



## NAWCJ COMPARATIVE STUDIES

### STATE WORKERS' COMPENSATION LAWS WHICH FEATURE MEDIATION PROVISIONS

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State	Statute	Regulation	Program Name  Agency and/or private website(s) providing public information	Miscellaneous/ Illustrative case
<b>AL</b>	Ala. Code §25-5-290 <sup>1</sup> §25-5-291 §25-5-292 (added 1992).	Ala. Admin. Code Rule 480-5-1-.08 <sup>2</sup>	Benefit Review Conference (Mediation) <a href="http://dir.alabama.gov/docs/law/wc_mediation_overview.pdf">http://dir.alabama.gov/docs/law/wc_mediation_overview.pdf</a> <sup>3</sup>	<i>Ex parte Ford</i> , 782 So. 2d 185 (Ala. 2000) (trial court did not have jurisdiction to set aside workers' compensation settlement agreement entered into by claimant and employer at benefit-review conference conducted by ombudsman; claimant did not seek to have agreement set aside, as required, within 60 days of agreement).
<b>AR</b>	Ark. Code Ann. §11-9-703 <sup>4</sup>	Code Ark. Rule 099.26 (Ark WC Comm'n) <sup>5</sup>	Preliminary Conference  <a href="http://www.awcc.state.ar.us/div.html#3">http://www.awcc.state.ar.us/div.html#3</a> . Legal Advisor	2012 Report states, "Another service offered by the [Legal Advisor] division is mediation, a process through which a neutral party helps resolve disputes without the necessity of a hearing." <sup>6</sup>

<sup>1</sup> See <http://www.legislature.state.al.us/codeofalabama/1975/25-5-290.htm>.

<sup>2</sup> See <http://alabamaadministrativecode.state.al.us/docs/lab/480-5-1.pdf>

<sup>3</sup> Defines mediation and sets forth rules.

<sup>4</sup> See <http://law.justia.com/codes/arkansas/2010/title-11/chapter-9/subchapter-7/11-9-703>.

<sup>5</sup> See <http://www.awcc.state.ar.us/rules/rule26.pdf>.

<sup>6</sup> See <http://www.awcc.state.ar.us/reports/biennial/fullbiennialreportfor2012.pdf>.

<b>CA</b>	Cal. Lab. Code §5502(d) <sup>7</sup>	Cal. Code Regs. tit. 8, §10607	<p>Mandatory Settlement Conference</p> <p>An extensive review is at the website of Robert S. Havens, Esq.: <a href="http://hurtworker.com/california-workers-compensation-articles/mandatory-settlement-conference-workers-comp/">http://hurtworker.com/california-workers-compensation-articles/mandatory-settlement-conference-workers-comp/</a><sup>8</sup></p>	<p><i>Cnty. of Sacramento v. Workers' Comp. Appeals Bd.</i>, 68 Cal. App.4th 1429 (1999) (purpose of statute requiring that discovery in workers' compensation cases be closed at time of mandatory settlement conference is to guarantee a productive dialogue either leading to the resolution of the dispute or thoroughly and accurately framing the stipulations and issues for hearing).</p>
<b>CO</b>	§8-40-201(2) (def.); §8-43-205 (med.); <sup>9</sup> §8-43-206 (Setlmt conf.) <sup>10</sup>	7 Colo. Code Regs. § 1101-3:9 (addressing Mediation-Settlement Conferences - prehearing conferences arb'trat'n). <sup>11</sup>	<p>Mediation Settlement Conference</p> <p><a href="https://www.colorado.gov/pacific/cdle/prehearings-and-settlements">https://www.colorado.gov/pacific/cdle/prehearings-and-settlements</a>.</p> <p>A review is at the website of R. Mack</p>	

<sup>7</sup> See <http://codes.lp.findlaw.com/cacode/LAB/1/d4/4/3/s5502>.

<sup>8</sup> Noting, among other things, “Some judges do not mind setting cases for trial and trying them and other judges use a lot of pressure to settle a case. Your attorney will usually know the personality of the judge you are dealing with. Your case is usually not set for trial with the same judge who handled the settlement conference. If the case does not settle, another judge will be assigned as the trial judge. The personality of that judge will be a factor that your attorney will discuss with you in regard to whether or not you should settle your case....”

<sup>9</sup> See <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1251567766098&pagename=CDLEWrapper#Mediation>.

<sup>10</sup> See [http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1251567766098&pagename=CDLEWrapper#Settlement\\_conference\\_procedures](http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1251567766098&pagename=CDLEWrapper#Settlement_conference_procedures)

<sup>11</sup> See <http://www.workerscompensation.com/regulations/stateitem.php?ID=2457&state=colorado&Parent=252&title=>.

			Babcock, Esq.: <a href="http://www.injurylawcolorado.com/attorney.html">http://www.injurylawcolorado.com/attorney.html</a>	
<b>DE</b>	Del. Code Ann. tit. 19, § 2348A <sup>12</sup>			
<b>FL</b>	Florida Statutes §440.25 <sup>13</sup>	Fl. Admin. Code, Rules of WC Adj. Proc., §§ 60Q-6.110, .111, 6.112 <sup>14</sup>	(Mandatory) Mediation <a href="http://www.myfloridacfo.com/Division/WC/pdf/mediation.pdf">http://www.myfloridacfo.com/Division/WC/pdf/mediation.pdf</a> (schematic) <sup>15</sup>	<i>Cabrera v. Outdoor Empire et al.</i> , 108 So.3d 691 (Fla. 1 <sup>st</sup> DCA 2013) ( <i>pro se</i> claimant who agreed to settlement at end of mediation before state WC mediator was not bound by same, and hence JCC committed error in enforcing agreement); <i>Scotty's Hardware, Inc. v. Northcutt</i> , 883 So.2d 859 (Fla. 1 <sup>st</sup> DCA 2004) (claimant's failure to raise issue of attendant care in prior mediation proceedings barred award of retroactive attendant care benefits, under doctrine of res judicata).
<b>GA</b>	Ga. Code Ann. § 34-9-100(b) <sup>16</sup>	GA Board Rule 100 <sup>17</sup>  GA Board Rule 200.1(e)(3) <sup>18</sup>	Mediation <a href="http://sbwc.georgia.gov/mediation">http://sbwc.georgia.gov/mediation</a>	

<sup>12</sup> See <http://delcode.delaware.gov/title19/c023/sc03/index.shtml>.

<sup>13</sup> See <http://www.flsenate.gov/Laws/Statutes/2011/440.25>.

<sup>14</sup> See generally websites commencing at <http://florida.eregulations.us/rule/60q-6.110>.

<sup>15</sup> See also Bolton, *Enforcement of Workers' Compensation Settlements*, 83 FL. BAR JOURNAL (Apr. 2009), available at <http://www.floridabar.org/divcom/jn/jnjournal01.nsf/Subjects/3154B67A06C3A4FF8525758A004DE136>

<sup>16</sup> See <http://law.justia.com/codes/georgia/2010/title-34/chapter-9/article-3/part-2/34-9-100>.

<sup>17</sup> See <https://sbwc.georgia.gov/board-rule-100>.

<b>ID</b>		Rules of Prac. & Proc. No. 17 (May 2013) <sup>19</sup>	Mediation <a href="http://www.iic.idaho.gov/faqs/faqs_injured_worker.html">http://www.iic.idaho.gov/faqs/faqs_injured_worker.html</a> - mediation	
<b>IA</b>	Iowa Code Ann. § 86.44 (Confidentiality) <sup>20</sup>	876 Iowa Admin. Code r. 4.40 <sup>21</sup>	Dispute Resolution (Mediation) <a href="http://www.iowaworkinjuryblog.com/mediation-iowa-workers-compensation-case/">http://www.iowaworkinjuryblog.com/mediation-iowa-workers-compensation-case/</a> .	
<b>KS</b>	Kan. Stat. Ann. §44-5,117 <sup>22</sup> (WC Act)	Kan. Stat. Ann. § 5-501 through § 5-516 (Arbitration & Award) <sup>23</sup>	Mediation <a href="http://www.dol.ks.gov/WorkComp/mediation.aspx">http://www.dol.ks.gov/WorkComp/mediation.aspx</a>	
<b>LA</b>	La. Rev. Stat. Ann. §23:1310.3 <sup>24</sup>	La. Admin. Code tit. 40, §5813, <sup>25</sup>	Voluntary Mediation <a href="http://www.davidbu">http://www.davidbu</a>	[obsolete]: <i>Ware v. Holmes</i> , 719 So. 2d 1147 (La. Ct. App. 1998) (failure to comply with mandatory requirements of

<sup>18</sup> See <http://law.justia.com/codes/georgia/2010/title-34/appendix-appendix/title-34-appx-bd-work-comp-r-200-1>.

<sup>19</sup> See [http://www.iic.idaho.gov/disputed\\_claims/jrp.pdf](http://www.iic.idaho.gov/disputed_claims/jrp.pdf).

<sup>20</sup> See <http://coolice.legis.iowa.gov/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=86.44>.

<sup>21</sup> See <https://www.legis.iowa.gov/docs/ACO/IAC/LINC/07-28-2010.Agency.876.pdf>. Rule 4.40 is intended to implement Iowa Code § 17A.10 (Admin. Pro.); § 86.8 (duties of Commissioner); and § 86.13 (compensation payments).

<sup>22</sup> See [http://statutes.laws.com/kansas/chapter44/article5/statutes\\_19136](http://statutes.laws.com/kansas/chapter44/article5/statutes_19136).

<sup>23</sup> See [http://kansasstatutes.lesterama.org/Chapter\\_5/Article\\_5/](http://kansasstatutes.lesterama.org/Chapter_5/Article_5/).

<sup>24</sup> See <http://legis.la.gov/lss/lss.asp?doc=83494> (providing, among other things, that “if any party fails to appear at a mediation conference ordered by the judge or requested by the parties after proper notice, the

		5817, 5819	<a href="http://www.state.me.us/wcb/departments/crs/index.html">ie.com/a/6_mediation_conferences_and_trials.html</a> (attorney website remarking on practical needs of carriers in the mediation/settlement process).	mediation proviso as to conference and subsequent report by mediator, rendered all subsequent actions taken in case void; under repealed statutory scheme, scheduling mediation conference prior to service of petition was mandatory, as was mediator's report on outcome of conference, and it was only upon notice from mediator that parties were unable to resolve dispute that service of process was to be effected). <sup>26</sup>
<b>ME</b>	Me. Rev. Stat. tit. 39-A, §313 <sup>27</sup>	Code Me. R. 90-351, Ch. 11, §§ 1, 2 <sup>28</sup>	Mediation (Mandatory)  <a href="http://www.state.me.us/wcb/departments/crs/index.html">http://www.state.me.us/wcb/departments/crs/index.html</a> (discussing "Claims	<i>Commercial Union Ins. Co. v. Maine Employers' Mut. Ins. Co.</i> , 794 A.2d 77 (Me. 2002) (signed mediation agreement is binding on parties in a workers' compensation proceeding to same extent as a

workers' compensation judge upon request of a party may fine the delinquent party an amount not to exceed five hundred dollars, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the workers' compensation judge may assess against the party failing to attend costs and reasonable attorney fees incurred by any other party in connection with the conference. The penalties provided for in this Subsection shall be assessed by the workers' compensation judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute.”).

<sup>25</sup> See [http://www.workcompcentral.com/wiki/index.php/Louisiana\\_Regulations\\_I.5813](http://www.workcompcentral.com/wiki/index.php/Louisiana_Regulations_I.5813).

<sup>26</sup> Mediation is no longer mandatory, so this case may be of limited precedential value.

<sup>27</sup> See <http://www.mainelegislature.org/legis/statutes/39-a/title39-Asec313.html> (providing, among other things, “The board may assess a forfeiture in the amount of \$100 against any employer or representative of the employee, employer or insurer who participates in mediation without full authority to make decisions regarding the claim. If a representative of the employer, insurer or employee participates in mediation or any other proceeding of the board, the representative shall notify the employer, insurer or employee of all actions by the representative on behalf of the employer, insurer or employee and any other actions at the proceeding.”).

<sup>28</sup> See <http://www.workerscompensation.com/regulations/stateitem.php?ID=5950&state=maine&Parent=681&title=>; <http://www.workerscompensation.com/regulations/stateitem.php?ID=5949&state=maine&Parent=681&title=>.

			Resolution Specialists” <sup>29</sup>	final decree by hearing officer; however, mediation agreements, like formal decrees, can be modified upon a finding of “changed circumstances.”).
<b>MA</b>	Mass. Gen. Laws Ann. ch. 152 §10 <sup>30</sup> (conciliation)  Mass. Gen. Laws Ann. ch. 152, §10B(5) <sup>31</sup> (mediation)	.	Conciliation <sup>32</sup> (Mandatory, state-run)  Mediation (private)	<i>Nolan v. Commissioner, Department of Industrial Accidents</i> , 2009 Mass. Super. LEXIS 216 (Mass. Super. 2009) (if conciliator dismisses claimant’s petition, and Administrative Judge affirms, appeal is available via writ of certiorari to superior court; thus, claimants were mistaken in filing a declaratory judgment/mandamus action against agency head).
<b>MI</b>	Mich. Comp. Laws Ann. §418.847 (3) <sup>33</sup>		Mediation  <a href="http://www.michigan.gov/wca/0,4682,7-191-26919-268732--,00.html">http://www.michigan.gov/wca/0,4682,7-191-26919-268732--,00.html</a>	

<sup>29</sup> The Maine agency website does not seem to direct injured workers to a link by which they can obtain a claim form or the like. *See also* Benjamin R. Hutchinson, *It has to End Somewhere: Feiereisen v. NewPage Corp. and the Scope of the Employment Contract*, 64 MAINE LAW REVIEW 326 (2012) (discussing case [5 A.3d 669] where hearing officer and court held that claimant injured in MVA on trip to mandatory mediation did not sustain injury arising in course of employment).

<sup>30</sup> <https://malegislature.gov/laws/generallaws/parti/titlexxi/chapter152/section10>.

<sup>31</sup> *See* <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter152/Section10B>. *See* subsection (5). This is also the rare workers’ compensation statute that seems to allow for arbitration.

<sup>32</sup> According to the DIA website, “When you, or your attorney files claim for benefits or the insurer files a complaint to stop or modify your benefits, a Conciliation is scheduled . A Conciliation is an informal meeting between you, your attorney, the insurer, and a conciliator from the DIA. At the Conciliation we will attempt to reach a voluntary agreement between you and the insurer. If a voluntary agreement cannot be reached, the status of your claim would remain the same as before.” *See also* <http://blog.mass.gov/jobs/workers-compensation/conciliators/>.

<sup>33</sup> Section 3 was added in 2011 by 2011 Mich. Legis. Serv. P.A. 266 (H.B. 5002), to provide, “If the agency or the Michigan administrative hearing system determines that a case may be resolved by mediation, the

			<p>(Alternate Dispute Resolution Policy, January 9, 2012) (indicating that mediation is mandatory for certain cases)</p> <p><a href="http://www.bcpwq.com/workers-compensation-defense/claim-timeline/">http://www.bcpwq.com/workers-compensation-defense/claim-timeline/</a> (attorney website describing process)</p>	
MN	Minn. Stat. Ann. § 176.305 <sup>34</sup>	Minn. R. 5220.2670 <sup>35</sup>	<p>Settlement Conference/ Mediation</p> <p><a href="http://www.dli.mn.gov/wc/FaqADR.asp">http://www.dli.mn.gov/wc/FaqADR.asp</a><sup>36</sup></p> <p><a href="http://www.dli.mn.gov/wc/PDF/mediation_brochure.pdf">http://www.dli.mn.gov/wc/PDF/mediation_brochure.pdf</a> (brochure)</p> <p><a href="http://www.dli.mn.gov/wc/Pdf/mediation_at_DLI.pdf">http://www.dli.mn.gov/wc/Pdf/mediation_at_DLI.pdf</a> (information sheet)</p>	

case may be mediated by the parties. If the matter is not resolved by the mediation, the case shall be set for hearing.”). *See also* [http://www.legislature.mi.gov/\(S\(ngaymz554slh4x55n5aa4jay\)\)/mileg.aspx?page=GetMCLDocument&objectname=mcl-418-847](http://www.legislature.mi.gov/(S(ngaymz554slh4x55n5aa4jay))/mileg.aspx?page=GetMCLDocument&objectname=mcl-418-847).

<sup>34</sup> *See* <https://www.revisor.mn.gov/statutes/?id=176.305> (noting, among other things, “The hearing must be held before a compensation judge other than the compensation judge who conducted the settlement conference.”).

<sup>35</sup> *See* <https://www.revisor.mn.gov/rules/?id=5220.2670>.

<sup>36</sup> This website, which features FAQ’s, commences with the following explanation: “The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry (DLI) seeks early intervention in workers’ compensation disputes through conference and mediation. It handles calls from the workers’ compensation hotline and responds to questions from injured workers and their employers.”

			with links).  http://cousineaulaw.com/la/Workers_Compensation_Litigation_Process.pdf (lawyer website explaining litigation process and describing settlement conference as typically being held in most cases).	
<b>MS</b>			Voluntary Mediation (Encouraged)  <a href="http://www.mwcc.state.ms.us/LAWCLMS/mediationpolicyMemorandum10-2005.pdf">http://www.mwcc.state.ms.us/LAWCLMS/mediationpolicyMemorandum10-2005.pdf</a> <sup>37</sup>	
<b>MO</b>	Mo. Ann. Stat. §287.460 <sup>38</sup>	Mo. Code Regs. Ann. tit. 8, §50-2.050 <sup>39</sup>	Mediation  http://labor.mo.gov/DWC/Division_Units/dispute_manage_unit  Conference  http://labor.mo.gov/DWC/Injured_Wor	<i>Shelton v. Missouri Baptist Med. Ctr.</i> , 42 S.W.3d 700 (Mo. Ct. App. 2001) (claimant's claim was dismissed during mediation because she failed to comply with court order to attend doctor appointments – claimant argued that dismissal of her claim was improper because it was dismissed

<sup>37</sup> Policy Statement declaring, *inter alia*, “A system of completely voluntarily mediation is adequately protected from abuse by the Commission’s ultimate authority to consider and approve, or not, any settlement agreement reached through mediation.”

<sup>38</sup> See <http://www.moga.mo.gov/statutes/C200-299/2870000460.HTM>.

<sup>39</sup> See <http://www.workerscompensation.com/regulations/stateitem.php?ID=8017&state=missouri&Parent=851&title>.



			kers/legal_process# LegalProcess2 <sup>40</sup>	during mediation; court held that ALJ was authorized to dismiss claim for failure to prosecute during mediation).
<b>MT</b>	Mont. Code Ann. § 39-71- 2401 <sup>41</sup>  <i>See also</i> § 39-71- 2406, <sup>42</sup> § 39-71- 2407, <sup>43</sup> § 39-71- 2408, <sup>44</sup> § 39-71- 2409, <sup>45</sup> § 39-71- 2410, <sup>46</sup> § 39-71- 2411 <sup>47</sup>	Mont. Admin. R. 24.28.101 thru 112  <i>See</i> <a href="http://www.mtrules.org/gateway/ruleno.asp?RN=24%2E28%2E101">http://www.mtrules.org/gateway/ruleno.asp?RN=24%2E28%2E101</a>  Of note: Rule 24.28.107 (Role of Mediator – Unrepresent ed Claimant).	Mediation (Mandatory)  <a href="http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit.html">http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit.html</a>  <a href="http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit/mediation-guide-for-insurers.html">http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit/mediation-guide-for-insurers.html</a>	<i>Weidow v. Uninsured Employers' Fund</i> , 246 P.3d 704 (Mt. 2010) (equitable tolling applied so that claimant's failure to meet 60-day claim filing period – after failure of mediation – was excused).
<b>NE</b>	Nebraska Work		Settlement Conference	

<sup>40</sup> Stating, *inter alia*, “A conference is a proceeding before an administrative law judge held in cases where no claim for compensation has been filed. A conference is an opportunity for the injured worker to meet with the attorney for the employer/insurer, discuss the case, and attempt to resolve the case by settlement, if appropriate.”

<sup>41</sup> See [http://leg.mt.gov/bills/MCA\\_toc/39\\_71\\_24.htm](http://leg.mt.gov/bills/MCA_toc/39_71_24.htm).

<sup>42</sup> See <http://leg.mt.gov/bills/mca/39/71/39-71-2406.htm>.

<sup>43</sup> See <http://leg.mt.gov/bills/mca/39/71/39-71-2407.htm>.

<sup>44</sup> See <http://leg.mt.gov/bills/mca/39/71/39-71-2408.htm>.

<sup>45</sup> See <http://leg.mt.gov/bills/mca/39/71/39-71-2409.htm>.

<sup>46</sup> See <http://codes.lp.findlaw.com/mtcode/39/71/24/39-71-2410>.

<sup>47</sup> See <http://leg.mt.gov/bills/mca/39/71/39-71-2411.htm>.

	Comp Ct Rule 6, <sup>48</sup> Rule 48 <sup>49</sup>  <i>See also</i> Neb. Rev. Stat. § 48-168 <sup>50</sup>		<a href="http://www.wcc.ne.gov/publications/idr_information_sheet.pdf">http://www.wcc.ne.gov/publications/idr_information_sheet.pdf</a> <sup>51</sup>	
<b>NM</b>	N.M. Stat. Ann. §52-5-5 Subpart C <sup>52</sup>	N.M. Admin. Code § 11.4.4 but specifically N.M. Admin. Code § 11.4.4.10 <sup>53</sup> (Mediation Rules)	Mediation (Mandatory)  <a href="http://www.workerscomp.state.nm.us/pdf/booklets/C1.pdf">http://www.workerscomp.state.nm.us/pdf/booklets/C1.pdf</a>  <a href="http://www.workerscomp.state.nm.us/pdf/booklets/C3.pdf">http://www.workerscomp.state.nm.us/pdf/booklets/C3.pdf</a>	<i>Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't</i> , 2013 WL 1482949 (N.M. Apr. 11, 2013) (claimant, widow of tribal police officer, appealed denial of her claim in connection with her husband/officer's death; dispute was over the tolling of the limitations period – discussion of mediation process toward the end of the opinion; court noted that mediators can't dismiss a claim with prejudice like a judge could).
<b>NY</b>	N.Y. Workers' Comp. Law §25	N.Y. Comp. Codes R. & Regs. tit. 12, § 312.1	Conciliation <sup>56</sup>  <a href="http://www.wcb.ny.gov/content/main/f">http://www.wcb.ny.gov/content/main/f</a>	<i>Employer: Brand Mgmt. Inc.</i> , 2010 WL 4231331 (N.Y. Work. Comp. Bd., Oct. 21, 2010) (court could not review

<sup>48</sup> See <http://www.wcc.ne.gov/publications/rules.pdf>. Rule 6

<sup>49</sup> See *id.*, Rule 49.

<sup>50</sup> See <http://nebraskalegislature.gov/laws/statutes.php?statute=48-168>.

<sup>51</sup> According to the Court Administrator, the “court does have the authority to facilitate mediation. In fact, the court has three staff attorneys who are trained as mediators and conduct mediations as part of their duties. All petitioned cases involving pro se plaintiffs are automatically forwarded to our staff attorneys to attempt informal resolution, and our public information and compliance staff members also refer callers interested in mediation to the attorneys. ... [Also,] some private practice attorneys also conduct mediations. This is done largely outside the statutory dispute resolution processes, with the exception that any resulting agreement becomes final and binding only if it results in a settlement agreement or release in accordance with §48-139.” Memorandum to Mr. Glenn Morton to DBT (9/24/2014).

<sup>52</sup> See <http://law.justia.com/codes/new-mexico/2013/chapter-52/article-5/section-52-5-5>.

<sup>53</sup> See <http://www.workerscomp.state.nm.us/pdf/rules/rule4.pdf> (includes remarkable proviso, “The mediator shall be addressed in a courteous and respectful manner by all parties.”).

	section 2-b <sup>54</sup>	through § 312.5 <sup>55</sup>	<a href="#">orms/cb11.pdf</a> (“Claimant’s Guide to the Conciliation Process”)	final conciliation decision where party did not object within the statutory period); <i>Employer: Gloria Parks Cmty. Ctr</i> , 2006 WL 1859655 (N.Y. Work. Comp. Bd., June 21, 2006) (carrier contended that conciliator inappropriately converted conciliation into pre-hearing conference when scheduling depositions; Board held that at end of pre-hearing conference WCLJ is to issue written order limiting issues to be tried, and naming the witnesses so matter may move forward – <i>that</i> order is interlocutory and cannot be reviewed).
NC	N.C. Gen. Stat. Ann. § 97-80(c) <sup>57</sup>	4 N.C. Admin. Code §10G.0101 through .0112 (also cited as	Mediation (generally mandatory) <a href="http://www.ic.nc.gov/v/faqs.html">http://www.ic.nc.gov/v/faqs.html</a> (noting that mediation is	<i>Lemly v. Colvard Oil Co.</i> , 577 S.E.2d 712 (Ct. Appeals 2003) (agreement obtained at mediation that complied with law will be enforced against employee absent a defense in contract law); <i>Knight v. Wal-</i>

<sup>56</sup> May be mandatory in some cases. A lawyer website states, “Your case may also be scheduled for a “conciliation” meeting. This is similar to a hearing, except that any findings made must be by agreement. This is less formal than a hearing. Unfortunately, the Workers’ Compensation Board will often schedule conciliation meetings when a hearing is necessary to deal with problems that we cannot agree on. Usually, there is little we can do about this, and the conciliation meeting may not be very helpful. We will try to avoid this when we can. If this does happen, the conciliator will usually schedule a hearing after the meeting.”). See [http://www.chellislaw.com/Frequent\\_Questions.html](http://www.chellislaw.com/Frequent_Questions.html). For a 2006 blog posting that criticizes mandatory conciliation, see <http://www.disabledworkerlaw.com/2006/02/articles/ny-workers-compensation-claims/ny-workers-comp-alliance-position-paper-2006/>. This item is obviously dated but points up standard criticisms of mandatory processes that delay a case from reaching a WCJ.

<sup>54</sup> See [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$WKC25\\$\\$@TXWKC025+&LIST=LAW+&BROWSER=&TOKEN=30768548+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$WKC25$$@TXWKC025+&LIST=LAW+&BROWSER=&TOKEN=30768548+&TARGET=VIEW).

<sup>55</sup> See <http://www.wcb.ny.gov/content/main/wclaws/312.jsp>.

<sup>57</sup> <http://www.ic.nc.gov/ncic/pages/statute/97-80.htm>. See generally Lex Larson, *Mediation of Industrial Commission Cases*, 17 CAMPBELL L. REV. 395 (1995). As to enforceability of mediated settlement in North Carolina, see <http://www.wci360.com/news/article/enforceability-of-mediated-settlement-agreements-north-carolina-law>.

		Rule 1-12) <sup>58</sup>	generally mandatory). <a href="http://www.ic.nc.gov/mediation.html">http://www.ic.nc.gov/mediation.html</a> (detailing responsibilities of NCIC Mediation Section) <a href="http://www.wci360.com/news/article/w-e-dont-need-no-stinking-hearings-">http://www.wci360.com/news/article/w-e-dont-need-no-stinking-hearings-</a>	<i>Mart Stores, Inc.</i> 562 S.E.2d 434 (Ct. Appeals 2002), <i>aff'd</i> (2003) (failure to award employer and insurer a credit for having advanced workers' compensation claimant's share of mediator's fee against the compensation due claimant was not erroneous, even though rule for mediated settlements provided that parties pay equal shares; Commission had authority to order payment of costs in a
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<sup>58</sup> “Order for Mediated Settlement Conference”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0101.pdf>;  
“Selection of Mediator”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0102.pdf>;  
“The Mediated Settlement Conference”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0103.pdf>;  
“Duties of Parties, Representatives, and Attorneys”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0104.pdf>;  
“Sanctions (Effective July 1, 2014)”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0105.pdf>;  
“Authority and Duties of Mediators”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0106.pdf>;  
“Compensation of the Mediator”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0107.pdf>;  
“Mediator Certification and Decertification”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0108.pdf>;  
“Neutral Evaluation”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0109.pdf>;  
“Waiver of Rules”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0110.pdf>;  
“Motions”: <http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0111.pdf>

			mediations-in-nc-an-attractive-alternativ (title marred by unexplained vulgarity, but features detailed lawyer's explanation of the process).	different apportionment).
<b>OK</b>	Okla. Stat. Ann. tit. 85A, § 110 <sup>59</sup>	OK WC Rules 52 and 53 <sup>60</sup>	Mediation (Voluntary)  <a href="http://www.owcc.state.ok.us/mediation.htm">http://www.owcc.state.ok.us/mediation.htm</a> (Court of Existing Claims)  <a href="http://www.ok.gov/oid/documents/111413_The%20WC%20PP%2011%2012%2013.pdf">http://www.ok.gov/oid/documents/111413_The%20WC%20PP%2011%2012%2013.pdf</a> (slide show detailing reform to an administrative system and referencing mediation) <sup>61</sup>	
<b>OR</b>	Or. Rev. Stat. Ann. § 656.307 (6) <sup>62</sup>	Or. Admin. R. 438-019-0000 through 438-019-	Mediation (Voluntary)  <a href="http://www.cbs.state.or.us/wcb/mediati">http://www.cbs.state.or.us/wcb/mediati</a>	

<sup>59</sup> [New Administrative System]: <http://www.oklegislature.gov/osstatuestitle.html>.

<sup>60</sup> [Court of Existing Claims]:  
[http://www.owcc.state.ok.us/PDF/CEC%20rules%20as%20approved%20by%20Sup%20Ct\\_2014%20OK%202.pdf](http://www.owcc.state.ok.us/PDF/CEC%20rules%20as%20approved%20by%20Sup%20Ct_2014%20OK%202.pdf).

<sup>61</sup> See also <https://www.travelers.com/claim/iw-documents/workers-compensation/OK.Admin.WC.Act.S1.Title85A.2013.pdf>.

<sup>62</sup> See <http://www.oregonlaws.org/ors/656.307>.

	Or. Rev. Stat. Ann. §36.224(5) <sup>63</sup>	0060 <sup>64</sup>	<a href="http://www.cbs.state.or.us/wcb/mediation.htm">on/mediatoravail.htm</a> <a href="http://www.cbs.state.or.us/wcb/mediation.htm">http://www.cbs.state.or.us/wcb/mediation.htm</a>	
<b>PA</b>	Sections 401.1, 401 of the WC Act, 77 Pa. Stat. Ann. tit. 77, §§ 710, 701 <sup>65</sup>	34 Pa. Code § 131.59 § 131.59a § 131.59b <sup>66</sup>	Mediation (Mandatory in most cases, <i>though not in the Florida sense</i> , as judge may waive mandate if session deemed futile) <a href="http://www.portal.state.pa.us/portal/server.pt/community/alternative_dispute_resolution/10414">http://www.portal.state.pa.us/portal/server.pt/community/alternative_dispute_resolution/10414</a>	<i>Webb v. WCAB (Am. Cancer Society)</i> , 2011 Pa. Commw. Unpub. LEXIS 395 (May 19, 2011) (claimant's argument that WCJ committed error in not directing parties to mandatory mediation before grant of termination petition held waived and hence not addressed by court).
<b>SC</b>	Mediation introduced in 2013 via <i>regulatory</i> authority  Note: Private mediators are	SC Code of Regs. § 67-1801 through § 67-1809 <sup>67</sup>	Mediation (Mandatory for certain classes of claims) <a href="http://www.wcc.sc.gov/Pages/MediationRegulation.aspx">http://www.wcc.sc.gov/Pages/MediationRegulation.aspx</a>  <a href="http://www.wcc.sc.gov/judicial/Pages/">http://www.wcc.sc.gov/judicial/Pages/</a>	

<sup>63</sup> See <http://www.oregonlaws.org/ors/36.224>.

<sup>64</sup> See [http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_438/438\\_019.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_438/438_019.html).

<sup>65</sup> See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553004&mode=2>; See D. TORREY & A. GREENBERG PA WORKERS' COMPENSATION: LAW & PRACTICE, § 16:102 et seq. (Thomson-Reuters 3<sup>rd</sup> ed. 2008 & Supp. 2013) (reviewing mediation law and practice).

<sup>66</sup> See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553004&mode=2>.

<sup>67</sup> See <http://www.wcc.sc.gov/Documents/What%27s%20New/Regulations/Mediation%20Regulation%2067%201801/Final%20Mediation%20Regulation%20eff%202013%2006%2028.pdf>. For a lawyer website which summarizes the 2013 enactment, see <http://www.constangy.com/communications-460.html>.

	utilized		<a href="#">Mediation.aspx</a> <a href="http://www.wcc.sc.gov/Documents/What%27sNew/JudicialNotices/2013MediationRegulationInfoSheet_FINAL.pdf">http://www.wcc.sc.gov/Documents/What%27sNew/JudicialNotices/2013MediationRegulationInfoSheet_FINAL.pdf</a> (FAQ's in brochure form)	
<b>SD</b>	S.D. Codified Laws § 62-7-37 <sup>68</sup>	S.D. Admin. R. 47:03:01:17 (repeats language of statute)	Mediation <a href="http://dlr.sd.gov/workerscomp/mediation.aspx">http://dlr.sd.gov/workerscomp/mediation.aspx</a> <a href="http://dlr.sd.gov/workerscomp/publications/mediation_process_infographic.pdf">http://dlr.sd.gov/workerscomp/publications/mediation_process_infographic.pdf</a> (easy-use schema)	
<b>TN</b>	Tenn. Code Ann. § 50-6-203 <sup>69</sup> § 50-6-236 [major section] Tenn. Code Ann. § 50-6-239	<i>See</i> [Proposed] Rule 0800-02-21-.11 (Alternative Dispute Res. Proc.)	Mediation (Mandatory) <a href="http://www.tn.gov/labor-wfd/wcomp/CourtofWorkersCompClaims_andAppealsBoard.shtml">http://www.tn.gov/labor-wfd/wcomp/CourtofWorkersCompClaims_andAppealsBoard.shtml</a> <a href="http://www.tn.gov/labor-wfd/wcomp/wc_2013_ReformAct_faq">http://www.tn.gov/labor-wfd/wcomp/wc_2013_ReformAct_faq</a>	

<sup>68</sup> See <http://legis.sd.gov/statutes/DisplayStatute.aspx?Type=Statute&Statute=62-7-37>.

<sup>69</sup> Stating, inter alia, “No request for a hearing by a workers' compensation judge under this chapter shall be filed with the court of workers' compensation claims, other than a request for settlement approval, until a workers' compensation mediator has issued a dispute certification notice certifying issues in dispute for hearing before a workers' compensation judge.” Proviso also limits issues for hearing to those raised at mediation (with exceptions.)

	All for new Court of WC Claims <sup>70</sup>		s.shtml (FAQ's).	
<b>TX</b>	<p>Tex. Labor Code Ann. § 410.023 (By Request)<sup>71</sup></p> <p>Tex. Labor Code Ann. § 410.024 (Mandatory)<sup>72</sup></p> <p>Tex. Labor Code Ann. §413.0311 (Party to medical dispute not obliged to undergo BRC).<sup>73</sup></p>	28 Tex. Admin. Code § 141.1 through 141.5, and § 141.7 <sup>74</sup>	<p>Benefit Review Conference (Mediation<sup>75</sup>) (Generally Mandatory)</p> <p><a href="http://www.tdi.texas.gov/wc/idr/brcinfo.html">http://www.tdi.texas.gov/wc/idr/brcinfo.html</a> (detailed review of BRC/mediation)</p> <p><a href="http://www.oiec.texas.gov/topics/benefitreview.html">http://www.oiec.texas.gov/topics/benefitreview.html</a> (video in English, Spanish, to help prepare for BRC)</p> <p><a href="http://www.tdi.texas.gov/WC/employee/dispute.html">http://www.tdi.texas.gov/WC/employee/dispute.html</a> (comprehensive review of entire Texas process)</p>	<i>Thomas v. Am. Home Assur. Co.</i> , 403 S.W.3d 512 (Tex. App. 2013) (injured worker failed to exhaust administrative remedies under Act relating to extent of compensability for knee injury; case gives overview of Texas process, including necessity of benefit review conference).
<b>UT</b>	Statutory authority		Mediation/Claims Resolution	<i>Reese v. Tingey Const.</i> , 177 P.3d 605 (Utah 2008) (given

<sup>70</sup> See generally <https://www.travelers.com/claim/iw-documents/workers-compensation/Tennessee.WC.Reform.2013.pdf>

<sup>71</sup> See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.410.htm#410.021>.

<sup>72</sup> See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.410.htm#410.021>.

<sup>73</sup> See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.413.htm>.

<sup>74</sup> See <http://www.tdi.texas.gov/wc/rules/documents/141.pdf>.

<sup>75</sup> The regulations, at § 141.5(b), characterize the conference as follows: “*Overview of the benefit review conference*. The benefit review conference consists of three parts: opening, mediation, and closing.”



	for mediation TBD		<a href="http://laborcommission.utah.gov/FAQ/workers_comp_problems.html">http://laborcommission.utah.gov/FAQ/workers_comp_problems.html</a> (FAQs)  <a href="http://laborcommission.utah.gov/divisions/IndustrialAccidents/mediation_claims_resolution.html">http://laborcommission.utah.gov/divisions/IndustrialAccidents/mediation_claims_resolution.html</a> (explaining claims resolution program)  <a href="http://laborcommission.utah.gov/divisions/IndustrialAccidents/WCClaimsProcess.html">http://laborcommission.utah.gov/divisions/IndustrialAccidents/WCClaimsProcess.html</a> (detailing claims process in general)	Supreme Court's holding that any oral agreement reached in the course of mediation between workers' compensation claims service and claimant was confidential, portions of record in claimant's personal injury action against third party disclosing confidential mediation information would be ordered sealed, and judges who reviewed confidential information from the mediation would be required to recuse themselves from further proceeding).
<b>VT</b>	Vt. Stat. Ann. tit. 21, § 663A <sup>76</sup>	13-4 Vt. Code R. § 1 (parts 2 & 3 discuss what disputes not required for mediation) <sup>77</sup>	Mediation (Mandatory at discretion of the Commissioner)  <a href="http://159.105.83.163/Portals/0/WP%20Safety/Approved%20Mediator%20List.pdf">http://159.105.83.163/Portals/0/WP%20Safety/Approved%20Mediator%20List.pdf</a> <sup>78</sup>	
<b>VA</b>	Va. Code § 65.2-201 (general duties and powers of Commission)	Commission Rule 1.9	Mediation  <a href="http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/resources/resolutions/20">http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/resources/resolutions/20</a>	<i>Willis R. Surrett, Jr., Claimant</i> , 211-17-53, 2007 WL 1652426 (Virginia WC Comm'n) (May 9, 2007) (mediation does not necessarily continue a hearing).

<sup>76</sup> <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=009&Section=00663a>.

<sup>77</sup> <http://labor.vermont.gov/workers-compensation/workers-compensation-rules/>. (Includes rules, approved mediator list, and report on program).

<sup>78</sup> See <http://labor.vermont.gov/workers-compensation/injured-workers/dispute-resolution/>. (This site details informal dispute resolution, which is different from mediation.)

	on)		<p>00/september/workers_comp.html (broad description of genesis of program).</p> <p><a href="http://www.vwc.state.va.us/content/alternative-dispute-resolution-adr">http://www.vwc.state.va.us/content/alternative-dispute-resolution-adr</a> (description of program)</p> <p><a href="http://www.vwc.state.va.us/sites/default/files/documents/Mediation-Pamphlet.pdf">http://www.vwc.state.va.us/sites/default/files/documents/Mediation-Pamphlet.pdf</a>.</p>	
<b>WA</b>	RCW sec. 51.52.095 <sup>79</sup>	<p>WAC § 263-12-090 (in general)<sup>80</sup></p> <p>WAC § 263-12-092 (confidentiality and privilege)<sup>81</sup></p>	<p>Settlement Conference (aka Mediation)<sup>82</sup> (Mandatory)</p> <p><a href="http://blog.fosterstation.com/the-board-of-industrial-insurance-appeals-its-purpose-and-importance-in-workers-">http://blog.fosterstation.com/the-board-of-industrial-insurance-appeals-its-purpose-and-importance-in-workers-</a></p>	

<sup>79</sup> See <http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.095> (“Conference for disposal of matters involved in appeal/ Mediation of disputes”).

<sup>80</sup> See <http://app.leg.wa.gov/wac/default.aspx?cite=263-12-090>. Providing, *inter alia*, “No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal ....”

<sup>81</sup> See <http://app.leg.wa.gov/wac/default.aspx?cite=263-12-092>.

<sup>82</sup> One agency report explains: “Workers, employers, and other parties who dispute DLI orders have a limited time within which to file appeals with the BIIA. Once an appeal is filed, the BIIA has up to sixty days to accept (grant) or deny the appeal. Specially trained support staff first develop historical summaries and prepare case files. An appeal is then assigned to an industrial appeals judge who has expertise in mediation and settlement skills (a mediation/review judge). ... In the event an appeal is not settled or dismissed, the case is assigned to an industrial appeals judge (a hearings judge) for a hearing on the merits of the appeal. The hearing process is adversarial in nature; attorneys represent over 90% of all parties....” <http://ofm.wa.gov/budget/manage/strategic/0709/190strategicplan.pdf>.

		WAC § 263-12-093 (disposition via agreement)  WAC § 263-12-095 (conference procedures)	compensation-appeals (attorney site explaining process).	
<b>WV</b>	W. Va. Code Ann. § 23-5-9(b) <sup>83</sup>	W. Va. Code R. § 93-1-17 <sup>84</sup>	Mediation	
<b>DC</b>		D.C. Mun. Regs. tit. 7, § 219 <sup>85</sup>	Informal Procedures (Mediation)  <a href="http://does.dc.gov/node/192372">http://does.dc.gov/node/192372</a> (characterizing D.C, system in general)  <a href="http://does.dc.gov/page/workers-compensation-does">http://does.dc.gov/page/workers-compensation-does</a> (referencing mediation)	<i>Hensley v. D.C. Dep't of Employment Servs.</i> , 49 A.3d 1195 (D.C. 2012) (res judicata did not apply in part because the court reasoned “[i]t is far from clear that a DOES Informal Conference, conducted pursuant to 7 DCMR § 219, is the ‘essential equivalent of a judicial proceeding.’ We note that such conferences, which may be held over the telephone, do not require that all interested parties be present, no stenographic records are kept, and “no witnesses shall be called.”); <i>Travelers Indemn. Co. of Illinois v. D.C. Dep't of Employment Servs.</i> , 975 A.2d 823 (D.C. 2009) (memorandum of informal

<sup>83</sup> See <http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=23&art=5>.

<sup>84</sup> See [http://www.workerscompensation.com/regulations/stateitem.php?ID=18694&state=west\\_virginia&Parent=2004&title=](http://www.workerscompensation.com/regulations/stateitem.php?ID=18694&state=west_virginia&Parent=2004&title=).

<sup>85</sup> See <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=7-219>.

				conference issued by a claims examiner, in a workers' compensation case, is, in effect, a recommendation for settlement, which the parties can either accept or reject and, thus, the memorandum acquires the force of law only if it is accepted by the parties).
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