- Voluntariness
- Equal treatment of parties
- Autonomy of parties
- Confidentiality of procedure
- Impartiality of the mediator

The mediation process must create an **environment of trust**, which means that the victims or aggrieved parties or parties to the dispute must perceive the procedure and the competent persons as trustworthy.

Mediation is a process in which **equal and responsible partners** help settle the dispute; they have accepted the assistance of a mediator with trust and voluntarily in order to form an acceptable permanent solution to the dispute on the basis of their own ability to form a dialogue and cooperate. The responsibility for finding the right solution lies with the participants, whereas the mediator is responsible for the process; the process enhances the ability to form a dialogue and cooperate, as well as the responsibility to find a solution that is



acceptable for everyone and secures victory to everyone involved in mediation. Within this context, the **emancipatory potential of mediation procedures** can also be understood in the sense of working towards eliminating inequality; only employees that are aware of all their rights and empowered to suitably respond to all the violations of their rights at their company can become the proposers and subjects of a mediation process.

The principles of **speed and informality** allow solutions that help the participant avoid time-consuming bureaucratic procedures; they clear any misunderstanding and prevent disputes or find a “small” or an “ad hoc” solution to a problem (e.g., through conversation that eliminates tension and enables cooperation to continue; a substitution/leave/absence plan that is in line with the organizational rules and at the same time ensures greater flexibility to parents that have young children or people with other caretaking obligations; or a workshop on stereotypes about gender and sexual orientation organized in the part of the organization in which such discrimination has been suspected or has actually occurred).

4.2 Mediation procedure

In introducing mediation procedures into the work environment, the following **questions** must be answered (adapted from Doherty and Guyler, 2008):

- Who will perform the mediation?
- Will mediation include an internal or external mediator (or both)?
- Where can external mediators be found?
- How can internal mediators be selected from among one's own coworkers (selection criteria and procedure)?
- What kind of training do mediators require?
- What kind of support and assistance will be provided to external mediators?
- How will the mediation service operate (if organized according to needs)?
- How can mediation be promoted across the organization, so that each employee or member of the organization knows it?

The course of mediation can be divided into three stages (the preparation, mediation, and post-mediation stage).

A) Initial formalities

- Initial complaint or mediation proposal;
- The manager, HR-professional, or other person in charge of the mediation procedure in the organization talks to both parties in order to receive their consent for mediation;
- A mediator, either internal or external, is selected;
- Parties receive the mediator's notification informing them about the content of the mediation procedure, so that they know what to expect;



- The date of mediation is set by common agreement.

B) Mediation

- The mediator assumes his or her role and has preliminary separate meetings with both parties;
- The next meeting takes place with both parties, in which the mediator uses a structured procedure to lead the parties towards signing a jointly formed agreement;
- The date of the next meeting between the parties and the mediator is set by common agreement; at this meeting they review and verify the implementation of the agreement signed. With this meeting the role of mediator is completed.

C) After mediation

- The parties must follow the provisions of the agreement they have themselves developed;
- If new problems arise, new mediation or another method of resolving the issue is possible.

In addition to mediation, the work environment must provide all forms of advising, trade union representation, legal assistance, and all the rights provided to the employees by law. This also includes the need for the senior staff and managers to obtain better training in methods of communicating with their employees, respecting employee rights, and constructively settling disputes. Mediation can be a good choice, but only if employees also have all **other means of exercising their rights** at their disposal. In the case of unsuccessful mediation, the aggrieved party has all other legal means at his or her disposal (especially the possibility of taking the matter to court). Here it is important that the mediation process interrupt the period of limitation for lodging a claim in court in line with Article 17 of the ZMCGZ.

The mediation procedure itself (B) can have various structures. In the UK, six-step mediation designed by the English workplace mediator Nora Doherty is the most common. It is basically a synthesis of various approaches.

The six-step mediation model envisages a preliminary separate meeting between the mediator and each party. At the next, joint meeting, the following stages should be taken into account:

1. Presenting the purpose of mediation and defining the basic rules;
2. The parties describe the problem from their own perspectives, and the mediator sums up the basic circumstances;
3. Defining the core of the dispute and discussing the matter;



4. The mediator encourages mutual understanding between the parties, and controlling and verbalizing emotions, and establishes direct communication between them;
5. Selecting useful ideas and proposals for the agreement;
6. Signing a mutually formed agreement.

These stages represent only a framework, which is as flexible and changeable as mediation itself; the mediator must follow the needs arising in the process of finding the right solution that takes place between the participants of mediation.

4.3 The mediator: selection and training

In deciding whether to include an **internal or external mediator**, the argument in favor of internal mediators is their incorporation into the organizational environment, understanding of the context of the problem/dispute, and good knowledge of the organization and parties to the dispute. However, these advantages are also potential disadvantages because overly strong incorporation into the organization can compromise impartiality and non-involvement. Exactly the opposite is true for external mediators: the advantages of their objectivity and impartiality will have to be evaluated with regard to their insufficient knowledge of the organization, its processes and culture, and dispute/problem circumstances. Perhaps innovative solutions to this issue should also be explored, as it was in the case of a Slovenian organization that assigned the role of ombudsman (in the capacity of an internal mediator) to a retired employee. Retired employees combine the advantages of internal and external mediators: they know the organization well, but in their present role are probably sufficiently distant to possess the required independence and impartiality.

The success of the mediation process depends largely on the mediator's ability to enable the parties to the dispute to form mutual solutions and support their efforts. To this end, mediators must have certain **personality traits** (e.g., highly developed empathy and emotional intelligence), skills (e.g., of listening and understanding, and summarizing other people's thoughts), and expertise that they obtain through education and training. It is very important that mediators receive high-quality **training**, in which the training and education program must be adapted to workplace mediation. A general or basic education program is insufficient. Currently the most appropriate and well-tested education in Slovenia is organized by the **Slovenian Association of Mediators** (DMS). Practically all those actively involved in mediation in Slovenia are members of this association. The association has adopted its own code of ethics, and has a disciplinary and ethical committee, which is a precondition for meeting EU rules. Its president is Gordana Ristin, a senior higher court judge on the Higher Court of Ljubljana.

The education program is harmonized with the guidelines of the Council of Europe (Council of Europe Recommendations, CEPEJ 2007/14) and implemented by instructors that have



trained in the UK and US. So far, they have carried out many training courses, including last year's training of labor and social court judges, which began introducing mediation as part of their activity. The association adjusts the training program to the specific wants and needs of clients, taking into account the guidelines mentioned above.

The training lasts 50 hours (or 63 teaching hours) and costs EUR 550 (+ VAT) per person. The DMS also organizes advanced training courses and monthly mediator supervision – that is, supervision, mentorship, and further professional training.

The key contents of basic labor-dispute mediator training include the following:

- Basic principles and purpose of mediation
- Mediator ethics and attitude
- Stages of the mediation process
- A tradition of settling disputes and mediation
- Suitability of a case, and mediation structure and course
- Communication and settlement skills and techniques
- A sufficient number of role plays and other practical exercises
- Special features of mediation in labor disputes

The DMS can prepare a general presentation of mediation or according to the specific nature of labor disputes. Such a presentation lasts 8 hours (with breaks) and includes the following:

- Alternative dispute resolution (general)
- Legal bases for alternative dispute resolution in Slovenia and the EU
- Basic principles of the mediation process
- Mediation process stages
- Presentation of some basic techniques used by mediators

4.4 Presentation of the concept and model of mediation in an organization

In order for the introduction of mediation as a form of resolving conflicts to be successful, it is necessary that both the employer (management) and the trade union agree with its introduction. The **cooperation and support of the employer**, who can support mediation procedures financially and by providing the time and place for mediation, is key to implementing mediation within the organization. In assessing the costs of mediation, the costs of promotion, organization, and implementation of mediation procedures must also be taken into account in addition to the costs of training mediators (and other active members in charge of mediation procedures in the organization). This assessment should also take into account the direct and indirect benefits (including the financial ones) of successfully carried out mediation procedures and the consensual method of resolving disputes and problems.

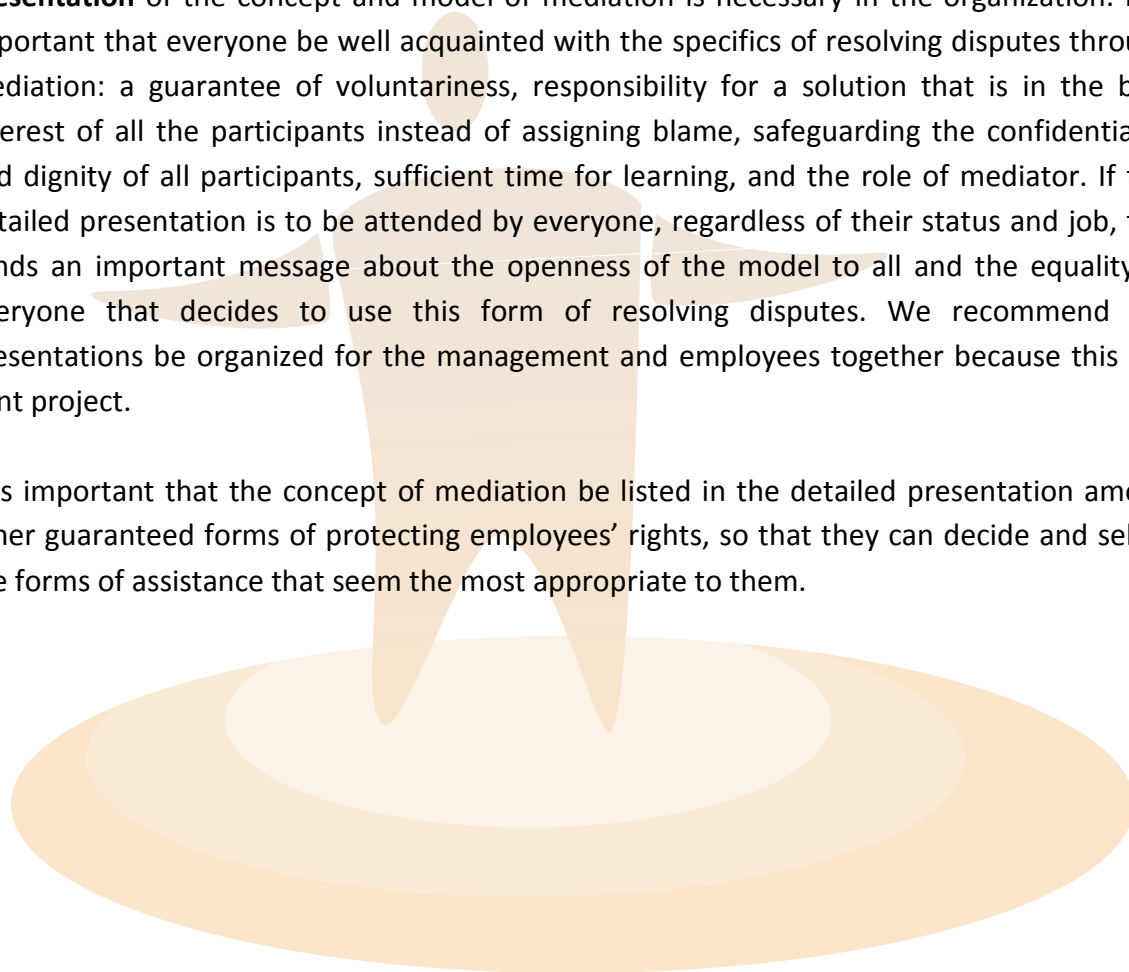


The **trade union** plays a key role in:

- Promoting mediation as a method of resolving workplace disputes in companies in which it operates, among both employees and management;
- Proposing suitable inclusion of mediation in company bylaws;
- Providing suitably qualified mediators that will be available if both parties agree to resolve the dispute by means of a mediation procedure.

In addition to introducing the mediation mechanism and procedures, a **detailed presentation** of the concept and model of mediation is necessary in the organization. It is important that everyone be well acquainted with the specifics of resolving disputes through mediation: a guarantee of voluntariness, responsibility for a solution that is in the best interest of all the participants instead of assigning blame, safeguarding the confidentiality and dignity of all participants, sufficient time for learning, and the role of mediator. If this detailed presentation is to be attended by everyone, regardless of their status and job, this sends an important message about the openness of the model to all and the equality of everyone that decides to use this form of resolving disputes. We recommend the presentations be organized for the management and employees together because this is a joint project.

It is important that the concept of mediation be listed in the detailed presentation among other guaranteed forms of protecting employees' rights, so that they can decide and select the forms of assistance that seem the most appropriate to them.





Example of the structure of material used for presenting mediation:

Presentation of mediation at Medijatorka

- 1. What is mediation?**
Definition and advantages (amicable and fast resolution of problems/disputes; creating a better work environment) and required conditions
- 2. Organizational values of *Medijatorka***
- 3. When to use mediation?**
- 4. The mediation process**
 - a. Mediation principles**
 - b. Initiative, participants, and role in mediation**
 - c. Mediation costs**
- 5. The mediator**
 - a. Required expertise and skills**
 - b. Internal/external**
- 6. The equal opportunity advisor**
 - a. Required expertise and skills**
- 7. What has already been used, but not referred to as mediation?**
 - a. Examples of good organizational practice**
 - b. Existing procedures, roles, and procedures that include elements or principles of mediation**

Guidelines prepared by:

Aleksandra Kanjuo Mrčela, associate professor, Faculty of Social Sciences, University of Ljubljana

Andrej Razdrih, mediator and member of the administrative board of the Slovenian Association of Mediators

Nevenka Černigoj Sadar, full professor, Faculty of Social Sciences, University of Ljubljana

Gabi Čačinovič Vogrinčič, full professor, Faculty of Social Work, University of Ljubljana

Barbara Rajgelj, assistant professor, Faculty of Social Sciences, University of Ljubljana

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