

How Do Effective Dispute Resolution Programs and Policies Assist Businesses to Anticipate, Manage and Resolve Conflict?

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For more than 30 years, Fortune 1000 corporations have successfully developed cutting-edge systems for preventing, managing and resolving internal conflicts and disputes. These systems are now being utilized by smaller private companies, public agencies, international institutions and non-profit entities.

In the business environment, a Dispute Resolution Program (DRP) is structured to enable executive staff, human resources and employees to reduce conflict or internal disputes as early as possible. The overall system is calculated to improve and enhance employee satisfaction, promote a civil workplace, reduce loss of productivity, and save time and money by reducing potential litigation costs.

When CPP, Inc., publishers of *Myers-Briggs Assessment* and the *Thomas-Kilmann Conflict Mode Instrument*, commissioned a study on workplace conflict, they found that in 2008:

U.S. employees spent 2.8 hours per week dealing with conflict.

Representing approximately \$359 billion in paid hours (based on average hourly earnings of \$17.95/hour) or the equivalent of 385 million working days.

In 2011 the American Bar Association's Section of Dispute Resolution established the "Planned Early Dispute Resolution Task Force" to promote planned early settlement resolution. As a result, the Task Force issued a Planned Early Dispute Resolution User Guide, establishing a strategic rationale for DRP systems.¹ The Task Force recommends that, in order to analyze whether and how a business would benefit by developing its own DRP, it should begin by conducting a comprehensive review of how the business has managed disputes during a specified period in the past. The DRP attempts to manage conflict at the information stage with minimal bureaucracy and maximal choice over the various apparent processes and the selection of neutrals.

The review or analysis is calculated to assist senior management to determine the need for particular types of resolution systems for different categories of disputes, as well as how to structure the process to make it more effective in advancing the overall business strategy. The review would include input from all appropriate internal stakeholders about the types of dispute resolution processes to be utilized. After a business has analyzed its history of disputes, a step-by-step process can be utilized to assess the best way to handle conflict.

A substantial body of empirical research supports the theory that participants to the DRP are more satisfied when it is believed that the resolution is fair and favorable. The program's credibility likely depends on both top-down and bottom-up support. Top-down support requires statements of support from organizational leaders and active utilization of the program by key stakeholders. Bottom-up support is based on successful participation and key word-of-mouth endorsements that the program has provided a fair, just and efficient dispute resolution process.

After the new dispute resolution policies are codified in the business's policies and procedures, an important next step is to identify the responsible executive, the business's legal department, or an outside dispute resolution entity to undertake the day-to-day operation of the program. Many companies have adopted an escalation approach to resolve employee conflicts, often overseen by their HR department, legal department, or an outside neutral.

Integrated conflict management systems provide multiple points of entry to conflict resolution for an array of disputants utilizing a variety of processes, such as the following:

Open-Door Policy

An employee can meet with his or her immediate supervisor or a supervisor further up the chain of command.

Ombuds

A neutral person within or outside the company confidentially investigating employee complaints and proposing resolutions to management, with the goal of correcting abuses and resolving conflict. Often the Ombuds is considered a critical neutral member of the corporate structure, located outside the normal managerial chain of command and reporting directly to the President or Chief Executive Officer.

Peer Review

A specially-trained panel of employees or employees and managers who work together to resolve specific conflicts and complaints. The Peer Review team will review documents, interview witnesses and gather statements used to draft recommendations to senior management.

Investigation and Fact-Finding

An outside impartial person or team conducting an investigation and issuing a non-binding report.

Mediation

An outside experienced mediator working with the parties to resolve their dispute(s).

Arbitration

The use of a neutral arbitrator to provide voluntary or mandatory arbitration services.

If internal processes such as open-door policy, ombuds, peer review or investigation/fact-finding do not lead to resolution, the next step is often voluntary and confidential mediation. Mediation involves an attempt by the parties to resolve their dispute with the aid of a highly-trained mediator. The mediator will serve as a facilitator, but resolution rests with the parties themselves. Commonly, the mediator is selected from an impartial outside panel to mitigate the fear that the process will not be confidential and to reduce allegations of bias.

If mediation does not result in an agreement, the next step may be voluntary or mandatory arbitration. Arbitration is a private dispute resolution procedure that generally contains the essential elements of court adjudication but is outside the court process. Arbitration differs from other dispute resolution procedures, such as mediation, in that the neutral Arbitrator, rather than the dispute parties, determines the outcome of the dispute. Arbitration can be either voluntary or mandatory and can be binding or non-binding, as established by the DRP.

To reduce any perception on fairness in the arbitration process, some businesses have adopted a strategically-balanced arbitration program and have adopted the Employment Due Process Protocol. Pursuant to the Protocol, employees are allowed to choose the representative; employers must pay a portion of the employee's legal fees; the employee may obtain sufficient discovery; employees have an equal voice in the choice of the neutrals; and the employer pays the bulk of the arbitrator's fee.

Those with expertise in designing DRP systems stress the actual and perceived importance of justice or fairness in system development. Experts and scholars advocate for the fairness of

the process and the outcome by suggesting guiding principles:

- *Create a Dispute Resolution Program that is fair and just;*
- *Consider efficiency for the institution and participants;*
- *Engage stakeholders, including users, in design and implementation.*
- *consider and seek prevention;*
- *Provide multiple and appropriate interest-based and rights-based process options;*
- *Ensure users flexibility and choice of sequence of process options;*
- *Match the design to the available resources, including training and support;*
- *Train and educate system providers, users, and other stakeholders;*
- *Make the Program accountable through transparency and evaluation, with appropriate concern for privacy.²*

Throughout the 20th Century, employers have attempted to develop systems to assist in managing conflict in the workplace. In the past 30 years, employers in the global marketplace have developed unique Dispute Resolution Programs as a means to prevent, manage, and resolve expensive and time-consuming workplace disputes or conflicts. These new systems should be considered both an art and a science capable of streamlining business practices and procedures.

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¹ The American Bar Association Section of Dispute Resolution *Planned Early Dispute Resolution TaskForce* by John Lande, Kurt L. Dettman and Cathryn E. Shanks (2012)

² *Dispute System Design: Preventing, Managing and Resolving Complaints*, Lisa Blomgren Ansler, Janet K. Martinez and Stephanie E. Smith. Stanford University Press (2020).