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UPDATE

Karen Carrera Consulting can help you with your mediation needs.

Karen Carrera recently concluded 40 hours of mediation training with respected mediator, Steve Rosenberg. Ms. Carrera serves as a settlement conference panelist and mediator for the Early Settlement Program of the San Francisco Bar Association and on the Alternative Dispute Resolution Panel of the Marin County Superior Court. Ms. Carrera is available to conduct workplace conflict resolution mediations between

Recent Speaking Engagements

April 29, 2009

Karen Carrera was a presenter at the **Professional Liability Underwriting Society (PLUS) Symposium Series**. She spoke on a panel about wage and hour class actions and lawsuits.

June 3, 2009

Ms. Carrera spoke at the **Northern California Human Resources Association-North Bay Chapter Breakfast Meeting** on the Employee Free Choice Act.

Fall of 2009

Ms. Carrera will serve as an **Adjunct Professor teaching Legal Writing & Research** at the University of California, Hastings College of the Law.

Why Workplace Mediations Work

Virtually any dispute that arises in the workplace can benefit from mediation if the parties are willing to deal directly with each other and if the business or organization has the resources to provide a mediator. Over time, a workplace in which mediation is the preferred or presumed dispute resolution mechanism is likely to become a workplace in which managers, employees and coworkers need less assistance in working

employees, teams, managers and supervisors.

Ms. Carrera conducts mediations in labor/employment law cases, landlord/tenant and neighbor disputes, business, commercial and real estate transactions, elder and family law, and personal injury disputes and lawsuits.

Also, Ms. Carrera conducts neutral fact-finding workplace investigations into sexual harassment and discrimination complaints.

Karen Carrera is a Bay Area employment law attorney with over 17 years experience assisting and advocating for clients. Ms. Carrera works with employers to counsel them on how to comply with the complex and ever changing employment laws, but in the past has represented workers, tenants, and public agencies.

Karen Carrera Consulting provides consultation services to growing businesses and non-profit organizations. We provide employment law training, one-on-one consultations, advice and counsel, employment policy manuals, neutral fact-finding investigations, forms and document review.

Karen Carrera Consulting is unique in that we provide bilingual services and training for employers with Spanish speaking employees.

through differences and begin to be natural collaborators. However, there are certain types of workplace conflicts in which any company would be advised to offer mediation. These include the following:

1. **Sexual harassment complaints.** People often assume that parties to a sexual harassment complaint cannot work together to resolve the dispute. That assumption can do both parties a disservice. Many hostile environment complaints arise as a result of differences in perception about what is funny or flattering and what is offensive behavior, or they arise as a result of one person's failure to respect the other or to understand the effect of his or her behavior on the other. If the parties are willing to talk with each other, these complaints can be mediated to excellent conclusions. The employer can save its relationship with both employees and avoid an expensive and painful lawsuit.
2. **Discrimination complaints.** Employees who claim that they are being discriminated on the basis of one of the protected categories: race, sex, national origin, religion, age, sexual orientation, medical condition, disability, etc., may feel intimidated, hurt and angry. Whether it is an employee, manager, or group engaging in the unlawful behavior, the employee(s) who is the target of the discrimination or harassment wants to be heard. The perpetrator of the discrimination or harassment may not even know he/she is engaging in this type of behavior. Or he/she may know and has to be informed that what they are doing is hurtful and against the law. Mediation can assist the parties in understanding each other's differences. The employer may have a policy that is unfairly targeting or affecting an entire group of workers. During workplace mediation, the employer may come to realize that its policies or practices are discriminatory or are having a discriminatory effect before the employee or group files a lawsuit or a claim with the

We also conduct the California law required sexual harassment prevention and diversity trainings in Spanish and translate employee manuals and other forms into Spanish for use with your Spanish speaking employees.

For information on services, please visit our website at www.consultingcarrera.com. For a free consultation, call us at **415-789-9798** or email us at karen@e-licenciados.com.

You do not have to navigate the laws by yourself. Call us for help.

REMINDER

Sexual Harassment Prevention Training for all managers and supervisors is required under California law every 2 years for employers with 50 or more employees, and recommended for **ALL** employers.

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EEOC or the Department of Fair Employment and Housing.

3. **Wage and Hour Claims.** Employees who claim they are being paid incorrectly may have a wage and hour claim against the company or organization. Mediation can help in determining whether an employer is violating a wage and hour law and how much the employee or employees are owed. Instead of risking the defense of a costly wage and hour lawsuit or claim with the Labor Commissioner, the employer can mediate the wage and hour dispute and correct its practices before the dispute reaches the point of no return. An agreement reached at the mediation will assist the employer in correcting its practices and make the employee feel that he or she has been heard, that he/she has obtained reimbursement of wages owed and that he/she will be paid correctly thereafter.

4. **Disputes between employees.**

Sometimes interpersonal differences prevent employees from functioning effectively together. If the company needs both employees and needs them working together harmoniously, mediation can be very effective. The employees are offered a controlled setting in which to air their differences, guidance in communicating effectively about them, and a chance to make agreements about how they will function together in the future. In many workplaces, gossip has led to deterioration in the trust between employees which lead to conflict. Mediation of teams can create an environment of acceptance of each other's differences. An agreement can be reached whereby all employees in a certain group or team agree not to gossip about another employee and learn to accept their dissimilarities. Mediation can also work in instances of workplace bullying. If a manager or employee is perceived as a "bully" or verbally abusive to other employees the morale of the victim of the

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bullying or the entire workforce may be affected. Mediation can bring to light the “bully’s” behavior in a safe, confidential environment. The agreement that comes out of mediation may include a pledge by the “bully” to stop his behavior or an understanding by all involved as to why the “bully” acts the way he/she does.

5. **Deteriorating performance.** A good employee can stop performing well for many reasons. Often, when the manager attempts to address the problem, the employee responds with fear and defensiveness, resulting in further deterioration. Mediation between them can help each understand the other's needs requirements and requests and can yield an agreement about how they will work together in the future. Both are more likely to observe such an agreement because both had a hand in creating it.

6. **Terminations.** When an employer chooses to terminate an employee even though the termination poses litigation risks, mediation on the terms of the separation can be very helpful. Through the mediation process, the employee has a chance to communicate severance needs and to affect the nature and quality of the severance package, while the employer has an opportunity to eliminate its litigation exposure. Mediation can also be beneficial emotionally: the employee may never agree that the termination was warranted but will more likely feel that he or she had a fair hearing, and may come to understand the reasons for the employer's action. These realizations can make it easier for terminated employees to move ahead with their lives.

Implementing an effective workplace mediation program will require a company to undertake two basic tasks: establishing a panel of mediators and promoting general workplace acceptance of mediation as a dispute resolution mechanism.

The first task is relatively easy to accomplish. The company should select one or more employees who will serve as in-house mediators and provide them with professional mediation training. Those selected should be people who are known in the organization for being discreet, fair-minded and neutral. Ideally, they should already possess good communication skills, though these can be acquired through training. If the company trains several in-house mediators, it should select people from different levels of the organization, so that parties will not be mediating with someone too far above or below them in the reporting structure.

For those disputes needing an outside mediator, the company should be ready with a list of professional mediators from which the parties may choose. The company should have information about each mediator available and may wish to allow the parties to talk briefly with potential mediators before deciding whether to work with them.

The second task can be more complex. It is important to generate acceptance of the idea of mediation before a dispute arises in which it will be proposed: once parties are in a dispute, it is normal for one to reject automatically any suggestion made by the other. If the employer wants to mediate, the employee thinks it must be a bad idea, and vice versa.

Two steps can help here. First, mediation should be incorporated into the company personnel policies in some way that makes sense for the particular company. One way that works well is to write mediation into an internal complaint review process: the highest reviewing authority can be given the option to refer the matter to mediation or the Human Resource Department can be given authority to offer mediation at any point in the review process.

Second, the company should offer an educational program about mediation, which most mediators are willing to conduct. The program could include demonstrations of hypothetical mediations; role-play exercises in which employees experience the mediation process firsthand, and opportunities to ask questions about the process. If

the program is offered by the company's panel of outside mediators, it can have the added benefit of giving employees the opportunity to observe those mediators at work so that they will feel comfortable selecting one of them if and when they are involved in a mediated dispute.

Mediation of workplace disputes is the way of the future. It achieves the most satisfactory, timely and cost-effective resolution of disputes. It is also helpful in creating a collaborative workplace culture. Employers interested in bringing these benefits to their workplaces should incorporate mediation into their dispute resolution programs.

Karen Carrera is a Bay Area attorney and mediator with over 17 years experience assisting and advocating for clients. Ms. Carrera works with employers to counsel them on how to comply with the complex and ever changing employment laws. She conducts neutral fact-finding harassment and discrimination investigations, sexual harassment prevention trainings and workplace mediations. Where there are Spanish speaking employees involved, Ms. Carrera, who speaks and writes fluent Spanish, can conduct trainings, investigations, and mediations in Spanish. For further information about this article, contact Karen Carrera, at www.consultingcarrera.com, or call for a free consultation at 415-789-9798.

Mediation of Landlord/Tenant, Neighbor and Neighborhood Disputes

During my seven years as a Deputy City Attorney in the San Francisco City Attorney's Office, I learned quite a bit about landlord/tenant and neighborhood disputes. Landlords' concerns range from bad tenants, to government intrusion into their ownership of property. Tenants are concerned about rent payments, lack of power with their landlord and repair problems. Neighborhood disputes are more about lack of understanding between neighbors regarding

neighborhood issues such as encroachments or trespasses on property (such as trees, bushes, and foliage), view issues, barking dogs, excessive noise, privacy and nuisance issues.

On the other hand, there were also some very serious neighborhood disputes that came across my desk including neighbors/property owners/tenants who allowed their properties to become public nuisances to the whole neighborhood as a result a myriad of problems, including but not limited to, drug dealing, prostitution, loitering, public urination, accumulation of cars or illegal fixing of cars, illegal units, insanitary conditions, accumulation of trash and debris, fire hazards, pest infestation and unsightly conditions on the outside of the property.

These disputes are perfect for mediation. Mediation can assist in all of these types of disputes. Mediation helps the parties to be able have a conversation in a safe environment.

Further, mediation assists each of the neighbors to listen to the other neighbor. You would be surprised at how difficult it is for people to really listen to someone else during a dispute.

The following techniques can be used to assist in neighborhood/landlord-tenant disputes:

1. Try to open a dialogue with your neighbor/tenant/landlord regarding your concerns.
2. When expressing your concerns use “I” phrases instead of “you” statements.
3. Ask questions about how you and your neighbor/owner/tenant can both try to work together to resolve the problem.
4. Ask your neighbor if your neighbor has any concerns.
5. Offer to help your neighbor with a common problem; or even a problem that is unique to your neighbor. This might help you to get on the good side of your neighbor.
6. If your neighbor won't, or can't, speak with you, write a friendly note and then give it some time before you follow up.

12. Give your neighbor a small gift for a special occasion such as a holiday. Remember, good neighborhood gifts make good neighbors.
13. Do not escalate the situation by threatening to file a lawsuit.
14. When communicating with your neighbor/tenant/landlord, make sure that you listen actively. This means you must focus on listening to what your neighbor/tenant/landlord has to say and not on figuring out how you want to respond to what she has to say.
15. Try to rephrase what your neighbor/tenant/landlord says in your own words.
16. For landlords and tenants, put your concerns regarding your apartment or dwelling down in writing. But try to be as positive as possible. Remember, being nasty or hostile won't get you anywhere.

Karen Carrera is an attorney and mediator providing unique mediation services in a variety of types of civil litigation. Her ability to understand the human process and complex emotional issues involved in legal negotiations enables her to effectively assist the parties in obtaining the best possible results during mediation. In addition, her ability to connect with the parties and attorneys in mediation allows her to be a trusted aide in the mediation process. She is well known and respected by both sides as being a fair and neutral mediator who works hard at trying to obtain a resolution. Ms. Carrera speaks Spanish and is available to mediate with Spanish speaking clients.

Ms. Carrera is also available to co-mediate with **David Perry**, an experienced real estate and business litigator with over 20 years of experience.

Contact David at david@perrymediation-law.com. Visit his website at www.perrymediation-law.com.

Contact ➡

Karen Carrera Consulting

The Employment Law Update was sent to our clients and interested parties via email and by

U.S. mail. To receive future Newsletters via email contact

Karen@e-licenciados.com and ask to be added to our mailing list. If you have any questions, please call Karen Carrera at **415-789-9798**.

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