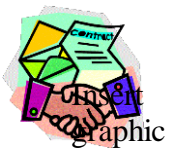


Getting the Most Out of Your Modified Work Negotiation



Resource Guide

Business Training
Customer Service Unit



Getting the Most Out of Your Mod. Work Neg.

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Introduction

Welcome to the workshop “Getting the Most Out of Your Modified Work Negotiation.” As you know, providing suitable modified work to the injured worker is one of the most effective services that we can offer to ensure the worker recovers as much as possible from their injury.

A safe and timely return to work with the accident employer can sometimes make the difference between the worker getting back to the life that they had before they were injured to never being able to return to work and having their life and their family’s life profoundly changed—not always for the better.

RTW stats suggest that if an injured worker is away from work for;

- **6 months, they have a less than 50% chance of ever returning to work.**
- **one year or more, there is less than a 20% chance they will ever return to work (depending on the support systems available).**

This training emphasizes the importance of preparing for the modified work calls, particularly with employers you’re unfamiliar with, to negotiate, use creativity to address barriers and objections, to persevere during the call, to provide a detailed modified work file note and to be really clear on what the next steps are no matter what the outcome is of the conversation.

Course objective:

At the end of this course you will be able to negotiate modified work using the modified work coaching guide.

Topics:

- New Adjudication Modified Work Measure
- Preparing for Your Call
- Employer Profiling
- Negotiating – an Interest-Based Approach
- Next Steps & Follow Up in Negotiating Process

Corporate Learning developed the course, “Negotiating Skills” and they have generously loaned their course material to Business Training. Parts of their course are found in this participant guide; refer to pages 16 to 38.

Thank you Corporate Learning





Claim Review of Modified Work Outcomes

Effective Approaches to Modified Work:

The following adjudication practices resulted in the worker returning to modified work;

- Setting up a RTWPM immediately when the employer could not confirm modified work duties.
- Confirming modified work is available with the employer even when the medical indicated the claimant was not fit. Then making a COP referral right away for a medical consultant to contact the family doctor to discuss the claimant's fitness for work
- Obtaining a PDA right away and sending a letter to the family doctor confirming modified work duties were available.
- Confirming the restrictions with the employer and offering modified work ideas and job options, instead of asking the employer, "Do you have modified work?"

Ineffective Approaches to Modified Work:

The following practices did not result in the worker returning to modified work;

- Limited or no discussion with the employer about modified work based on the documentation in the initial contact note
- No follow up with the family doctor or arranging for a COP with a medical consultant to confirm restrictions when the employer had indicated that they had modified work duties.
- Having limited discussion with the employer when they said "no" to modified work, with no exploration on what the barriers were or offering suggestions for modified work.
- When there are modified work conflicts, there does not appear to be suggestions for modified work job ideas or discussion about how the conflicts could be resolved (i.e RTWPM or RTWPD)
- When there is a difference in medical opinions for a fitness level (e.g. GP and PT), and there is no attempt to resolve by contacting the physician or the physio.



Benefits of Modified Work

Employer

- Once maximum costs on a claim have been reached the claims cost goes to the industry in which the employer belongs. Modified work will reduce claim costs. Ask an account manager to estimate the impact modified work would have on the employer's premiums.
- Helps employers to set an example to their workers that if a worker is injured, they will support the worker with modified work. This message will assist in maintaining the message that, if their workers are fit for some level of employment, the expectation remains that they can continue to come into work. This will also assist to strengthen worker and employer relations by showing that an injury does not threaten job security.
- Having or creating modified work allows employers to use the same duties for any future claims, resulting in fewer time loss claims.
- By offering modified work an employer can retain an experienced worker which may reduce any additional hiring or training costs.
- Modified work can help employers maintain a reputation as a supportive employer by boosting worker morale by increasing their employee's independence and confidence. The worker sees they are able to work despite an injury.
- Modified work can reduce the amount of time the worker is away from work, which will help him/her to remain connected and committed to their employer.

Worker

- It assists with the physical rehabilitation that the worker is participating in. The provider is able to use the modified duties and hours to assist with work conditioning. This can help the worker to recover sooner and provides the worker with a routine.
 - *e.g A worker can attend work on modified duties and when his/her fitness level increases the work duties will increase. This allows the worker to relay difficulties that they may be having to their therapist while actually performing the increase in work.*
- Keeps the employer up to date on the worker's progress. This will help to ensure a sustainable return to full duties when they are fit for full duties.



- Keeps doors/opportunities open for the worker; if WCB still proceeds with VR services it allows the worker to maintain employment even as he/she is participating in vocational services. The worker then gets the best of both services from his/her employer and WCB.
- Increases independence while continuing to contribute to the organization's success
- Maintain financial credibility, stability and quality of life.
- Decreases time away from work. RTW stats suggest:

(For additional tips on negotiating with the accident employer and the worker go to EW/Modified Work/Toolkit/Tip sheets)

Modified Work Negotiating

Tips for the Worker

- Modified duties will help them to gradually increase their hours and/or duties at work so that when they are fit for full duties they won't feel rushed back into full duties. Also if the worker is in treatment and is having challenges with the modified work, a solution can be discussed with their treatment provider, as opposed to finding out after a return to full duties.
- Sometimes workers are resistant from doing modified duties because they think that if they do or agree to the modified work no further vocational services will be offered. Let the worker know that even though they are on modified duties vocational services may still be required. This way the worker will still be job attached and if discharged fit for full duties he will have a job to return to. However, if discharged with restrictions and his employer can not accommodate then we proceed with our back up plan.
- If the worker has some barriers, the WCB will assist in many ways to remove these barriers. For example, child care, travel, ergonomic assessments. A return to work planning meeting can always be arranged to assist in ensuring that the modified is suitable and to ensure clarity of the expectations of modified between the worker and employer.
- Ensures job security. The worker is more likely to have a job with the accident employer when they have recovered. This also allows the worker to assess their own progress allowing the worker to focus on what they can do rather than on what they can't do. This can reduce stress and worry about the future.
- Keeps a routine for the worker while they recover. Being at work, they will also keep contact with co-workers. This promotes social and emotional well-being for the worker.



- If the worker is apprehensive, remind them that this is just a start and make sure to arrange a time to follow up shortly after the return to work. This ensures that the worker is aware that you are still focused on his recovery even while on modified.

Questions to Ask the Worker

- What worries you about your current situation?
- What makes you feel like you need to do something about returning to work?
- What difficulties or hassles have you had because you not working?
- What do you think will happen if you don't change anything?
- How would you like things to be different? What would you like your life to be like in a year from now?
- What are the main reasons you see for making a change?
- What makes you feel that if you did decide to make a change, you could do it?
- What do you feel would work for you if you decided to return to work?
- What are your thoughts about returning to work at this time?
- When you think about returning to work, what do you think you might have to do?
- How important is this to you? How much do you want to do this?
- What would you be willing to try?
- Never mind the "how" for right now. What do you want to have happen?
- So, what do you intend to do? Or what is one small thing you can do?
- What is one small thing you think you can do to move forwards towards returning to work?
- What would you be willing to try to move towards your goal of returning to work?
- What are the benefits of not returning to work?" "What else?" "Tell me more about that?"
- What are the benefits of returning to work?
- What are the three best reasons to return to work?
- On a scaled of 0-10, how important is it to your to return to work?

When the worker is ready to discuss the type of modified work they could do, consider asking the following questions to generate job ideas;

- What parts of your regular job can you perform while recovering?
- Would you be able to any of your regular duties for a reduced amount of time? If so, which ones?
- Do you know of any other jobs/tasks outside of your normal work routine you could perform while recovering?
- Do you have other experience, skills or education you could use in other areas at work?



Tips for the Employer

- **Review the workers job title and physical demands analysis then come up with a small list of modified duties on your own before making the call to the employer.** Employers are usually busy and sometimes think that creating modified duties is making more work for them.
- Ask the employer what their barriers are for bringing the worker back to work. **Always keep in mind that many businesses have some form of modified duties available.** You just need to be able to ask the right questions to determine the real issues and concerns the employer may have. Then you can and confirm how that those barriers can be resolved and how.
- Employers may perceive that the modified work may have limited impact on their business. **Explain to the employer the purpose of modified duties in terms of being meaningful and how it can bring routine back to the worker.** Allowing the worker to be in a work environment reinforces his identity as a “worker” and not an “injured worker” or “disabled.”
- **Give power to the employer.** Let employers know that modified duties can be a created position it does not have to be a position that currently exists. And since we recognize that this is a created position and may not be long term, the employer can take the offer off at any point this. This allows employers to recognize that they are in control and not “committed” for an indefinite period of time.
- If modified work does not seem available with the employer, ask if they work with other companies.
- Suggest the worker initially return to modified work even for a short period - e.g. 1 - 2 hours per day
- Suggest cost-sharing arrangements for ergonomic modifications.
- Offer to return the worker as a floater employee.
- Suggest the injured worker assist with training new employees
- Split modified work between two injured workers



Questions to Ask the Employer

- For seasonal businesses, ask what other parts of the company are busy during the off season.
- Clarify up front what was the nature of the injured worker's DOA job? (Did they work as part of a crew? Were they a supervisor/manager with paperwork duties? Or, was he/she the only employee?) By fully understanding the DOA duties and the employer's business requirements, you may be able to come up with modified work options to fill the injured worker and the company's needs.
- Ask if it would be more affordable if the worker comes in during their busier times.
- Ask about other businesses/divisions the employer is involved with or other locations (this may expand the modified work options available)
- Ask the employer, "If you had an extra set of hands, what would you get them to do? or "If I gave you a worker for free, what could they do?"
- What concerns you the most about _____ being on modified duties?
- Can you relate some specific problems so we can avoid repeating them?
- Do all of your jobs require staff to do heavy lifting full time?", or, "When other employees advance in their trade or move on, what types of jobs do they move into?", or, "Do you know anyone else who is hiring in this position right now?"
- If you could have a free employee for a month, what job could he/she do?
- What could I do to assist you in arranging modified work?

Questions to Ask the Self-employed Worker

- Ask, "What do you need to keep your business running?"
- Discuss the possibility of 1 or 2 hours of modified per week as a starting point during their recovery.
- Explore other types of self-employment work with the self-employed worker.
- Recommend they contact other companies to see if work is available within their restriction(s).
- Clarify up front what was the nature of the injured worker's DOA job? (Did they work as part of a crew? Were they a supervisor/manager with paperwork duties? Or, was he/she the only employee?) By fully understanding the DOA duties and the employer's business requirements, you may be able to come up with modified work options to fill the injured worker and the company's needs.
- Ask what they are doing right now? Are they still making calls, e-mail etc from home? Your worker may still be contributing to his/her business without considering it regular work.
- Do you work out of the vehicle/home/ garage...is there a shop/office etc?
- What are your daily job duties?
- What kind of tools/equipment do you use for your job?
- Do you have a crew or staff, if so, how many?
- Is your crew/staff currently working?
- How many projects or job sites are currently active?



- Who is supervising those sites and or crews?
- If you had to ensure your business stayed operational, what would that look like? Would it require a change/modification of equipment, change in hours, etc?
- Is it possible to do a GRTW? If so, what would that look like?

Some Common Barriers in Returning to Work

English As a Second Language

- When ESL (English as a Second Language) is an issue for the worker and/or the employer, conference call with an interpreter from one of our service providers. (Watch for interpreter bias during meeting).
- To assist with communication during modified work, pair ESL injured workers with employers who speak the same language.

Temporary Workers

- Discuss modified work options by teleconferencing with the worker and employer.
- Get a commitment from the worker to check at the same time with the accident employer on a daily basis for modified work possibilities.
- Where appropriate, ask the accident employer to talk to their repeat customers for possible modified work options.
- Develop a working relationship with employers willing to hire injured workers for modified work on a temporary or permanent basis. These employers are prepared to hire workers with RTW barriers, such as low levels of education, poor personal appearance or hygiene. Consider asking Millard Health for assistance with establishing these employer contacts.

Older Workers

- Keep in mind what used to be considered as "an older worker" is changing. For example, people in their 60s are quickly being seen as young seniors who are very employable given the skills and background they have acquired.
- Suggest they explore other types of work they could do in their community on a self-employed basis.
- Depending on the older worker's skill set, a possible job idea is companion for seniors through senior residences or agencies.



Removing Barriers

- Suggest a return to work trial
- Wage top up
- Taxi, Child Care, Tools, Equipment etc.
- Ergonomic Assessments.
- Return to Work Planning Meeting. To resolve any worker/employer relationship issues or to clarify the details of the modified work.
- A Return to Work Skills Profile to outline the workers work experience and transferable skills. This can assist an employer in determining new modified work for an employee based on skills the employer may not have been aware the worker had.
- Take the time to listen to their concerns and fears. If possible meet face to face.
- English Second Language training while in acute treatment.
- Out of province – Fly worker back.
- Isolated areas – Return to work planning meeting and vocational services.
- Involve union rep
- Use the Physical Demands Analysis to explore modifying or creating job tasks.
- English Second Language as a barrier– Arrange a translator.
- Emotional or psychosocial issues occurring in the worker’s private life – Offer 10 sessions of counseling.
- Outlining options for modified before they go to the doctor. Consider medical consultant involvement, and get doctor on board
- Mention to employer the effect on experience rating. Request an account manager referral.
- Offer short term courses to give skills for modified work, eg; computers.

Negotiation Modified Work Conversations

Employer Conversation Example

ADJ: Hi Dave, How are things?

Dave: Oh pretty good, busy as usual. Are you calling about Al, how’s he doing?

ADJ: Actually, yes I wanted to touch base with you about him, I just got his doctor’s report and his doctor has advised that he is recovering well and that he would be fit to return to work at a modified level. His doctor recommended a sedentary level of work, meaning no lifting over 10 pounds and his doctor would like him to have the chance to sit, stand and walk as needed to help his back recover.

Dave: Oh, well I’m not to sure about that. I really don’t want him to get hurt again, my premiums are already going through the roof on this one.



ADJ: I totally understand your worries. Part of my job is to try to meet the needs of both you and Al. I also do not want to put Al in a situation that could further injure him and I also want to help manage the costs on this claim as well. This is why I am calling to see if you have any modified work available? Providing modified work can impact your premiums in positive way by reducing the cost of wage loss benefits being issued to Al.

Dave: Yeah, I suppose that's true, I'm still not too sure about this, Dave is a good guy and I don't want him to get hurt again, it has taken him so long to recover up to this point.

ADJ: Again Dave, I am totally with you on this, but keep in mind, I would not be suggesting this if his doctor had not said this would be ok. I have also seen a lot of success in recovery when a worker is able to gradually increase his duties, while at work.

Dave: Really, that seems pretty risky, when it's the employer who will need to pay if things go wrong!

ADJ: Think about it this way Dave. Al is currently in physiotherapy and seeing his doctor, if he is able to start working at a desk right now, he will be able to do more physical work as he progresses in treatment. If Al is able to be at work, and progress at work, his doctor and therapist can monitor this. Essentially Al will be given the opportunity to ease back into his full duties, which are normally quick heavy, as opposed to just going from 0 to 60 in one day, which also reduced the chances of further injury.

Dave: Yeah, I guess that makes sense, I just really don't know what we have available. I could start him at the desk, but I don't have a full day of work available for him.

ADJ: That's fair, I know you guys have a small shop and I am assuming that without Al, things are a lot busier for you? Would it take some pressure off you to have Al back in doing something to help out, even if it is for a few hours? Modified work does not have to be full hours, modified work can also mean less hours.

Dave: Well, one of Al's normal duties as an assistant manager includes, schedules and payroll and ordering. This only takes up to 3 hours each morning. That's really all I can think of.

ADJ: Would he be able to sit at a desk and sit, stand and walk as he needs?

Dave: Oh yeah, he would just be in the back office with a desk and chair. He can move all he wants.

ADJ: When can he start and what hours would he work?

Dave: Well I have done everything for this week, he can come in on Monday the 15th, this stuff needs to be done in the morning, so he can come in at his normal start time, which is 8 am and I guess work till 11.

ADJ: Great, I do have just a few other things I need to confirm with you. Will you be paying his full regular wages or just the hours he works?



Dave: Oh just the hours he works, for 3 hours a day, is that ok?

ADJ: Yes, it just means that I will now give Al top up benefits. I will continue to issue his benefits every 2 weeks, but it will be based on 5 hours per day, since you will be paying him for 3.

Dave: Sure that sounds good.

ADJ: So Dave, I have one more quick thing, I would like to confirm with you before we get this going. How long will you be able to provide these modified duties?

Dave: Well the 3 hours a day, that could be available all the time, we have to do this everyday.

ADJ: That sounds good to start. Remember when I mentioned about gradually increasing his hours of work. What kind of other modified work might you have available as Al gets better?

Dave: I have no idea, this desk stuff is all I can think of, Al does so many things, I couldn't even tell you that.

ADJ: I could offer you a return to work planning meeting. This is a service we have available to help employers out in situations like this. It would be a meeting with you, Al and an Occupational Therapist from CBI. At this meeting you will all confirm the physical demands of his regular work duties. This will really help out his therapist because it will let them know what level of fitness Al needs to get back to. Also, because the Occupational therapist will come out there, he will also be able to help create a gradual return to work plan, based on Al's injury, recovery and the work you do have available. Do you think this might help Dave?

Dave: Yeah, for sure that would. Ok that sounds good.

ADJ: Well thanks so much for your time Dave, I just want to reconfirm what we talked about today. Al will come in on Monday Oct 15 starting at 3 hours per day, doing scheduling, payroll and orders. He will have a desk and can adjust as needed. This modified will be Monday to Friday and you will pay him for the hours he works. I will also make a referral for the return to work planning meeting, so we can determine the rest of the return to work plan.

Dave: That sound good, are you going to give Al a call?

ADJ: Yes, I will be giving him a call right away, I would also recommend that you give Al a call as well, because the expectation is that the employer "offers" the modified work to the worker, it just makes things much more clear if you and Al have a discussion about this.

Dave: Oh for sure, I'll give him a call this afternoon.

ADJ: Thanks for you time Dave, I will send a letter to outline our conversation and I will also give you a call after the return to work planning meeting. Let me know if anything comes up or if you have any more questions and you can expect a call from CBI in the next day or 2 to book the return to work planning meeting.



Worker Conversation Example

ADJ: Hey Sarah, how are you doing, how's physiotherapy going?

Sarah: Well things are going pretty well I think. My therapist told me that I am where I should be right now and that things should be good for me to go back to work in a month.

ADJ: That's what I wanted to call you about today Sarah. I got your therapist's report, which does say what you just mentioned but she also explained that based on how well you have progressed so far, you could now return to a modified level of work, of course she gave some restrictions which include only half days of work and no lifting over 15 pounds. What are your thoughts on returning to work at this time?

Sarah: I hadn't even thought of that yet, I really don't think I am ready for that, I still have a lot of pain and need to go to therapy every other day, I think going back to work might set me back.

ADJ: I can understand that, sounds like being off work has helped you to get your treatment and has helped you to manage your pain, are there some other positives that you have had because you have been off work?

Sarah: Of course, I can lay down when I am in pain, my kids have also been around a lot more to help me out.

ADJ: For sure, sometimes just some time and extra support can really help us in our recovery, have you had any challenges since being off work?

Sarah: Well I have no idea what is going on at work, we have a huge project that is due in 2 months and that worries me a bit, because I am going to be really behind.

ADJ: Sounds like you are really committed to your work.

Sarah: I am, I know I need to get back to work, I'm just not ready yet.

ADJ: I think that is a really fair concern, and I am guessing that may be why your therapist has only recommended half days to start. What else would make you feel more confident about returning to work?

Sarah: I have no idea, I really was not prepared for this, I don't even know what I would be doing. And a lot of times, I do more than I need to at work, just to get the job done and I don't want to be put in that position because I have worked really hard at therapy and I do not want to undo all of that.

ADJ: Sarah, as I had mentioned, I do think you have some very real concerns and the reason I had called you today was to ensure I had the chance to see where you were at about all of this. I want to clarify that at this moment your employer has not confirmed what modified work they have, because they too do not want to put you in a position that could make things worse, but they are interested in exploring what modified work options are available.

Sarah: Ok, well that is good to hear, so I don't have to go back tomorrow.



ADJ: From speaking with you Sarah, it sounds like you feel it is important to get back to work because you have a big project which is important to you, but you are worried that you may be expected to do more physical work and that could put your recovery in jeopardy.

Sarah: That's exactly it, and I don't know how we can solve that.

ADJ: Well, I do have a service I could arrange for you and your employer. Would you be interested in attending a return to work planning meeting. This would be a meeting where you, your employer and an occupational Therapist would meet. You would all discuss what safe modified work is available and would also be able to discuss the return to work plan.

Sarah: Would this be done before I return to modified work?

ADJ: Yes, Sarah, although you are fit for a modified level of work, we need to ensure that your employer has work that fits within your restrictions. None of us want you in a position that could hinder your recovery. Do you think this kind of meeting might help you feel more confident in returning to work so you will no longer feel worried about your upcoming project?

Sarah: Yeah, I think so.

ADJ: Ok Sarah, I will make the arrangements for this meeting and you should be contacted by CBI in the next few days to book a time. I think a return to modified work will be a good solution for you, where you can work on the project and still recover safely.

Sarah: Yeah hopefully, we'll see what happens at that meeting. Oh wait. I didn't even think of this earlier, but I can't even drive yet, my therapist does not want me putting that kind of pressure on my ankle just yet. I've been ok getting to therapy, since it is so close, but work is a long drive away.

ADJ: Thanks for letting me know that Sarah. I do not want this to be a problem for you, and if it would help you to be able to work, I will offer to assist you with a cab ride to and from work, while you are still restricted from driving. Since your therapist did not mention this on her report I will do a quick follow up with her and that way I can also confirm how long she expects you will not be able to drive.

Sarah: Oh that would be great.

ADJ: Thanks Sarah, as we discussed, I will call your therapist and will arrange the return to work planning meeting for you and your employer. I will follow up with you after the meeting, so we can discuss the plan.

Sarah: Ok, sounds good, we'll talk then.



Next Steps-Post Negotiation

Worker Returns to Modified Work

- Contact the employer and the worker every two weeks to monitor the worker's recovery and trouble shoot as required until the worker is fit for their full duties or the claim needs to be transferred to case management.

Worker Doesn't Return to Modified Work

- Arrange for one or more of the following referrals or services (depending on the circumstances);
 - RWSP (Return to Work Skills Profile)
 - RTWPM or RTWPD ((Return to Work Planning Meeting or Discussion)
 - Referral to account management
 - Referral for a MSE, FCE
 - Contact doctor or the other service providers re: diagnosis, work restrictions. Phone calls are the most efficient. If you are unable to reach the physician by phone, ask a medical consultant to try and make contact.
- Could send the IN063A letter to the employer in follow up to your initial conversation about modified work to encourage the employer to re-consider providing modified duties either now or in the future based on the worker's medical clearance.



- **If you negotiated modified work and the start date is in the future, send the pre-negotiation letter (IN064A) to the employer confirming the specific job duties and job demands.**
- Contact the employer and the worker every two weeks to monitor the worker's recovery and trouble shoot as required until the worker is fit for their full duties or the claim needs to be transferred to case management.
 - The availability of modified work needs to be discussed with the employer (**especially with the employer**) and the worker during each follow up conversation.



Negotiating Skills

Characteristics of Effective Negotiators

- Take the time to prepare prior to starting
- Give validity and provide clarity to the perceptions of others
- Avoid ultimatums and strong positions; focus on interests
- Use creativity and imagination in generating options
- Appreciate and utilize the power of understanding
- Make trade-offs of value to others rather than concessions
- Make it as easy as possible for the other side to say yes
- Value deadlines and timelines to stay on track
- Anticipate the potential of no agreement
- Take more time before offering counterproposals
- Ask for reasons (diplomatically) as to why they disagree with a particular solution
- Ask great open ended questions to build understanding

Negotiation Pitfalls and Mistakes

- Inadequate preparation – preparation helps in providing a good understanding of options and allows for flexibility to change course as required
- Ignoring Give/Get Principle – each party needs to conclude the negotiation feeling something has been gained
- Use of intimidating behaviour – Research shows the tougher the tactics, the greater the resistance. Persuasiveness, not dominance is the key to creating an effective outcome.
- Lack of patience – Give ideas and proposals time to work. Don't rush things; patience pays off
- Loss of temper – strong negative emotions get in the way of developing a cooperative environment and creating solutions
- Talking too much and not listening – through listening actively, you will be able to create a mutually satisfying solution
- Arguing instead of influencing – your position can best be explained through education, facts versus stubbornness
- Ignoring conflict – accept that conflict is normal, accept and resolve it versus avoiding it.
- Exposing weaknesses unnecessarily
- Miscalculating the power relationship
- Getting stuck on one issue
- Accepting positions as non-negotiable
- Convincing the other to accept your position
- Caving into a bad deal under pressure
- Needing something too much
- Not allowing enough time to negotiate
- Accepting perception as facts
- Failing to understand the agreement



Negotiating – An Interest Based Approach

The goal of this process is to help those who have a different or opposing set of interests to create a fair agreement. Though both sides want to win, their best interests are served by generating a mutually acceptable agreement. Key characteristics of this type of negotiation are as follows:

- Parties are seen as problem-solvers
- Goal of negotiation is the “best” for everyone
- Problems are seen as separate from people
- Be gentle on people, be hard on the problem
- Focus on interests not positions by exploring the interests underlying the stated position
- Invent options for mutual gain
- Develop multiple options
- Avoid bottom line
- Be open to reason
- Maintain integrity
- Maintain/repair the relationship

Attitude required for this method:

- A curiosity which wants to understand what the parties really want
- Willingness to clarify your own interests and make an effort to understand the interests of the other side
- Balance advocacy (disclosure) with inquiry (probing)
- Openness in disclosing your interests, reasoning, intentions, rationale and inviting, inquiring others to do the same
- View positions as clues and ask for help to understand how and what is leading them to their position.

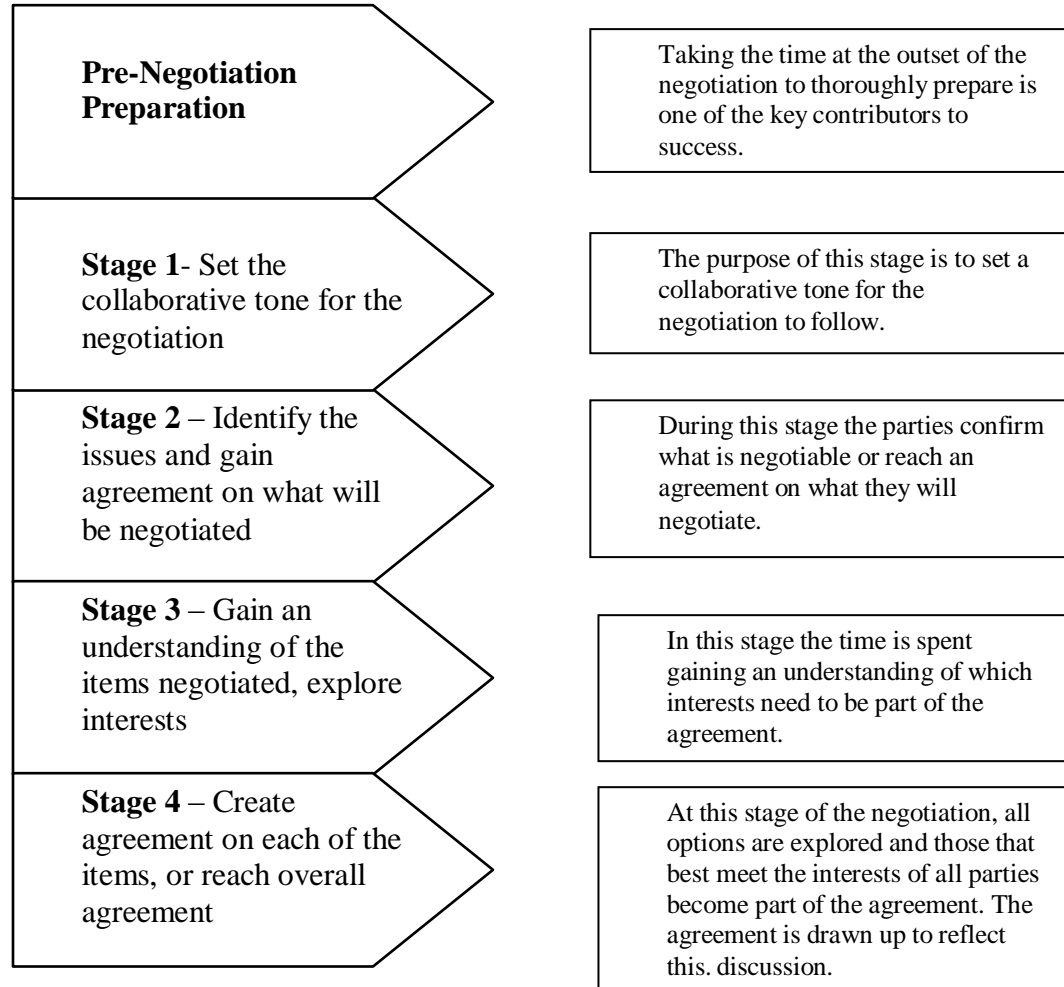
We have chosen this model for claim owners in Customer Service because **it promotes collaboration where two parties (the claim owner and the employer or the worker) work together in seeking a mutually satisfying agreement.** The relationships that we have with workers and employers can be long term and **the interest based approach focuses heavily on the care and maintenance of relationships.**

The interest based approach to successful negotiating is to shift from:

- ❖ Judgement to Curiosity
- ❖ Positions to Interests
- ❖ Our own Gain to Mutual Gain



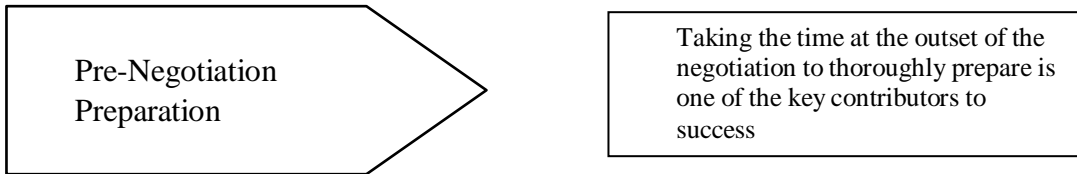
Stages of the Interest Based Approach



This model includes a **pre-negotiation preparation phase, as well as four distinct negotiation stages**. It is important to give attention to all of the stages including the preparation phase as this will lead to an effective agreement.



The Pre-Negotiation Preparation Phase - Doing your homework



This pre-negotiation preparation is an important planning component to the upcoming negotiation. **Completing the work in this phase will help you to clarify your own expectations and interests as well as anticipate the interests of the other party.** This model assumes that you adopt a curiosity about why you are seeking a particular solution at a deeper level. In other words, what needs will be met based on getting that particular solution provided the other party agrees with the solution? Or on the other hand, what needs of theirs will not be met if they agree with your solution? **Thorough preparation will minimize unexpected surprises, spark creativity and set the stage for both parties to work side by side.**

Components of the pre-negotiation preparation phase include: (see additional handout)

- **Three Key Components** – substance, process, emotions
- **Five Core Concerns** – appreciation, affiliation, autonomy, role, status
- **Seven Elements** – interests, options, alternatives, legitimacy, communication, relationship, commitment

The Three Key Components

Substance	Includes the documents, timelines, interests and overall information required during a negotiation. This information needs to be shared during the course of a negotiation.
Emotions	Refers to the emotional climate which exists during a negotiation. For instance, emotions can range from fear to anger to joy.
Process	Refers to the management of the negotiation itself and a commitment to using an agreed upon process. Using the interest based model requires that there is an exploration of interests and drawing up an agreement which is mutually satisfying.



For a negotiation to be successful, all three components need to be addressed in the pre-negotiation phase. Failing to manage them will result in a less than sustainable outcome or agreement.

Questions for consideration when addressing the three key components:

1. What type of supporting documentation will you need to gather prior to your negotiation?
2. What type of preparation do you need to manage the emotional climate of the negotiation? What will you do to set the emotional climate of the negotiation?
3. Confirm the process that will be used to conduct the negotiation. Identify what each party should know relevant to the process.

The Five Core Concerns

Based on our own motivations and values each individual will experience different things that trigger negative and positive emotions. To understand all of the potential triggers we experience and others experience can be a daunting task. It can be more useful for us to turn our focus onto the five core concerns that lay at the heart of many emotional challenges we may face when we are negotiating.

Instead of the feelings of powerlessness that we experience in the face of our emotions, by focusing on the five core concerns we are able to stimulate positive emotions in ourselves and others and overcome negative ones. **Core concerns are those things that are important to each of us in virtually every negotiation and stimulate the great many emotions that can arise. They are often unspoken but can easily be as important and as tangible as our interests in the negotiation.** Increasing our awareness of the core concerns is another way we can manage the impact our emotions have on us.

Emotions are part of the landscape when negotiating. It is very difficult to address the numerous emotions which present themselves during a negotiation. A framework for addressing these emotions have been created by Roger Fisher and Daniel Shapiro in their book *“Beyond Reason: Using Emotions as You Negotiate”*

This framework consists of five core concerns that negotiators can use to help prepare, conduct, and review the emotional dimensions of a negotiation: appreciation, affiliation, autonomy, status, and role. Each concern has its own special contribution in stimulating our emotions. Core concerns are human wants that are important to almost everyone in virtually every negotiation. Focusing on these concerns rather than reacting to changing moods that occur during a negotiation can stimulate positive emotions and overcome negative ones.



Appreciation is a core concern and an all purpose action. Everyone wants to be appreciated. **When properly appreciated we feel better and we become more open to listening and more motivated to cooperate.** Honestly expressing appreciation is one way of meeting many of the core concerns of the other.

Affiliation describes a **sense of connectedness** with another person or group. When we feel affiliated with person the emotional distance becomes less and working together becomes easier. Having a sense of affiliation results in caring for the other person, protecting their interests as well as our own, and looking out for the good of all.

Autonomy As individuals most of us have autonomy to make many decisions for ourselves every day. **We are easily offended when others limit our scope of autonomy beyond what we think is appropriate.** In a negotiation, the greater the autonomy we exercise, the greater the risk that our actions will be perceived by the other person as impinging on their autonomy. If this happens trust is immediately reduced, ideas may be rejected, and affiliation gains that may have been established are quickly lost.

Status refers to our standing in comparison to the standing of others. **Status raises both our self-esteem and the esteem with which others view us.** If our status is demeaned, we may feel embarrassed, ashamed, angry or frustrated and we may act inappropriately and damage relationships. There are many levels of status within organizations and many social factors that may also help define a person's status. **Listen carefully for clues as to how one may define their own status, and use this to gauge courtesy appropriately.**

Role We all have a core need to fulfill a role that is personally rewarding and defines who we really are. **As individuals we want a role that has a clear purpose, is meaningful for us, and is not full of pretense.** When we are forced into a role that is not comfortable for us negative emotions can be triggered. Be sure that if you or the other party are asked to take on temporary roles to complete the negotiation, they are as close to your preferred role as possible and allow you to be close to yourself and not uncomfortable.

When one or more of the core concerns are ignored, there may be a negative impact on the negotiation. When the concern is met, the negotiation continues on successfully. When we think about core concerns we also need to think about the appropriate emphasis we want to place on them. We want concerns to be met, but not excessively or ingratiatingly so. The following **three standards can be used to measure if our core concerns are being treated appropriately:**

- **Fair:** Fair treatment is consistent with custom, law, organizational practice and community expectations. We feel treated as well as others who are in similar or comparable circumstances.
- **Honest:** Honest treatment means that what we are being told is true. We may not be entitled to know everything, but we do not want to be deceived. When the other person honestly addresses our concerns, their intent is not to deceive or trick us. They communicate what they authentically experience or know.



- Consistent with current circumstances: It is perhaps unreasonable to expect all of our concerns to be met in every circumstance. Norms change as we deal with everyday matters or a crisis. Appropriate treatment is often consistent with these changing norms.

The power of this framework is that core concerns can be used as a lens to understand the emotional experience of each party, and as a tool to promote productive relationships.

Questions for consideration when addressing the five core concerns:

1. What core concerns will need to be managed during the course of this negotiation?
2. What cues will I need to look for to indicate a core concern is not being met?
3. What will be done to show appreciation?
4. What other questions can be posed?

The Five Core Concerns		
Core Concern	The Concern is Ignored when:	The Concern is Met when:
Appreciation	Your thoughts, feelings, or actions are devalued.	Your thoughts, feelings, and actions are acknowledged as having merit.
Affiliation	You are treated as an adversary and kept at a distance.	You are treated as a colleague.
Autonomy	Your freedom to make decisions is impinged upon.	Others respect your freedom to decide important matters.
Status	Your relative standing is treated as inferior to that of others.	Your standing where deserved is given full recognition.
Role	Your current role and its activities are not personally fulfilling.	You so define your role and its activities that you find them fulfilling.
From: <u>Beyond Reason: Using Emotions as You Negotiate</u> , Fisher, Roger and Shapiro, Daniel, Penguin Books, 2005, pg. 17.		

These core concerns focus on your relationship with others. They involve how you see yourself in relation to the other party, and how the other party sees themselves in relation to you. Although the concerns are not completely distinct from one another, they can blend, mix, and merge together at times, they each contribute in unique ways to stimulate our emotions.



The Core Concerns as a Tool in Negotiations

The power in understanding the core concerns comes from the fact that they can be used to help you understand the emotional triggers of yourself and the other party, but also as a tool to stimulate positive emotions in yourself and others. When you understand the *Risk* of ignoring core concerns and the *Power* of meeting core concerns you can prepare to use language, information, and past experience to ensure a successful outcome to your negotiation. The following tables show the emotional impact of both ignoring and meeting core concerns.

The Risk of Ignoring Core Concerns

Core Concern:	My Core Concerns are unmet whenever:	The resulting emotions include:	When this happens, I am likely to:
Appreciation	I am unappreciated and not acknowledged for my strengths	Angry, impatient	React negatively, contrary to my interests
Affiliation	I am treated as an adversary and there is a loss of belonging	Indignant, resentful, disgusted	Go it alone
Autonomy	My autonomy has been encroached upon	Guilty, ashamed, remorseful	Think rigidly
Status	My status is not acknowledged or respected	Embarrassed, sad, conceited	Act deceptively and be seen as untrustworthy
Role	My role is trivialized and restricted	Envious, anxious, jealous	Withhold and be aloof



The Power of Meeting Core Concerns

Core Concern:	My Core Concerns are met whenever:	The resulting emotions include:	When this happens, I am likely to:
Appreciation	I am appreciated	Enthusiastic, caring	Cooperate
Affiliation	I am treated as a colleague	Compassionate, content	Work together
Autonomy	I have the freedom to make a decision	Comforted, hopeful	Be creative and adaptable
Status	My status is recognized and utilized appropriately	Proud, sense of accomplishment, courageous	Be trustworthy
Role	My role enables me to contribute in a way that I know I can make a difference	Calm, relaxed, happy	Share expertise freely and fully commit to the discussion

The Seven Elements

The seven elements which need to be taken into consideration as part of the pre-negotiation preparation phase are as follows: *interests, options, alternatives, legitimacy, communication, relationship and commitment.*

1. Exploring Interests

- At the outset of the negotiation, **it is important to identify your interests as well as anticipate the interests of the other party.** Bear in mind interests answer the “why” of the negotiation. Doing so will help you to move from a positional stance to more of a common ground. **Interests underlie positions, and are the motivating qualities and values which underlie and inform the positions taken. These include the desires, needs, wants, concerns, fears, beliefs, values, priorities, likes, expectations, assumptions and hopes of each of the parties involved in the dispute.**



- Powerful interests are basic human needs which include: a sense of belonging, appreciation, recognition, economic security. Additional interests include: acceptance, accountability, appreciation, competency, fairness, knowledge, respect, trust, security and understanding.
 - Analyze your position, and ask yourself, what needs would be met if you got your way?
 - Consider the other party, what needs or interests are they looking for?
 - Who if any are the other stakeholders involved? Who might be a ghost in the room?
 - What interests are shared, different or conflicting?

2. Options

- Brainstorming options will provide an opportunity to surface positions as well answer the “what” of the negotiation. Options can also be thought of as solutions.
 - What other solutions or options might meet your needs?
 - What additional options or solutions could the other party be seeking?
 - What are some possible agreements that might satisfy both parties’ interests?

3. Alternatives

- Identifying your alternatives prior to the negotiation helps you to position yourself by protecting you from worrying about failing in the negotiation or being taken advantage of.
- Developing your BATNA (best alternative to the negotiated agreement) protects you from bad outcomes. Invent as many alternatives as you can and find ways to improve or further enhance your alternatives. Try and anticipate what the other party’s alternatives might be. During the negotiation, you can refer to your BATNA not as a threat but as showing the other party that you have carefully considered your options. As you move towards agreement, step back prior to accepting. Assess and measure the implications of the deal against your alternatives and primary interests, how closely does the agreement fit? Make your decision based on the fit. You also need to identify your WATNA (worst alternative to a negotiated agreement) to help you decide when you might need to withdraw from the negotiation.
- Questions to help you to define your BATNA/WATNA:
 - Why am I negotiating?
 - What are all of the actions you might take on your own to resolve this issue?
 - What are your overall alternatives?
 - What impact would these have?
 - What can you do all by yourself? What is your WATNA (worst alternative to a negotiated agreement?)
 - What type of strategy, influence or leverage might you have to use to help the other party clearly understand your interests?
 - If an impasse is reached, what external standards exist to convince you/them the proposed solution is fair?
 - Based on the options identified, what is your best alternative or BATNA?
 - If an agreement is reached, what must be included?

BAT

WAT



4. Legitimacy

- It is important to create a sense of fairness within the negotiation. To establish a sense of fairness, consider what external standards might apply and will these standards measure up to the scrutiny of stakeholders? Additionally, consider what relevant criteria can be applied (i.e., comparative prices of similar goods, opinions of recognized experts, formal appraisals, precedent, equal treatment, fees paid for similar work, reciprocity or what a judge would decide.) Creating these standards will enable both parties to rationalize their decisions based on the usage of criteria.
 - What criteria or standards ought to be taken into consideration prior to the start of the negotiation?
 - What might the other party be bound to?

5. Communication

- Listening is a critical skill within this context. If careful attention isn't paid to what the other party is saying it is difficult to have a meaningful dialogue.
- Assumptions can hijack the negotiation, especially if they go unchallenged. Listening actively will help you to challenge or confirm your assumptions. Additionally, it is critical to identify assumptions that you have of the other party prior to start of the negotiation.
- Be prepared to be transparent about your interests, identify how you formed your conclusions. By doing so, it will help to maintain a collaborative tone for the negotiation.
- Focus on how you can improve the relationship without conceding on substance
- Create a climate of ease, encouragement and mutual respect
- Communicate your understanding of their perceptions and rationale. Put yourself in their shoes – look at how they see the issues.
- Invite joint problem solving:
 - What kind of climate do you need to create to improve the working relationship and build trust?
 - What type of information do you need to listen for? What message do you want to them to leave with?



6. Relationship

- Throughout the negotiation be mindful to separate the problem from the person. It is appropriate to be hard on the problem not on the person. Making the distinction between the person and problem is critical to success.
- It is essential to build a relationship with the person through listening actively and demonstrate to the other you are hearing and understanding what they are saying. By acknowledging you are not necessarily agreeing however, you are demonstrating respect.
- Consult the other person; inform and ask their advice before making a decision on issues which might impact them or the negotiation process.
- Avoid blaming or judging or attributing motives on the other side, speak for yourself
 - What are the substantive issues in this negotiation?
 - What relationship issues need to be taken into consideration?
 - What is the ratio of time which needs to be spent establishing the relationship versus discussing the substantive issues? (Substantive issues include prices, terms, conditions, dates, timelines, deliverables)

7. Commitment

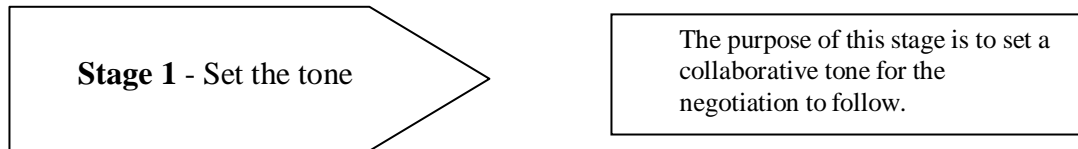
- Identify what the final outcome or agreement needs to include.
- Take into consideration the goals of each of the meetings, the types of agreement required (final and binding, exploration of options only, open to more negotiation)
- Clarify who has the authority to negotiate an agreement in principle and who has the authority to sign off.
- Identify the categories which need to be negotiated
 - Once the agreement has been reached, what are the steps and timelines required?

Questions for Consideration when addressing the seven elements:

1. What are we negotiating about?
2. What interests (want, needs, concerns, fears) do I have with regard to the issues?
3. What would I guess might be some of their interests?
4. What interests do we have in common?
5. What information might I need before negotiating?
6. What are some of the possible options that might meet both sides' interests?
7. What happens to me if there is no agreement? For them?
8. Am I negotiating on the behalf of other people or an organization? If yes, what parameters have they provided you with?
9. Is the other party negotiating on behalf of other people or an organization? If yes, what questions will I ask to discover the parameters they have been given?



Stage One – Setting a Collaborative Tone



During this stage, the foundation for building a collaborative tone is set. To create this spirit of openness and cooperation, the following need to be taken into consideration in setting the climate:

- Gather as much information about the other party. Prior to meeting, know what you want as an outcome for the negotiation
- Understand what information you have and what information you need to bring to the table
- Take the time up front during the first meeting to get to know the party, provide enough time to create a comfortable rapport with the other party
- Choose a location which is convenient, quiet and neutral, one that both parties feel comfortable in
- Determine whether the other party or parties are willing to participate (how?)
- Set a positive tone about your expectations for the negotiation
- Listen actively, respect differences and work towards finding a mutually satisfying solution

At the same time, during this stage it is critical to establish the guidelines of the process the negotiation will follow. These include:

- Describe the steps within the Interest-Based Negotiation Model as required
- Clarify the level of authority parties have to reach for agreement
- Determine confidentiality
- **Discuss ground rules and the timelines required for the negotiation**
- Confirm the timelines, breaks, ground rules for the negotiation to proceed
- **Discuss your role in the negotiation and confirm their role**
- Establish the timeframes for the meetings and steps for upcoming meetings

The final step of this stage is to get a commitment or agreement to proceed to the next stage of the negotiation.



Stage Two – Identify Issues and Set the Agenda

Stage 2 – identify the issues and gain agreement on what will

During this stage the parties confirm what is negotiable or reach an agreement on what they will negotiate

During this stage, the parties begin to prioritize the issues and confirm or reach agreement on the issues that they will spend time discussing for the duration of the negotiation. In this stage the following needs to be considered:

- Agree on the purpose or goal for the meeting
- Provide a general overview on your point of view related to the issues using neutral language framed as a statement or topic for discussion free from bias or judgment
- Allow for the other party to set out the issues they would like to discuss
- Listen actively to what is being said and observe body language
- Briefly summarize the issues and seek agreement on the agenda
- Prioritize the agenda through choosing issues and discussing them in depth

Effective communication skills, including active listening and questioning for clarification will help to form the agenda and prioritize the issues which will be discussed fully during the next stage within the negotiation process.

Stage Three – Explore Interests

Stage 3 – gain understanding of the items negotiated, explore

In this stage the time is spent gaining an understanding of which interests need to be part of the

In this stage, a great deal of time is spent on gaining an understanding of each of the items which are being negotiated. The essence of this stage is gaining an understanding of the issues and interests. Use the following as a guide:

Explore and Clarify Issues and Interests

- **Be aware issues are often stated as solutions, probe to surface underlying interests**
- Clarify the problem before starting to solution it
- State your interests without disqualifying theirs, affirm and acknowledge the other person's interests



- Emphasize areas of common ground
- Summarize interests prior to looking for options
- Develop objective criteria
- Clarify perceptions, assumptions
- Divide the issue into manageable parts
- Summarize what you have heard their interests are and prepare to reach agreements
- **Resist going to solutions before you understand the issues**

Often times an interest is the underlying motivation of a position. To move from a position to an interest, consider the following:

- A position (demands) is the ideal solution to a conflict from one person's perspective and meets the need of one of the sides.
- A position contains an expectation the person should agree with this position, this sets up a condition that one person wins and the other one loses
- There is a tendency to defend positions

During this stage there is a great deal of discussion and disclosure of the interests. The goal of this stage is to generate a list of interests that all parties can agree will be met through the agreement created at the conclusion of the negotiation.

The final step in this stage is to create a goal statement which summarizes the interests of all of the parties involved. An example of how a goal statement might be written is provided below.

Sample Goal Statement:

Given that _____ is important to me, and
_____ is important to you; and, we both
agree we want an agreement that is _____. In regards
to the issue of _____, are we ready to start
brainstorming some possible options to meet those needs?

Creating the goal statement indicates the transition from Stage 3 into Stage 4. If the discussion is still related to the positions, it is too soon to move forward. The signal to move forward is based on the interests meeting the conditions outlined in the goal statement.



Stage Four – Create an Agreement

Stage 4 – create agreement on each of the items or reach agreement

At this stage of the negotiation, all options are explored and those that best meet the interests of all parties become part of the agreement. The agreement is drawn up to reflect this discussion.

This is the final stage of the negotiation where all of the options are explored and an agreement is reached. Creating an agreement on each negotiable is also known as reaching an agreement. The three areas to consider during this phase are as follows:

Problem Solve

- Identify and choose the most important interests for both parties
- Pinpoint areas for mutual gain
- Summarize the areas which are common to both parties
- Brainstorm possible solutions without judging them
- Use criteria for determining fairness
- Select and develop options which are realistic and fair as determined by the criteria
- Finalize the agreement
- Provide opportunity for follow-up or evaluation

Invent Options

- Invent multiple options for mutual gain
- Brainstorm or generate ideas on a mutual goal statement
- Separate the process of brainstorming options from the process of forming agreements
- Ensure that everyone realizes the options are possibilities, not commitments or agreements
- Do not evaluate, criticize, challenge or react to the brainstormed suggestions
- Generate creative options

Form Agreement

- Prepare a solution which benefits both parties
- Develop criteria for solutions which are objective, measurable and practical
- When brainstorming the options, just generate the options instead of evaluating each one
- Once a full list of options has been created, evaluate the best options
- Group acceptable options into an agreement
- Be specific in outlining the plan of the agreement
- Clearly assign responsibilities and accountabilities to who, what, where and when
- Develop action steps and timelines for implementation



Write up the Agreement

Prior to settling on the agreement, it is important to involve colleagues and/or stakeholders to clarify the potential impact of the commitments. Provide these individuals with drafts which are open for debate and discussion. Once there is agreement and understanding, finalize the agreement. Prematurely committing to an agreement without vetting out may lead to unfavorable results.

Impasses: No Agreement

In some cases, the process outlined above may lead to an impasse where there is no agreement resulting from the negotiation. **If there is an impasse, before giving up on the process entirely, it might be prudent to examine the “what ifs” or options, analyze what is blocking the process and look for opportunities to shift the focus off being stuck.**

To examine the various options and what ifs, **determine the pros and cons of the situation. Surface and challenge the negative assumptions about each of the options.** This type of analysis will lead to fuller understanding of the options which are on the table.

By uncovering the interests which may still be buried and not met, you will help in the understanding of what is blocking or getting in the way of reaching an agreement. Once these interests have been identified, brainstorming ways in which they can be met may help towards getting an agreement.

Another way of moving the negotiation forward is to shift the focus. This can be done through examining if the attention is still focused on positions, or are the underlying interests still unclear or are one or both parties being inflexible?

If none of these strategies work to get the negotiation back on track, then it might **be an opportunity to take a break from the negotiation to re-examine reasons to continue.**

The Consequences of Not Reaching an Agreement

There will be negative consequences if you are unable to negotiate an acceptable agreement and it is important to assess them. **Assessing possible consequences means finding an answer to the question “what is the worst that could happen if we can’t negotiate a deal”?** There is a chance that we might overestimate or underestimate the possible negative consequences. Our perceptions of these negative consequences can be connected to our negotiating power.



Negotiation Tactics – Dirty Tricks

Some of the common tactics used during a negotiation can include posturing, hidden agendas, or threats. When these tactics surface during the negotiation, it is important to identify the tactic in order to prevent it from derailing the process.

These tactics can be dealt using the following steps

1. Address the tactic as soon as it presents itself by
 - Identifying the tactic, calling it out
 - Bringing the tactic to the other side’s attention
 - Discussing the tactic – this will help to reduce its impact and may prevent it from being used again
2. Treat the tactic as though it is an issue to be negotiated. Focus on the tactic or behaviour versus on the person
3. Re-negotiate the process and reaffirm the ground rules
4. As a last resort if the tactics persist, walk away from the negotiation

Tactic	This is When...	Respond By...
Deception	The other side provides misleading or false facts	Make it a practice to verify all factual information. This practice reduces the incentive for deception
Misrepresentation of Authority	The other side informs you that they must take it to someone else for approval after an agreement has been worked out	Clarify their authority The agreement can be treated as a draft which can be subject to discussion.
Psychological Games	These can make you feel very uncomfortable. You might end the negotiations prematurely. E.g., location chosen isn’t conducive to a private conversation	Identify the problem and adjourn or suggest a new location



Interruptions	The other side allows the negotiations to be interrupted by phone calls or people coming and going from their office	Identifying this tactic and its impact will help to reduce the likelihood of it continuing. If it does continue, revisit the ground rules
Applying Pressure	The other side refuses to negotiate and threatens to follow up with legal action	Identify this tactic and discuss it with them. Suggest alternate options which might be faster and less expensive – potentially mediation.
Extreme Demands	The other side makes demands that both you and they know will be not be met	Bring this demand to their attention and ask for an explanation
Stonewalling or Calculated Delay	The other side is stalling or postponing matters when they know that time is of the essence	Raise this tactic with them. Look for external standards which can be used to establish deadlines.
Escalating Demands	The other side makes new demands for every concession or reopens issues you thought were settled.	Discuss this tactic, perhaps revisit the ground rules
Unexplained Change	The other side changes their mind for no apparent reason or become irrational about an issue.	Request an explanation related to the change.
Dodge	The other side tries to shift your attention away from the real issue to a side issue.	Refocus on the issues at hand. Use the agenda that was agreed upon. Identify another time to address the side issue



High Ball versus Low Ball	One side suggests a high asking price and the other side had a lower paying price in mind	Insist on determining the true value of the item. Look for external standards or objective criteria to achieve this.
Personal Attacks	These are designed to make you feel uncomfortable and to distract you from the negotiation	Call the attacks for what they are and refocus the negotiation
Good Guy/Bad Guy	The good guy tries to keep the negotiation moving while the bad guy stalls the negotiation	Identify the roles and discuss them openly
Take it or leave	This isn't a negotiating tactic	Call their bluff, either ignore or keep talking
Exaggerated assertions	Negotiators may intentionally describe interests, time preference or needs one way when they want them to go another way	Call them on what they want, if it is of low value to you, then leverage that to help you to get what you want
Scrambled Eggs	The negotiator deliberately makes a deal complex to create confusion	Admit the negotiation is becoming too complex and retreat until you have time to analyze the situation
Foot in the Door	The negotiator gets you to make a small concession, then builds from that base to get you to make more concessions.	Know what your negotiation latitude is in advance and stay within that range.
Deadlines	Imposing a time limit sets the boundaries on a negotiation. Often people accept another's time deadline as their own.	Determine why this deadline is important. Explain and impose your own deadline.



Tips for Dealing with Difficult Personalities

Difficult people can sabotage the negotiation, and often it is the way we respond to these individuals which can lead to trouble. Here are seven difficult types with some suggestions of how to and not to respond to them.

Aggressive types want to force their viewpoint on you. They tend to be loud and they may attack you verbally.

- Don't attack in response
- Ask them to explain in a calm manner what their key points are. Listening without interrupting helps in diffusing the situation

Know it alls are the experts who have no patience for other points of view.

- Don't be intimidated by them or allow them to take over a meeting
- Do listen and benefit from their knowledge

Victims often complain and feel they are being treated unfairly.

- Do not become their protector
- Ask them for suggestions on how to improve the situation and enable them to practice giving positive ideas

Sarcastic types use words as weapons, often destroying the harmony in a group and causing resentment. They can derail the negotiation.

- Let them know sarcasm is not acceptable
- Acknowledge when they contribute positively to the discussion

Nay-sayers have nothing good to say about others' ideas.

- Don't try and reform or change their mind
- Invite them to suggest alternatives which will work. They might back down if asked to say something constructive

Yay-sayers will go along with anything just to get approval.

- Discourage them from making more commitments than they can manage
- Do make sure they follow through on what they agree to do

Withdrawn types seem to have nothing to contribute and are difficult to draw out.

- Ask open ended questions which require more explanation
- Be patient in waiting for their response



Learning Summary

- Recognize that pre-negotiation planning is essential for a productive modified work negotiation and a successful agreement. Especially for those claims where you are unfamiliar with the employer's industry.
- Keep the 5 core concerns in mind to encourage positive interactions between you and the employer.
- Be completely committed to the idea that appropriate modified work is the best thing for the worker and the employer.
- Never say die for making modified work happen! Be open to exploring all available options.
- When you hear no from the employer, become curious as to why. Tap into that creative part of you that sees anything is possible. If you aren't successful, at least you planted the seed. There is always tomorrow.
- Document, document, document essential details of your negotiating modified work conversation.
- Whether you're successful or not, always have a plan for the next steps after a modified work conversation. Carry out these steps as soon as possible.
- During the negotiation shift from:
 - ❖ Judgement to Curiosity
 - ❖ Positions to Interests
 - ❖ Own Gain to Mutual Gain