

Client Alert

Employment Practices Group

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Automatic, Non-Binding Mediation for SDNY Employment Matters

In the typical employment discrimination litigation, emotions run high, claims seem to become personal and settlement discussions are often postponed until many hours and dollars have been spent litigating a case. In an effort to assist parties in resolving these matters, the Board of Judges of the Southern District of New York (“SDNY”) has adopted a new rule (SDNY Local Rule 83.12) that requires that all employment cases, except for wage and hour cases, be referred for non-binding mediation under the court’s Alternative Dispute Resolution (“ADR”) program. While the presiding magistrate may exempt a particular case from mediation, we expect this will be the exception rather than the norm.

By requiring early mediation, the SDNY is sending a clear message — determine as early as possible whether a case can be settled. While judges have previously encouraged mediation, both parties had to agree to it before a judge would refer the case to a court-appointed mediator. The new rule requiring mediation should cause all parties to immediately focus on the strengths and weaknesses of their respective cases, and their ultimate goals. As employment discrimination litigations are rarely dismissed during the early stages of litigation, early evaluation will be even more important to obtaining a good, business oriented result.

Under the new SDNY rule, each case will be automatically referred to non-binding mediation, and parties will have five days to indicate whether they require a mediator with particular expertise. If no particular expertise is required by the parties, the ADR program supervisor will choose the next available mediator from a list of certified mediators. The rule requires parties to conduct the first mediation session at the SDNY’s ADR Center, while additional sessions may be held elsewhere at the parties’ convenience. While discovery may be ongoing during this process, all indications are that judges will expect the parties to proceed with mediation simultaneously and take the process seriously.

The attorneys in Olshan’s Employment Practices Group are experienced in all aspects of mediation and litigation. Should you have questions related to ongoing litigation in the Southern District of New York, or any other employment matter, please contact Aliza Herzberg or any Olshan partner with whom you regularly work for assistance.

Aliza F. Herzberg
aherzberg@olshanlaw.com
212.451.2205

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