

Survey of the AAA Rules

1. This is a brief review and summary of the arbitration process under the American Arbitration Association Employment Arbitration Rules and Mediation Procedures (“the Rules”). See also the attached PLC flowchart: AAA Employment Arbitration Flowchart (“the Flowchart”). The Rules reflect the guidelines set out in the Due Process Protocol.

Commencing the Arbitration

2. Where the parties have a pre-dispute arbitration agreement the process commences by the parties submitting to arbitration jointly by filing a Submission to Dispute Resolution or by the claimant filing a Demand for arbitration. Where there is no pre-dispute agreement the parties may enter into one and file a Submission to Dispute Resolution.
3. The Claimant pleads the case in the Demand.
4. The Respondent has the option to respond with the Answering Statement within 15 days. If no Answering Statement is filed the AAA assumes the claim is denied (Rule 4(b)(ii)).
5. The Respondent may make counterclaims which the Claimant may answer, otherwise it is deemed to be denied.
6. The parties may make or amend claims and counterclaims at any time before the AAA appoints an arbitrator, after which time the arbitrator’s permission is required.
7. Jurisdictional challenges must be no later than the response to the claim or counterclaim (Rule 6(c)).

Before the appointment of the arbitrator

8. A party may request or the AAA may schedule an administrative conference (Rule 7).

9. A party may apply for interim relief if the parties have agreed to the AAA Employment Rules' Optional Rules for Emergency Measures of Protection (p.42-43 of the Rules).
10. Unless the parties agree otherwise, one arbitrator hears the dispute (Rules 12(a) and (b)).
11. Unless the arbitration agreement names an arbitrator or the parties have agreed to use party-appointed arbitrators, a "Strike and Rank Appointment" process is used whereby the parties are sent identical lists of arbitrators which they return to the AAA having ranked or struck out arbitrators for consideration (Rule 12(c)(i)-(ii)). When there is consensus on an arbitrator that arbitrator is appointed (Rule 12(c)(ii)). If there is no consensus the AAA makes the appointment (Rule 12(c)(iv)).
12. If a three-person arbitration panel is used, a chairperson is selected (Rule 14(a)).
13. The arbitrator or a potential arbitrator has a continuing obligation to disclose any circumstances which raise a doubt as to their impartiality or independence (Rule 15).

Pre-hearing matters

14. An Arbitration Management Conference is held within 60 days of the arbitrator's appointment (Rule 8). The default is for a telephone hearing. Rule 8 sets out the list of matters to be potentially considered at the AMC.
15. The arbitration agreement may govern discovery. If it does not, the Arbitrator orders discovery.
16. The Parties may, with permission, make dispositive motions. The arbitrator will allow a motion to be filed where it is likely to succeed in disposing of or narrowing the issues (Rule 27).
17. The arbitrator or arbitrators must take an oath of office.

Class actions

18. Class actions are apparently permitted. The AAA Supplementary Rules for Class Action Arbitration (2003) apply, including the relevant fee schedules.

The Hearing

19. The Arbitrator decides procedure (Rules 35 and 28).
20. Evidence is usually presented live and witnesses are subjected to direct and cross-examination. Evidence need not conform to state or Federal evidentiary rules. The burden of proof and evidential burdens are the same as if the claim had been brought in court (Rule 28).
21. The Arbitrator closes the hearing when either the parties have offered their evidence and will not file post-hearing briefs; or after the parties have filed post-hearing briefs (Rule 33).
22. The hearing may be reopened at any time before the award on the Arbitrator's initiative or by direction of the arbitrator on application of a party (Rule 34).

The Award

23. The Award is made no later than 30 days from either the closing of the hearing or the date of the AAA's transmittal of final statements and proof to the Arbitrators (where an oral hearing has been dispensed with) (Rule 39(a)).
24. The Award disposes of all claims, apportions costs and fees and gives reasons unless the parties agree otherwise (Rule 39(c) and (d)).
25. The Award must adhere to any legal formalities (Rule 39(c)).
26. The Award is publicly available for a fee, but the names of the parties and witnesses are not publicly available unless a party agrees (Rule 39(b)).
27. Changes to the Award may be made in the event of a technical error e.g. clerical/typographical (Rule 40), but there is no power for the arbitrator to re-determine the merits of any claim.

Costs/Fees

28. The Rules contain two separate and distinct arbitration costs sections; one for disputes arising out of employer plans and the other for disputes arising out of individually-negotiated employment agreements and contracts. When the arbitration is filed, the AAA makes an initial administrative determination on the submitted documents as to whether the dispute arises from an employer plan or an individually-negotiated employment agreement or contract. If a party disagrees with the assessment, the arbitrator can determine the issue.
29. For employer plan disputes, the costs scheme is at pp.33-35 of the Rules. Points to note are:
 - 29.1. The arbitrator compensation is not part of the AAA fees and is generally paid by the employer;
 - 29.2. There are non-refundable capped filing fees of USD 200 for the employee. The filing fees for the employer are much larger;
 - 29.3. The administrative hearing fees are also payable by the employer.
30. For individually negotiated dispute agreements, there is a much more comprehensive scheme of standard or flexible fees: pp.35-41. Key points to note:
 - 30.1. The standard fee schedule provides for higher filing fees, but lower overall administrative fees if the matter proceeds to a hearing.
 - 30.2. In the standard fee schedule, the filing fees depend on the claim value, with the lowest filing fee being USD 750.
 - 30.3. The flexible fee schedule provides for lower filing fees, but higher administrative fees if the case proceeds to a hearing. This schedule is only available for claims valued at USD 150k or more.
 - 30.4. In the flexible fee schedule, the filing fee is also determined by the claim value, with the lowest fee being USD 1650.

31. In general, the amount of fees also depends on:
 - 31.1. The role of the party (employer or employee).
 - 31.2. The number of arbitrators.
 - 31.3. Whether there are additional parties.
32. The AAA bills the parties periodically for deposits, returning as necessary any balance at the end of the case (Rule 46). If a party fails to pay a deposit the other party may pay it to avoid the proceedings being suspended.

Allocation of costs and fees

33. Under Rule 39(d) there appears to be provision for costs shifting:

“The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorney’s fees and costs, in accordance with applicable law. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Rules 43, 44, and 45 in favor of any party and, in the event any administrative fees or expenses are due the AAA, in favor of the AAA, subject to the provisions contained in the Costs of Arbitration section.”
(emphasis added)

34. Note also that the allocation of attorney’s fees and costs is an item on the agenda for the Arbitration Management Conference: see Rule 8.xii.

Ensuring proceedings are dealt with quickly

35. The following rules govern the timing of proceedings and provide time limits and deadlines to ensure the expeditious progress of proceedings:
 - 35.1. Rule 4(b)(ii) – the Respondent has 15 days from the AAA’s acknowledgement of receipt of a Demand to file an Answer and/or counterclaim.
 - 35.2. Rule 4(b)(iv) – the Claimant has 15 days from the AAA’s acknowledgment of receipt of a counterclaim to file an Answer.

- 35.3. Rule 8 – An arbitration management conference shall be held not later than 60 days after the selection of the arbitrator.
- 35.4. Rule 12(c)(ii) – parties have 15 days for the Strike and Amend selection process of an arbitration panel.
- 35.5. Rule 13(d) – if the parties have agreed to party appointed arbitrators and have failed to make an appointment within 15 days of the AAA sending a notice to the parties, the AAA will make the appointment.
- 35.6. Rule 14(b) – The AAA will appoint a chairperson within 15 days of the last arbitrator appointment if no chair has been appointed.
- 35.7. Rule 39(a) – The award shall be made promptly and unless otherwise agreed or specified by law, no later than 30 days after the closing of the hearing.