



Representing Yourself In Employment Arbitration: An Employee's Guide

What is the American Arbitration Association®?

The American Arbitration Association (AAA®) is a not-for-profit, private, public service organization which offers a broad range of dispute resolution services, including arbitration and mediation, through offices located in 23 major cities throughout the United States, Mexico, Singapore, and the Middle East.

As an administrative agency, the AAA processes a case from filing to closing, appoints arbitrators, schedules hearings, transmits documents, and schedules and occasionally participates in conference calls. The goal is to administer cases in a fair and impartial manner.

What is arbitration?

Arbitration is the submission of a dispute to one or more impartial persons, an alternate to the judicial system (judge or jury). The arbitrator(s) is presented with evidence at a formal hearing and a decision is rendered based on the evidence presented. Sometimes, a case is presented on documents alone. The arbitrator's decision is final and usually binding. An arbitrator's decision may be overturned only in limited circumstances.

Who is a *pro se* party in arbitration?

A *pro se* party is one who chooses to participate in arbitration without assistance of counsel ("attorney").

Who is a claimant in arbitration?

A claimant in arbitration is the person who initiates a claim against his or her employer.

Who is a respondent in arbitration?

A respondent in arbitration is the person who responds to the claim. In employment cases, this is usually the employer.

What are the steps involved in an employment arbitration?

Step 1. The dispute is filed with an AAA regional office, the applicable AAA Case Management Center, or online at www.adr.org, by a Demand (i.e., pursuant to an arbitration provision in a contract, personnel policy or manual, or ADR program/plan), a Submission Agreement (i.e., submitting an existing dispute to arbitration), or court referral.



- Step 2. The filing documents are reviewed. In order for the AAA to process employment cases, three requirements must be met. First, the AAA must be named in the clause or arbitration agreement as the administrative agency. Second, the arbitration clause or agreement must substantially and materially comply with the *Employment Due Process Protocol*. This *Protocol*, developed by a special task force comprised of individuals representing management, labor, employment, civil rights organizations, private administrative agencies, government, and the American Arbitration Association, seeks to provide fairness and equity in resolving workplace disputes. Finally, the appropriate fee must be submitted with the filing documents. If any one of these requirements is not met, the AAA may decline to initiate the case.
- Step 3. The file then is assigned to an AAA Case Manager who reviews the information about the dispute, examines the documents, and sends the parties an initiating letter acknowledging receipt of the case and providing the respondent an opportunity to file an answer. The parties also receive an identical list of the names of arbitrators who are members of the Employment Dispute Resolution Roster. The parties will have fifteen (15) days from the date of the letter in which to select the name of a mutually acceptable arbitrator. If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.
- Step 4. By the end of the fifteen (15) day period, the AAA likely would have received a statement raising the question of whether the claim is properly in arbitration (if applicable), an Answering Statement (*i.e.*, the response to the Demand, which should contain any affirmative defenses), any objection to the requested hearing locale, counterclaim(s), and/or requests for an administrative conference with the case manager or a preliminary hearing with the arbitrator(s).
- Step 5. If applicable, an administrative conference is held among the AAA Case Manager and the parties' representatives.
- Step 6. Upon receipt of the parties' lists, the AAA appoints an arbitrator pursuant to the rules and based on the parties' preferential rankings of those submitted on the list. The selected arbitrator(s) is screened for potential conflicts of interest. A management conference is then scheduled. If the arbitrator(s) makes any disclosures, they are communicated to the parties. Based on objections received from any party, the arbitrator(s) is either removed from the case because of the substantive nature of the disclosure or affirmed by the AAA because the nature of the disclosure does not warrant the arbitrator's removal.
- Step 7. The arbitrator conducts an Arbitration Management Conference with the parties and/or their representatives, in person or by telephone, to explore and resolve matters that will expedite the arbitration.
- Step 8. An evidentiary hearing is conducted with additional hearings scheduled as needed.
Note: This step is omitted if hearings are conducted on documents only.
- Step 9. The evidentiary hearing is closed and the arbitrator's award (decision) is due within thirty (30) days.
- Step 10. The award is transmitted to the parties.



How long do I have to file a claim?

Your contract, personnel policy or manual, or ADR program/plan usually will specify the amount of time you have to file a claim. Statutory claims, *i.e.*, claims governed by state and federal laws, contain separate statutes of limitations, based on the nature of the claim you assert.

Do I need an attorney to participate in arbitration?

No. The AAA, however, strongly encourages you to seek the advice of legal counsel, for several reasons. First, arbitration is a final and binding process. Second, workplace disputes, **particularly those involving statutory claims such as race, age, or national origin discrimination**, can be difficult to present without the assistance of an attorney. At a minimum, you should consider consulting with an attorney.

The AAA or its employees cannot recommend or provide attorneys to parties in arbitration, nor can any AAA employee offer legal advice. If you do not have an attorney and wish to be represented by an attorney in arbitration, you may want to contact your local bar association for a referral.

Are there rules or procedures that apply in employment arbitration?

For most employment claims, and for all employment claims that arise under employer-promulgated plans, the AAA applies the *Employment Arbitration Rules and Mediation Procedures*. The *Employment Due Process Protocol* ("Protocol") is part of these rules, meaning that there are minimum levels of fairness, which must be observed during the arbitration. The AAA's website (www.adr.org) will give you immediate access to these Rules and the *Protocol*. You also may obtain a copy of these Rules from your AAA Case Manager.

What does the process cost?

Fees in employment arbitration include a combination of filing fees (AAA forum fees) and arbitrator's fees. If you, the employee, are the filing party, you will pay \$200, unless the employment ADR plan specifies a lower fee. Your employer is responsible for paying the balance of the fee, which is \$1,350. If the employer is the filing party, the employer will pay \$1,350 or more, and the employee will pay \$200 or less, depending on the provisions in the plan.

The employer also will pay the arbitrator's fees. Arbitrators charge either an hourly fee or a per diem (daily fee). Typically, rates range from \$200-\$350 per hour or \$700-\$1,200 per day. Either rate usually encompasses all time spent on a case, including the preliminary hearing (arbitration management conference), the evidentiary hearing, research and writing the award.

A separate fee structure applies in cases that are a result of individually-negotiated agreements. Please check with your AAA Case Manager for information on how such fees are allocated.



How do I begin arbitration?

First, you, “the claimant,” must notify the other party, the “respondent,” that you intend to begin an arbitration proceeding. Obtain a copy of the “Demand Form” from the AAA’s Website or by contacting your local AAA office. This form must contain the following information:

- A statement explaining what your dispute is about,
- The names and addresses of any other parties involved in this dispute,
- The amount of money, if any, involved in this dispute,
- The remedy sought (what you feel you are entitled to at the end of the proceeding), and
- The hearing location (what city/state you want the hearing to be held in, if it is to be held in person).

Second, you should send two (2) copies of this completed form to the AAA along with two (2) copies of the contract you have with the other party, specifically the part that mentions arbitration.

Third, make sure that you enclose the proper filing fee with the “Demand.” The AAA will notify claimant(s) and respondent(s) when these materials are received.

Can my employer initiate arbitration against me?

Yes. Either party may initiate the arbitration. Additionally, if you file for arbitration, the employer might decide to file a counterclaim. By filing a counterclaim, the employer is saying that they are entitled to the remedy or relief against you.

What happens after the claim is filed?

The AAA has four (4) Case Management Centers nationwide, and an International Centre for Dispute Resolution. Although you can file your case with any one of the 30 regional AAA offices, the case will be forwarded to the appropriate Center for administration. Once the AAA Case Management Center receives a Demand for Arbitration with the filing fee, your case will be assigned to an AAA Case Manager who will be your contact for the arbitration of your case. The AAA’s Case Managers act as impartial liaisons, send out notices, monitor the arbitrator selection process, schedule hearings, prepare billings and transmit the arbitrator’s awards. The AAA offers comprehensive case management to expedite the resolution of your case.

How long does the process take from beginning to end?

Each case is different. Most employment disputes are resolved between 120-180 days. The average length for all arbitration matters through the AAA is about 4.5 months.



When do I present my evidence and what kind of evidence will be allowed?

At the evidentiary hearing, you will be given an opportunity to present your evidence. Evidence in arbitration takes three forms:

Testimonial: Live testimony by a witness on the stand, by affidavit, or by deposition.

Demonstrative: This type of evidence is in the form of photographs, videos, maps, diagrams, models, etc., designed to accentuate key points made through testimony.

Documentary: Written summaries, records and evaluations, all constitute forms of documentary evidence. Documentary evidence also is used to support testimony.

The party who files the Demand for Arbitration usually presents evidence first at the arbitration.

Formal rules of evidence that usually apply in court do not apply generally in employment arbitrations. Be prepared to present any and all evidence that you think is appropriate. However, understand that the arbitrator may accept or reject any evidence. Each party is expected to make a brief and focused presentation so the hearing can be conducted in a timely manner.

Although arbitration is a more relaxed process than litigation, it is a legal proceeding. At times, depending on the complexity of the issues in dispute, arbitration may be more structured.

Does the AAA help me present my claim?

No. The AAA's Case Manager will be your main contact throughout the case. However, neither the Case Manager nor the arbitrator can assist you in the presentation of your claim. As a neutral organization, the AAA cannot help either party in the presentation of its case. The AAA's Case Manager will answer your questions about the procedures and will distribute information to you, but s/he will not provide legal advice or legal assistance.

Who are the arbitrators?

The AAA's arbitrators are independent, impartial decision-makers chosen for their knowledge, case experience, integrity, and dispute resolution skills. Their conduct is guided by the AAA's *Code of Ethics for Arbitrators in Commercial Disputes*, prepared by a joint Committee of the American Arbitration Association and the American Bar Association. All AAA arbitrators are required to attend periodic training programs.

Do I get to select the arbitrator?

You are able to participate fully in the selection of the arbitrator. After the AAA receives the Demand for Arbitration, we will mail to each party a list of names from our Employment Dispute Resolution Roster. You will be able to review each



proposed arbitrator's background, and make your selections accordingly. If you and the other side are unable to agree on an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA.

How do I know the arbitrator is neutral (impartial)?

The Rules require an arbitrator to disclose any potentially disqualifying information, *i.e.*, a personal or financial interest in the results of the dispute, or relationship to the parties, their counsel, or witnesses. Parties may jointly or individually challenge an arbitrator's neutrality and request removal. Upon receipt of a joint objection, the arbitrator will be replaced. In the case of a single party objection, the AAA will determine, after carefully reviewing all parties' contentions, whether the arbitrator should be disqualified.

How do I prepare for the hearing?

You should gather all pertinent documentation and make copies for the arbitrator and the employer. Organize the information logically, following the main points you want to emphasize to the arbitrator. At the hearing, you will be given an opportunity to make a brief opening statement, examine witnesses (if any), introduce evidence and answer questions. Prepare an opening statement. Be prepared to discuss your evidence and answer questions about your case. You should consider the arguments the employer may make and be prepared to respond to them.

May anyone attend the hearings?

No. Generally, only the parties, their counsel, and the witnesses attend and participate in the hearing. The arbitrator has the authority to exclude witnesses, other than a party, from the hearing during the testimony of other witnesses (to safeguard the accuracy of the testimony).

There are times, however, when a party would like a friend or relative to attend, without assuming a formal role in the arbitration. The arbitrator will decide if this attendance is appropriate.

How are the hearings conducted?

Hearings are usually conducted in person. Generally, each party will present their side with the filing party going first. The arbitrator will explain the hearing protocol before the hearing.

What if the employer does not appear at the hearing? What if I do not appear?

The hearing can still proceed even if one party does not appear. The party who is present must present its case to the arbitrator. The appearing party does not win simply because the other party has not appeared and presented evidence.



Can I settle with the employer prior to the arbitration hearing?

Yes, you may. Once you believe the written terms of the settlement are agreeable to both you and the employer, and you have signed any settlement agreement, notify your AAA Case Manager and ask him or her to postpone hearing due to settlement of the dispute. Do not withdraw from your hearing until you have received your written settlement and all parties have signed it. **Important:** The AAA has no authority to enforce any settlement agreement.

How quickly after the hearing will I receive the arbitrator's decision?

Once the arbitrator closes the hearing (s/he determines that all of the information needed to make the decision has been received), the award (decision) will be given in thirty (30) days, unless the parties have extended this deadline.

Is the arbitrator's decision binding?

Yes. This is a very important point to keep in mind: arbitration is a binding process. This means that an arbitrator's decision is as legally binding as a judge's decision.

How quickly after the decision is received does either party have to follow the award?

Please refer to the appropriate state law governing arbitration. A list of state laws can be found on our website under "Resources" and "ADR Law." It's important to note that neither the arbitrator nor the AAA has any authority to make a party comply with the award.

Are there processes other than arbitration available?

Yes. A commonly used alternative to arbitration is mediation. You may use mediation if it is provided for in your ADR program/plan. You also may use mediation if the employer agrees, either before or after you have filed for arbitration. Mediation is different from arbitration in several key respects. The mediator's role is advisory. This means the mediator may offer suggestions for settlement. But the most important difference is that in mediation it is the parties, not the mediator, who decides whether and on what terms a settlement will occur.

Mediation has been shown to produce a high rate of success in reaching agreements. As with arbitration, mediation proceedings are confidential and private.

If you would like to use mediation, but it is not provided for in your ADR program/plan, contact your AAA Case Manager. S/he will contact the other party, explain the mediation process and encourage the party to use the process. The AAA, however, cannot require that the parties mediate.



What does mediation cost?

There is a separate charge for mediation. Please consult with your AAA Case Manager for additional details.

Disclaimer: *The American Arbitration Association (AAA) provides the materials contained in this guide for informational purposes only. Most information presented here is specific to the procedures of AAA, although it may serve as a useful tool for arbitration processes generally.*

Although this guide has been carefully written, the information presented does not constitute legal advice and should not be regarded as a substitute for legal counsel on any subject matter.

The AAA strongly encourages a party or a potential party in arbitration to seek the advice of legal counsel, as employment matters involve legal issues which can be difficult for a person who is not represented by counsel to understand.