Texas Wesleyan Law Review

Volume 11 | Issue 1 Article 5

10-1-2004

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DOI: https://doi.org/10.37419/TWLR.V11.I1.3

EMPLOYMENT DISPUTE RESOLUTION PROCESSES 2004

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I. EMPLOYMENT DISPUTE RESOLUTION SYSTEMS

Employment Dispute Resolution Systems (EDR Systems) are structured programs that use processes outside the courts to resolve employment disputes that arise within companies. These systems provide unique opportunities for airing and settling almost every kind of workplace dispute, primarily through negotiation, mediation, or arbitration, which are the workhorses of these systems. Negotiation enables the employee and employer to confer and then to arrive at settlement. Mediation aids the parties in devising creative, individualized solutions, yet allow for the competing interests of employers and employees. Arbitration provides the parties with a final decision of the matters presented. Since 1991, the Author has mediated and arbitrated numerous employment cases with a keen appreciation of the volatility of these emotional and hotly contested disputes. The Author has mediated, arbitrated, or both in 19 states across the United States with the majority of the companies, and their employees, referenced in this Article. The Author has consistently found the EDR Systems to be an efficient, creative, and valuable tool in resolving employment disputes while being fair, cost effective, and successful.

EDR Systems are an outgrowth of the Alternative Dispute Resolution (ADR) movement. ADR is a collection of strategies for resolving legal disputes outside traditional litigation. There are many forms of ADR available including, but not limited to:

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(a) Early Neutral Evaluation – the parties use the assessment of a third-party expert to improve their negotiations toward settlement;
(b) Mediation – a facilitated negotiation where an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them;
(c) Arbitration – a forum in which each party, with or without counsel for the party, present the position of the party before an impartial third party, who renders a specific award; and
(d) Non-Binding Arbitration – the parties are not bound to the arbitrator's decision.

The following is a series of questions and answers designed to enhance your understanding of EDR Systems. This article is not intended to be a comprehensive text on the subject of EDR, but rather an introduction to the subject highlighting key points for future reference.

II. A Dozen Questions and Answers on EDR Systems

1. *Question*:

What do these companies have in common?

Affiliated Computer Service, Inc.	J.C. Penney Company, Inc.
Bank of America, N.A.	Jack in the Box, Inc.
Bechtel Corporation	Johnson & Johnson
Circuit City Stores, Inc.	Levi Strauss & Co.
General Electric Company	McDonald's Corporation
General Motors Corporation	The McGraw Hill Companies
Halliburton Company	Nabors Industries, Ltd.
Shell	Texas Health Care Systems
Stage Stores, Inc.	United Parcel Service of America, Inc.
Texaco	Valero Energy Corporation

Answer:

Each of these companies have EDR Systems. EDR Systems are structured programs that use processes outside the courts to resolve employment disputes within companies. Within the EDR Systems are opportunities for all parties in a workplace dispute to air their grievances and settle their differences—whether between employees, between employees and supervisors, or between an employee and the company.

2. *Question*:

Why do these companies have EDR Systems?

Answer:

(a) EDR Systems work to resolve workplace disputes earlier than traditional litigation methods.

When polled at mediation, most litigators estimate the average time to trial for an employment case: (i) in Texas state court, nine to

eighteen months; (ii) in federal court, eighteen months to three years; and (iii) for either appeal, at least an additional two to three years. Halliburton's EDR Systems program from January 1, 2003, to June 30, 2003, reflected that 83% of all cases filed were resolved in four weeks or less, and 66% were resolved in one week or less.[1] According to the National Association of Securities Dealers, the turn around time for mediation is 4.4 months.[2]

(b) EDR Systems resolve workplace disputes economically.

EDR Systems are economical for the employee, the employer, and the public. In *Circuit City v. Adams*,[3] the Supreme Court upheld a mandatory arbitration provision required by an EDR System in an employment dispute.[4] The Court stated, "Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts."[5] A survey conducted by Price Waterhouse and Cornell's PERC Institute on Conflict Resolution of over 530 corporations in the Fortune 1000 category revealed the following trends: (i) 90% of respondents view ADR as a critical cost control technique and (ii) 54% of the respondents indicate that cost pressures directly effected their decision to use ADR.[6] The American Bar Association Section of Litigation Task Force on ADR Effectiveness, August 2003, found that 78% of the attorneys surveyed believe that arbitration is generally timelier than litigation and 56% feel it is more cost effective than litigation.

Corporations that have developed EDR Systems report a significant savings in litigation cost. Halliburton reported an 80% reduction in outside litigation costs.[7] Motorola reported a 75% reduction in outside litigation costs over a period of six years.[8] NCR reported a 50% reduction in outside litigation costs and a drop of pending lawsuits from 263 in 1984 to 28 in 1993.[9]

(c) EDR Systems work to resolve workplace disputes privately and confidentially.

EDR Systems resolve most workplace disputes internally, so in the vast majority of disputes, the privacy of the involved employees is preserved. This is particularly important for both the employees

1. William L. Bedman, Speech to the State Bar of Texas Alternative Dispute Resolution Section (Oct. 10, 2003).

2. Karen Whitaker, Speech to the Dallas Bar Association Section of Dispute Resolution (May 26, 2004).

3. 532 U.S. 105 (2001).

4. *See id.* at 123–24.

5. *Id.* at 123.

6. DAVID B. LIPSKY & RONALD L. SEEBER, THE USE OF ADR IN U.S. CORPORATIONS: EXECUTIVE SURVEY (1997) (a joint initiative of Cornell University, The Foundation for the Prevention and Early Resolution of Conflict (PERC), and Price Waterhouse, L.L.P.).

7. KARL A. SLAIKEU & RALPH H. HASSON, CONTROLLING THE COST OF CONFLICT: HOW TO DESIGN A SYSTEM FOR YOUR ORGANIZATION 14, 15 (1998).

8. *Id.*

9. *Id.*

and the company in disputes involving sexual harassment. Generally, the claimant does not want the public, friends, and family to know about the harassment, much less the nature of the activity. Most employees do not want their employment files open to public review. The employer has an interest in maintaining the safety of the workplace and avoiding the media publicity of illicit activities.

(d) EDR Systems work to resolve workplace disputes while preserving jobs.

When the claims reported to these EDR Systems are resolved internally, the individuals retain their jobs and the companies maintain a stable workforce. The claims submitted to EDR Systems are generally resolved by agreement. Halliburton, Johnson & Johnson, and Shell reported that less than two percent of claims filed proceed to the arbitration stage.[10]

In my own practice in the last few years, I have seen an increase in the number of mediations involving terminations where the case is resolved with the employee being reinstated. Often the reinstatement involves an action plan for future employee conduct or a transfer to a different location. Job retention is frequently the result of the parties determining that the termination was a one time offense or a personality difference. When a talented, long term employee is involved, a reinstatement is a "win-win" for both employee and employer.

(e) EDR Systems work to resolve workplace disputes fairly.

The fairness of the resolution is pursued procedurally and substantively. An EDR Systems program gives the employee the procedure to follow with a dispute. The employee is told who to call to implement the program and the substantive remedies available. This creates a psychological satisfaction with the fairness of the process and result. The Equal Employment Opportunity Commission (EEOC) encourages EDR processes and provides mediation pursuant to EDR Systems.[11] Of employers who have participated in EEOC mediations, 95% report the process worked and they would use it again.[12] When the matter is resolved amicably, both parties avoid the uncertainty of litigation, yet on their own fair terms.

(f) EDR Systems work to preserve relationships within the workplace.

Workplace disputes are not limited to acts governed by formal laws. Many workplace disputes relate to misunderstandings between managers and employees, such as schedule changes, reporting responsibilities, deadlines, safety, working environment, compensation benefits, workers' compensation, or performance evaluation. Over two-thirds of the dispute categories reported to

10. CPR INSTITUTE FOR DISPUTE RESOLUTION, INC., HOW COMPANIES MANAGE EMPLOYMENT DISPUTES: A COMPENDIUM OF LEADING CORPORATE EMPLOYMENT PROGRAMS 43 (2002).

11. MICHAEL C. FETZER, TEN BASIC "DOS AND DON'TS" FOR ENSUING THE FREEDOM TO COMPETE IN THE WORKPLACE (on file with the Texas Wesleyan Law Review).

12. *Id.*

Halliburton between January 1, 2003, and June 30, 2003, were unrelated to termination.[13] When employees talk out how to adjust the forklift schedule to provide an adequate break for taking prescription medications or how to reassign sales territories to equalize the work load, the relationship between management and employees is enhanced rather than terminated. Mediation is the tool most often used because it is less destructive to the relationships than a competitive form of EDR such as arbitration.

An expanding area is employment disputes arising over non-compete contracts. When employees choose to leave for competitors or to start their own businesses, significant disputes arise over trade secrets, customer lists, and geographic areas of competition. These disputes are subject to EDR Systems processes, which generally begin immediately after the court orders a preliminary injunction. The departing employee and company often negotiate a solution immediately without the necessity of further court action. The relationship between the company and departing employees is severed, but amicable.

One would note that there is a mention of court action in these covenant not to compete cases. Generally these cases start in the courthouse because of the necessity of immediate equitable relief such as injunctions. However, because many of the companies and employees have agreed to EDR Systems, the court will grant a preliminary injunction and order the parties to follow their EDR Systems of mediation, arbitration, or both. This is an example of how EDR Systems compliment the ADR Systems now used by most courts. If this matter were in a courthouse without an EDR System in place, the court might very well order the parties to immediate mediation because most trial courts in Texas, and in many other jurisdictions, now will not proceed to an evidentiary proceeding without ADR.

(g) EDR Systems work to resolve workplace disputes creatively.

Below is a chart reflecting the traditional remedies generally available (there are always exceptions) in legal proceedings, including arbitration and mediation, through the EDR Systems.

13. Bedman, *supra* note 1.

Type of Damages (generally a variable)	Contract Law in Most States	Tort Law in Most States	Title VII[14]	ADA[15]	ADEA[16]	EPA[17]	FMLA[18]	Civil Rights Acts[19]	Sarbanes-Oxley Act[20]
Back Pay	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Front Pay	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Fringe Benefits	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Prejudgment Interest	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Attorney's Fees & Costs	Yes	No	Yes	Yes	Yes	Yes			Yes
Liquidated Damages	No	No	No	No	Yes	Yes	Yes		No
Punitive Damages	No	Yes	Yes	Yes	No	No	No	Yes	No
Compensatory Damages		Yes	Yes	Yes	No	No	No	Yes	Yes

In addition, more creative solutions are available when the parties brainstorm the results. Here are some of the other solutions: letters of apology, post-employment consultation agreements, positive letters of reference, press releases explaining the dispute, new employment contracts, delayed severance agreements, out placement service contracts, vacation days, educational programs, free product agreements, free services agreements, company product discounts, paid rest periods, sabbaticals, bonus agreements, non-disclosure/confidentiality agreements, anti-piracy agreements, non-solicitation of customer agreements, true non-compete agreements, and non-competes tied to stock or stock options. The various types of solutions to an employment dispute are only limited by the creativity of the parties. The solutions are more flexible because the parties choose how to implement their agreements.

(h) EDR Systems work.

In summary, EDR Systems are an answer to the rising need to resolve employment disputes quickly and at minimal expense to the parties. In 1997 a survey of the 1,000 largest U.S. corporations, conducted by Cornell University and Price Waterhouse, showed the widespread use of ADR in employment disputes, and a majority of respondents said they are likely to utilize ADR in the future to

14. *See* Title VII of Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2000).

15. *See* Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101–12213 (2000).

16. *See* Age Discrimination in Employment Act (ADEA) of 1967, 29 U.S.C. §§ 621–634 (2000).

17. *See* Equal Pay Act (EPA) of 1963, 29 U.S.C. § 206 (2000).

18. *See* Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. §§ 2601–2654 (2000).

19. *See* 42 U.S.C. § 1983 (2000).

20. *See* Sarbanes-Oxley Act of 2002, 15 U.S.C.A. §§ 7201–7266 (West Supp. 2004).

avoid spiraling litigation costs and to gain greater control over the outcome of disputes.[21]

3. *Question*:

What are the common components of EDR Systems?

Answer:

- *Early internal resolution* is defined as a process whereby a neutral party, such as an ombudsman, investigates the claim after conferring with the claimant and then engages in confidential conversations between the claimant and the parties involved to facilitate resolution.
- *Mediation* is briefly defined as a facilitated negotiation with a mediator facilitating communication between disputing parties to promote settlement.
- *Arbitration* is briefly defined as a forum where an impartial third party hears the dispute and renders a specific award.

4. *Question*:

What has caused the need for these programs?

Answer:

The rapidly rising need for EDR Systems programs has been caused by the expansion of employment laws combined with a marked decrease in the number of labor cases being disposed of by the overworked courts. In 1962, approximately 10% of labor cases in federal courts were disposed of during or after trial, and in 2002, less than 2% were disposed of during or after trial.[22] At the same time, there has been a recent and dramatic growth in the number of arbitrations. The American Arbitration Association (AAA) had less than 1,000 cases in 1960, and in 2003, over 230,000 arbitration filings.[23] The National Association of Securities Dealers had 3,600 filings in 1990 and 8,900 in 2003.[24] The two organizations reported a significant number of these filings as work-related. Both organizations have special panels of neutral parties and rules for employment disputes.

5. *Question*:

Who do EDR Systems programs cover?

Answer:

Most EDR Systems programs cover all non-union employees of a company in the United States. The union employees may vote in their collective bargaining agreement to adopt the EDR Systems program. Many contracts for higher level employees opt out of the EDR Sys-

21. LIPSKY & SEEBER, *supra* note 6.

22. Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, Address before the American Bar Association Section of Litigation, Symposium on The Vanishing Trial (Dec. 12–14, 2003), *in* 1 J. EMPIRICAL LEGAL STUD. (forthcoming, Nov. 2004).

23. Address at the Trial on Trial Symposium (April 5, 2004).

24. *Id.*

tems' internal review process but opt in to the mediation and arbitration component.

6. *Question*:

What kinds of claims are covered by EDR Systems?

Answer:

Most EDR Systems programs cover all legal claims except those subject to state administrative programs such as workers' compensation and unemployment compensation. Many programs specifically apply to all actions under Title VII,[25] ADEA,[26] ADA,[27] ERISA,[28] FLSA,[29] and state common law.

Recently, the question arose whether an EDR Systems program applied to the Sarbanes-Oxley Act, which provides for employees' protection under certain whistleblower provisions. In *Boss v. Solomon Smith Barney*,[30] the court concluded that the employee's termination for refusing to share a research report with investment bankers was arbitrable.[31] There was nothing in the Act or the legislative history to preempt the arbitration claims.[32]

7. *Question*:

What have the Courts said about EDR Systems programs?

Answer:

Recent U.S. Supreme Court cases have endorsed EDR Systems programs which are well planned and administered. Since the Supreme Court's ruling in *Gilmer v. Interstate/Johnson Lane Corp.*,[33] employers are conditioning employment on an employee's agreement to arbitrate employment disputes. In *Circuit City Stores Inc. v. Adams*, the Supreme Court reaffirmed its approval of the private resolutions of disputes.[34] A Circuit City employee signed an employment agreement including an arbitration agreement and later brought suit pursuant to California's anti-discrimination statute and other common law state tort claims.[35] The Supreme Court confirmed that the Federal Arbitration Act (FAA) covers disputes arising out of employment

25. *See* Title VII of Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2000).

26. *See* Age Discrimination in Employment Act (ADEA) of 1967, 29 U.S.C. §§ 621–634 (2000).

27. *See* Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101–12213 (2000).

28. *See* Employee Retirement Income Security Account (ERISA), 29 U.S.C. §§ 1001–1461 (2000).

29. *See* Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C. §§ 201–219 (2000); *see also* Carter v. Countrywide Credit Indus., Inc., 362 F.3d 294, 298 (5th Cir. 2004) (holding that an FLSA claim was arbitrable).

30. 263 F. Supp. 2d 684 (S.D.N.Y. 2003).

31. *See id.* at 684–85.

32. *Id.* at 685.

33. 500 U.S. 20 (1991).

34. *See Adams*, 532 U.S. at 123–24.

35. *Id.* at 109–10.

relationships and continued the trend of rejecting arbitrability challenges of federal statutory claims under the FAA.[36]

The EDR Systems must not be unconscionable and must not place an unreasonable burden on the employee. In *Carter v. Countryside Credit Indus.*,[37] the Fifth Circuit held in a Fair Labor Standards Act case that a pre-condition to employment arbitration agreement was enforceable.[38] The plaintiffs argued that the agreement was unconscionable because it (i) barred collective proceedings; (ii) limited discovery; (iii) did not require the arbitrator to grant attorney's fees to the prevailing party (however the agreement did not prevent such an award); and (iv) required any employee to pay a $125 filing fee with the employer paying all other arbitration costs.[39] The Court found none of these provisions rendered the agreement unenforceable.[40]

The Texas Supreme Court considered Halliburton's EDR Systems program in *In re Halliburton, Co.*,[41] and found that an employee's promise to arbitrate is enforceable if supported by consideration, and the employer's promise to be bound by the result of the arbitration is sufficient consideration.[42] However, the employer's promise must not be illusory.[43] In *J.M. Davidson Inc. v. Webster*,[44] the Texas Supreme Court remanded a case for further fact finding where the employer may have the right to modify or eliminate an arbitration policy with respect to a pending grievance.[45] The Court found the consideration lacking where the employer retained the right to modify the EDR System retroactively as well as prospectively.[46]

8. *Question*:

What are the disadvantages of EDR Systems?

Answer:

Although the advantages of EDR Systems far outweigh the disadvantages, some disadvantages are:

(i) the EDR Systems process is binding; (ii) if you lose, there is no right of appeal into the court system; (iii) you lose the constitutional right to trial by a jury of your peers; and (iv) a significant portion of employment law is being decided outside of the court system in confidential settings.

9. *Question*:

What does the future hold for EDR Systems?

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36. *Id.* at 123.
37. 362 F.3d 294 (5th Cir. 2004).
38. *See id.* at 301.
39. *See id.* at 298–301.
40. *Id.* at 298.
41. 80 S.W.3d 566 (Tex. 2002).
42. *Id.* at 569.
43. *Id.*
44. 128 S.W.3d 223 (Tex. 2003).
45. *See id.* at 232.
46. *See id.* at 228.

Answer:

With the wide spread acceptance of EDR Systems, the future is bright for their continuation. However, recently there has been some retreat from EDR Systems that are overreaching. The U.S. Supreme Court denied certiorari in September, 2004, and let stand two Ninth Circuit decisions that found arbitration agreements signed by employees as unenforceable.[47] The Ninth Circuit Court of Appeals found the arbitration agreements, which were part of Circuit City's EDR System, procedurally and substantively unconscionable.[48] The agreements were held procedurally unconscionable because they were drafted by the employer who had superior bargaining power and were offered on a "take it or leave it" basis.[49] The agreements were held substantively unconscionable because they required the employees, but not the employers, to arbitrate their claims, imposed onerous limitations periods, prohibited class actions, required the parties to split the cost of arbitration, and could be unilaterally modified or terminated by the employer.[50]

When employers draft one-sided EDR Systems, it would appear that an EDR System would not hold up under a court's scrutiny. The EDR Systems that work best are even-handed and do not limit the employee's rights under established procedural and substantive law. EDR Systems work when they are balanced and apply the limitations on litigation to both the employer and employee. If an EDR System restricts any legal rights, then all parties must be restricted.

10. *Question*:

What are the steps in the EDR Systems process?

Answer:

(a) The first step is an effective EDR Systems program which will include both (i) internal procedures (those that take place in-house at the company) and (ii) external procedures, such as mediation and arbitration. The first step is early problem identification and assessment. These programs are generally implemented by a rollout of a written EDR Systems program brochure and a video for all existing employees and new hires. Many companies include the EDR Systems program on the intra-company website. There are generally the following two components:

- Open door and internal grievance procedures – the employee brings the problem to the attention of the employee's supervisor and, if necessary, the department head or the toll free 1-800 telephone line.

47. *See* Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1169 (9th Cir. 2003), *cert. denied*, 124 S. Ct. 1169 (2003); Circuit City Stores, Inc. v. Mantor, 335 F.3d 1101, 1104 (9th Cir. 2003), *cert. denied*, 124 S. Ct. 1169 (2003).

48. *See Ingle*, 328 F.3d at 1171, 1173; *Mantor*, 335 F.3d at 1107.

49. *See Ingle*, 328 F.3d at 1171–72; *Mantor*, 335 F.3d at 1106–07.

50. *See Ingle*, 328 F.3d at 1173–80; *Mantor*, 335 F.3d at 1107.

- Informal problem solving and fact development – an internal claims review process with written submission of the dispute and an investigation by a human resource department or other company officer or ombudsman.

These internal processes are used extensively by employees of Halliburton, ACS, and UPS.

(b) The second step is mediation.[51] Mediation is a non-binding, informal, and confidential settlement process. The mediator assists the parties in studying the strengths and weaknesses of their respective positions. It is highly flexible and informal. Each party can privately discuss with the mediator certain confidential information that would not be disclosed to the other party. Armed with such information, a skillful mediator often is able to identify hidden interests and settlement alternatives to overcome barriers to settlement. The mediator works with the parties to draft a written settlement agreement. If both parties agree to the terms, they both sign the agreement and it becomes a legally binding contract that is enforceable like any other legally binding contract.

(c) The third step is arbitration. Arbitration is a binding and formal means of reaching a resolution. The arbitrator or arbitrators serve as the judge and jury and make a decision that is final and binding on the parties. There are specific and formal sets of rules and procedures that govern the administration of the arbitration process. The decision is a written document that addresses each claim and sets forth the relief rewarded, if any.

11. *Question*:

What are ADR providers and why are they necessary for EDR Systems?

Answer:

Third party commercial services, or ADR providers, such as JAMS (initially known as J.A.M.S., Judicial Arbitration and Mediation Services), American Arbitration Association (AAA), and the CPR Institute (formerly known as the Center for Public Resources) are administrators of EDR Systems programs. As employment disputes progress through the EDR Systems processes, they become more complex. An ADR provider brings legitimacy to the EDR Systems process by providing outside procedures, rules, and neutral mediators and arbitrators.[52]

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51. This Article does not attempt to address employment mediation and arbitration, there are numerous articles addressing these topics. Rather the purpose of this Article is to give an overview of EDR Systems programs, and to address some of the less known aspects of EDR Systems programs.

52. Refer to *JAMS Guide to Dispute Resolution Clauses for Commercial Contracts, JAMS Employment Arbitration Rules and Procedures,* and *JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness, available at* www.jamsadr.com, for guidance in how to design an enforceable EDR Systems program.

The use of a third party commercial service to explain and present the EDR Systems program, particularly the mediation process, may be needed to maximize the opportunity for using mediation. Many parties and their attorneys confuse mediation and arbitration and refuse to try mediation. When 90% of the employment cases are settled at mediation, there is incentive to try this process first.

Third party administration of arbitration is often provided in the EDR Systems program because of the need of an independent voice deciding the dispute. Many programs give the employee the choice of at least two providers and therefore the choice of many different arbitrators from across the United States with many diverse backgrounds.

A third party administrative organization also provides neutral sites for the hearings and arranges the logistics such as timing of discovery and the hearing. When disputes arise over preliminary matters or the parties have questions, the administrator answers these matters so that the arbitrator is isolated from the preliminary details. The administrator also guards the arbitration process so there is no ex parte contact with the arbitrator.

12. *Question*:

What are the costs of an EDR Systems program and who pays?

Answer:

The costs of design and administration of the EDR Systems program, which are paid by the company, are far lower than costs involved in what would almost certainly be long-term litigation of all employment disputes.[53]

In the external stages of mediation and arbitration, the costs of the neutral parties and the costs of the proceedings are generally borne by the company, with the employee paying a proceeding fee of between $50 and $250. The costs of mediation and arbitration vary widely throughout the country. In metropolitan areas in Texas, mediators and arbitrators generally charge from $200 to $500 per hour depending upon the number of parties and the complexity of the dispute. For highly compensated employees the arbitrator's fees are often divided equally, with a provision in the employment contract that the arbitrator may award costs to the prevailing party.

Many employees want the option to seek outside legal counsel at the mediation and arbitration stage. Some EDR Systems programs provide the company will not have legal counsel attend if the employee attends without counsel. Many EDR Systems programs are combined with an employee legal benefit plan that provides up to $2,500 per year for the employee's attorney's fees for participation in the mediation or arbitration stage. GE Corporation, Halliburton, and Shell have these types of programs.

53. LIPSKY & SEEBER, *supra* note 6.

III. CONCLUSION

EDR Systems provide unique opportunities for airing and settling almost every kind of workplace dispute. These systems aid the parties in devising creative, individualized solutions, yet allow for the competing interests of employers and employees. EDR Systems are efficient and valuable tools in resolving employment disputes while being cost effective and successful. Thousands of employment disputes across the country are now resolved by EDR Systems programs. These dispute resolution systems work to resolve workplace disputes earlier and more economically than traditional litigation methods. They are also private, confidential and fair, and resolve workplace disputes while preserving jobs and work relationships. They are of tremendous economic and psychological benefit to both the employer and the employee when they are fairly and legally designed and administered. These programs continue to proliferate because they work.