

## **803 KAR 25:300. Mediation program.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.276

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.276(2) requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation. This administrative regulation establishes a mediation program for mediation of disputes as to the entitlement to compensation under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" or "ALJ" is defined by 803 KAR 25:010 Section 1(1).

(2) "Calendar day" means all days in a month, including Saturday, Sunday, and any day which is a legal holiday.

(3) "Mediation" means a process where a third party facilitates discussion among the parties in an effort to resolve disputes regarding entitlement to the compensation provided in KRS Chapter 342.

Section 2. Qualifications and Duties of Mediators. (1) A mediator shall be an administrative law judge.

(2) A mediator shall not conduct the mediation of a claim, or any of the issues involving a claim, presently assigned to him or her as an administrative law judge.

(3) The mediator shall:

(a) Explain the mediation process to the parties at the beginning of the session;

(b) Conduct the mediation in a fair and unbiased manner; and

(c) Maintain the confidentiality of the mediation.

Section 3. Process for Designation of Mediators. The chief administrative law judge shall designate one (1) or more administrative law judges to serve as a mediator on a rotating basis consistent with this administrative regulation.

Section 4. Procedures for Conduct of Mediation Proceedings.

(1) At any time after the claim has been initiated with the Department of Workers' Claims, any party may file a motion with the administrative law judge to have the claim, or any part of the claim, referred to mediation under the program outlined in this administrative regulation. The motion shall identify the issues to be mediated.

(2) An opposing party shall have seven (7) calendar days to file a response to the motion seeking mediation.

(3) The administrative law judge shall either grant or deny the motion within ten (10) calendar days of the filing of the motion to refer to mediation.

(4) The parties may file a joint motion to refer to mediation. The administrative law judge shall order that the claim or parts of the claim be referred to mediation within seven (7) calendar days of the filing of the joint motion.

(5) The administrative law judge may refer a claim or part of a claim to mediation at any time after being assigned the claim.

(6) Upon the referral, the administrative law judge or the mediator shall confer with the parties for the purpose of scheduling the mediation. The mediator shall issue a mediation order

within seven (7) calendar days of the referral which shall include:

(a) The date, time, allotted time, location of the mediation, and whether the mediation shall be conducted in person, by telephone, or by video conferencing technology;

(b) The required attendees of the mediation; and

(c) The issue(s) to be mediated.

(7) Except by agreement of the parties or by order of the mediator, all counsel of record and all parties shall attend the mediation.

(a) An insured party shall be deemed to have appeared by the physical presence of a representative of the insurance carrier, other than defense counsel, with full settlement authority.

(b) A public entity shall be deemed to have appeared by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.

(c) An entity other than a public entity or an insurance carrier for an insured party shall be deemed to appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation or approval.

(d) The requirement to physically attend the mediation may be modified to telephonic attendance or attendance by video conference technology by stipulation of the parties or by order of the mediator.

(8) Parties entering into mediation shall be prepared to mediate the disputed issues listed in the mediation order and shall mediate all issues listed in good faith.

(9) Mediation shall be confidential and considered as settlement negotiations for purposes of KRE 408.

(10) The mediator shall conduct the mediation in accordance with Section 2(3) of this administrative regulation.

(11) If the parties are able to reach a settlement of all disputed issues, the mediator shall issue a "Notice of Settlement at Mediation" within seven (7) calendar days after the mediation stating that all claims have been resolved. The "Notice of Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(12) If the parties are unable to reach a settlement of any disputed issues, the mediator shall issue a written "Notice of No Settlement at Mediation" within seven (7) calendar days after the mediation stating that no disputes have been resolved. The "Notice of No Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(13) If the parties are able to reach a partial settlement of the disputed issues, the mediator shall issue a written "Notice of Partial Settlement at Mediation" setting forth all the resolved issues and unresolved issues within seven (7) calendar days after the mediation. The "Notice of Partial Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

#### Section 5. Issues Subject to Mediation.

(1) All issues arising from disputes as to the entitlement to benefits under KRS Chapter 342 shall be subject to mediation under this administrative regulation if so ordered by an administrative law judge.

(2) Nothing in this administrative regulation shall prevent the parties from using a private mediator at their own cost to resolve disputes as to the entitlement to benefits under KRS Chapter 342. (47 Ky.R. 1511, 1962; eff. 7-6-2021.)