

Employment Non-Binding Arbitration Rules

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Introduction

The AAA® offers these streamlined procedures for arbitrations where an advisory award will be rendered that the parties may use to reach a settlement or simply to assess their respective cases. The Rules are specially designed to help the parties obtain the benefits of arbitration but not incur the expenses and the time that a binding arbitration or a lawsuit require. In a binding arbitration, the parties may seek to confirm the award in a court of appropriate jurisdiction. Under these Non-Binding Rules, the Award is an advisory decision reached by an actual arbitrator after considering the parties' evidence and arguments.

Streamlined Process

However, the non-binding nature of the award that is rendered under these Rules is not the only way these Rules are designed to assist the parties in potentially settling their dispute. These Rules provide all of the benefits of the informal nature of arbitration. The focus is on ease of use, accessibility, speed, and economy. The Rules do not contemplate the parties expending time and financial resources

as they would in litigation or even in arbitration. Motions, formal discovery, and other litigation-like procedures are not included in our Employment Non-Binding Arbitration Rules, and engaging in these expensive and time-consuming procedural techniques is strongly discouraged.

Streamlined Costs

Fees to be paid to the AAA and to the arbitrator have been set at modest amounts in contemplation of a streamlined, one-day (or less) hearing. To help keep the nonbinding arbitration process simple and smooth, parties are requested to not bring litigation techniques and steps to the process. For cases proceeding promptly however, the costs are capped at modest amounts to encourage all participants to be efficient and effective.

Streamlined Schedule

An arbitration under these Rules will not exceed 120 days from the filing of the case, unless both parties agree that they want to extend the schedule. If the arbitration has not been concluded within 120 days from the filing date, any mandatory contractual requirement to arbitrate pursuant

to these Rules will have been fulfilled and any party may pursue any other dispute resolution method available to them.

Standard Arbitration Clause

The parties can provide for non-binding arbitration of future employment disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be submitted to non-binding arbitration administered by the American Arbitration Association® under its Employment Non-Binding Arbitration Rules before the parties may initiate arbitration, litigation, or some other type of dispute resolution process.

Submission of existing disputes to non-binding arbitration may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to non-binding arbitration administered by the American Arbitration Association under its Employment Non-Binding Arbitration Rules the following controversy: (describe briefly)

Fees and Costs

The AAA charges modest and streamlined administrative fees and arbitrator compensation for cases administered pursuant to these Rules, as described in the Administrative and Arbitrator Compensation Fees section at the end of these Rules.

Employment Non-Binding Arbitration Rules

1. Agreement of Parties

(a) The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for non-binding arbitration by the American Arbitration Association (hereinafter AAA) under its Employment Non-Binding Arbitration Rules. These Rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by the AAA. Except as provided for in paragraph (c) of this Section 1, the parties, by written agreement, may vary the procedures set forth in these Rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) The parties shall further be deemed to have agreed that any arbitration award entered pursuant to the Employment Non-Binding Arbitration Rules shall not be introduced or cited as evidence in any subsequent arbitration, litigation or any other administrative adjudicative body. Absent mutual agreement of the parties, any award rendered pursuant to these Rules shall not be entered as a judgment in any court.

(c) Non-binding arbitrations arising out employment arbitration agreements must be guided by the principles contained in the Employment Due Process Protocol ("Protocol"). These Rules have been drafted to reflect the guidelines outlined in the Protocol but have been modified to

create an expeditious and low-cost process. In the interest of justice and upon a showing of good cause by either party, the arbitrator may amend any procedure in these Rules to meet the due process standards outlined in the Protocol.

2. AAA and Delegation of Duties

When parties agree to arbitrate under these Rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these Rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these Rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these Rules.

4. Initiation under an Arbitration Provision in a Contract

(a) Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

(i) The initiating party (the "claimant") shall, give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested.

(ii) The claimant shall file at any office of the AAA a copy of the demand and the relevant arbitration provisions of the contract, together with the appropriate filing fee as provided in these Rules.

(iii) The AAA shall confirm notice of such filing to the parties.

(b) A respondent may file an answering statement with the AAA within 15 days after confirmation of notice of filing of the demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought.

(c) If no answering statement is filed within the stated time, respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

5. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these Rules by filing, at any office of the AAA, a copy of a written submission to arbitrate under these Rules, signed by the parties. It shall contain a statement of the nature of the dispute, the names and addresses of all

parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule included with these Rules. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party.

6. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

7. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/ or their representatives. The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

8. Fixing of Locale (the city, county, state, territory, and or country of the arbitration)

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within 15 days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If the parties disagree as to the locale, the AAA may initially determine the place of arbitration, subject to the power of the arbitrator, after his or her appointment, to make a final determination on the locale.

9. Appointment from National Roster

(a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.

(b) Each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.

(c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall

be subject to disqualification for the reasons specified in Section 12. The parties shall notify the AAA within seven days from the date of the AAA's notice to the parties of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

10. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, or the parties do not agree otherwise, the dispute shall be heard and determined by one arbitrator.

11. Disclosure

(a) Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section 11 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

12. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(i) partiality or lack of independence,

(ii) inability or refusal to perform his or her duties with diligence and in good faith, and

(iii) any grounds for disqualification provided by applicable law.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

13. Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

14. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on

proof satisfactory to it, declare the office vacant. Vacancies shall be filled by a direct appointment made by the AAA.

(b) In the event of the appointment of a substitute arbitrator, the arbitrator shall determine in his or her sole discretion whether it is necessary to repeat all or part of any prior hearings.

15. Preliminary Hearing

In general, there will be no preliminary hearings in AAA non-binding arbitration. At the discretion of the arbitrator or the AAA, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing shall be conducted by telephone.

16. Exchange of Information

(a) In General

(i) Consistent with the expedited nature of non-binding arbitrations, the arbitrator shall manage the exchange of information among parties in advance of the hearing with a view to maximizing efficiency and economy.

(ii) The parties may provide the arbitrator with their views on the appropriate level of information exchange for each case, but the arbitrator retains final authority to apply the above standard.

(b) Documents in the Possession of Another Party - The arbitrator may, upon application, require one party to make available to another party documents in the party's possession, not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents along with an explanation of their relevance and materiality to the outcome of the case.

(c) Electronic Documents - Electronic documents or expansive electronic discovery is generally not contemplated under these Rules. However when documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible.

(d) Costs and Compliance - In resolving any dispute about pre-hearing exchanges of information, the arbitrator shall require a requesting party to justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information.

(e) Exhibits - At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

17. Date, Time, and Place (the physical site of the hearing within the designated locale) of Hearing

The arbitrator shall set the date, time, and place for each hearing to be held within 60 days after appointment of the arbitrator, subject to the provisions contained within Section 25. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule.

18. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

19. Representation

Any party may be represented by counsel or other authorized representative.

A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

20. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

21. Stenographic Record

Absent express written agreement among the parties, there will be no stenographic record.

22. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

23. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

24. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An

award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

25. Conduct of Proceedings

(a) Hearings conducted under these Employment Non-Binding Rules shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing and may require further submission of documents within two days after the hearing.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues, the decision of which could dispose of all or part of the case. When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including web conferencing, internet communication, telephonic conferences and means other than an in-person presentation of evidence. Such alternative means must still afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and when involving witnesses, provide that such witness submit to direct and cross-examination.

(c) The parties may agree to waive oral hearings in any case.

26. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present. "Presence" should not be construed to mandate that the parties and arbitrators must be physically present in the same location.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

27. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

28. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

29. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any extension.

30. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules, may be served on a party by mail addressed to the party or its representative, at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator, and the parties may also use overnight delivery or electronic facsimile transmission (fax) or electronic mail (E-mail) to give the notices required by these Rules. The parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

(c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

31. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 14 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

32. Form of Award

The award shall be in writing and shall be signed by the arbitrator and shall provide the written reasons for the award unless the parties agree otherwise.

33. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses,

personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

34. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto.

35. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

36. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these Rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these Rules.

37. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an administrative fee to compensate it for the cost of providing administrative services. The fee in effect when the fee or charge is incurred shall be applicable. The fee is payable in full by the parties when the claim for non-binding arbitration is filed subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

38. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses, including any expenses related to the proof and witnesses produced at the direction of the arbitrator shall be borne equally by the parties, unless determined otherwise by the arbitrator.

39. Neutral Arbitrator's Compensation

Arbitrators will receive compensation at the rate set forth in the Administrative and Arbitrator Compensation Fees section of these Rules.

40. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

41. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.

42. Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

Non-Binding Arbitration Fee Schedule For Employment Disputes

Administrative and Arbitrator Compensation Fees

The cost of non-binding arbitration is a single fee that encompasses both the administrative services of the AAA as well as compensation for the service of an arbitrator for one full day of hearing. The fee is payable in full by the parties when the claim for non-binding arbitration is filed.

All cases under these procedures will be before a single arbitrator. The employee's portion of the fee is \$250, unless the parties' agreement provides that the employee pay less. The employer will pay the remaining \$1,500, unless the parties' agreement provides that the employer pay more.

The AAA administrative fee for the non-binding process is \$750 and is nonrefundable.

The Arbitrator compensation for the non-binding process is \$1,000 for the case. The fee of \$1,000.00 includes all expenses of the arbitrator. If the case settles prior to the arbitrator having to participate in any administrative work on the case, the compensation on deposit will be refunded.

Hearing Room Rental

The AAA maintains hearing rooms in most offices for the convenience of the parties. Check with your case manager for the availability and the local rental rates. Hearing room rental fees are borne by the employer on a case filed under the Non-Binding Arbitration Rules.

Expenses

All expenses, including any expenses related to the proof and witnesses produced at the direction of the arbitrator shall be borne equally by the parties, unless determined otherwise by the arbitrator.