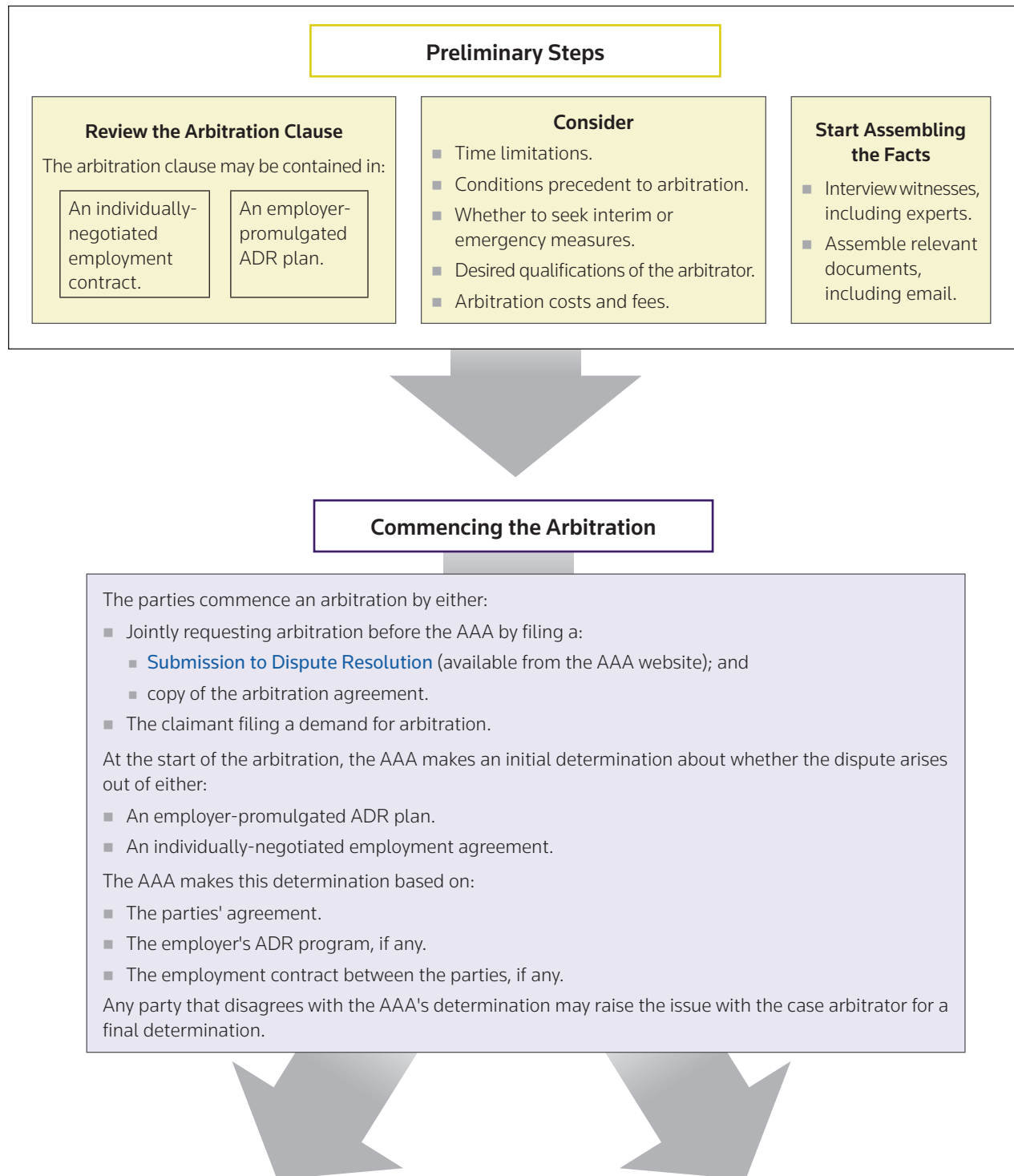


AAA Employment Arbitration Flowchart (AAA Employment Arbitration Rules)

For detailed information on arbitration under the AAA employment rules, see [Practice Note, AAA Employment Arbitration: A Step-by-Step Guide](#).



The Demand

No technical pleading requirements apply to the form of any filing under AAA Employment Rules (AAA Employment Rule 4(c)). The demand may take any form, including the one-page AAA [form](#) available from the AAA website.

The demand should summarize the nature of the claims referred to arbitration and should include:

- A brief and clear statement setting out:
 - the nature of the dispute in sufficient detail to make the circumstances clear to the arbitrator;
 - the relief sought; and
 - the amount involved.
- Official names and addresses of all parties, including:
 - phone number;
 - fax number; and
 - email address.
- The arbitral seat the claimant is requesting if the arbitration clause does not specify the location.
- A request for a panel of three arbitrators if desired.
- The arbitration clause of the contract quoted in full with the date of the document. The claimant may attach the clause separately if it is more convenient to do so.
- The appropriate filing fee.

The Answering Statement

The AAA notifies each party of the filing and type of claim. The respondent has 15 days to file and serve on the claimant an answering statement, which may include counterclaims. (AAA Employment Rule 4(b)(ii).)

There is no required form for an answering statement. It should clearly and concisely set out the respondent's response to the claims.

An answering statement is optional. If the respondent fails to file an answering statement within 15 days, the AAA deems the claim denied. (AAA Employment Rule 4(b)(ii).)

Counterclaims

A counterclaim must include a statement:

- Setting out the nature of the claim.
- Stating the amount involved.
- Identifying the relief sought.

If the respondent wants a panel of three arbitrators, it should make that request in the answering statement.

The respondent must pay the applicable filing fee for any counterclaim it asserts (AAA Employment Rule 4(b)(iii)).

Responding to Counterclaims

After receiving a respondent's counterclaim and filing fee, the AAA notifies each party of the filing of the counterclaim. The claimant may file an answer to the counterclaim within 15 days after receiving the AAA's notification of the counterclaim. (AAA Employment Rule 4(b)(iv).)

Submission Agreement

Where there is no pre-dispute arbitration agreement, parties may submit their dispute to arbitration by filing a written post-dispute agreement to arbitrate and a Submission to Dispute Resolution (available from the AAA website).

The Submission to Dispute Resolution contains:

- A brief and clear statement describing the nature of the dispute and any answers to the statement.
- Any claims and counterclaims.
- Official names and addresses of all parties.
- The remedy or relief each party is seeking.
- The amount involved, if any.
- The arbitral seat the parties request.
- A request for three arbitrators if desired.
- The appropriate filing fee.

Each party should retain a copy. Unless the parties state otherwise, the AAA deems all claims and counterclaims denied by the other party.

New or Amended Claims

At any time before the AAA appoints arbitrator, the parties may:

- Assert new claims and counterclaims.
- Change claims and counterclaims.

After the AAA appoints the arbitrator, the parties may add or amend claims or counterclaims only with the arbitrator's permission.

Within 15 days from the date the AAA transmits a new or amended claim or counterclaim, the parties may submit an answering statement in response. (AAA Employment Rule 5.)

Jurisdictional Challenges

If a party objects to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim, it must submit the objection no later than the filing of the response to the claim or counterclaim giving rise to the objection (AAA Employment Rule 6(c)).

Before the Arbitrator is Appointed

Administrative and Mediation Conference

The AAA may schedule, or any party may request, an administrative conference with the AAA before the arbitrator is appointed. The purpose of an administrative conference is to:

- Organize and expedite the arbitration.
- Address administrative details.
- Discuss the views of the parties in selecting an arbitrator.
- Discuss the viability of mediation.
- Address any other concerns the parties raise.

(AAA Employment Rule 7.)

With the consent of the parties, the AAA will arrange a mediation conference under its Employment Mediation Procedures (AAA Employment Rules M-1 – M-18). The mediator may not be an arbitrator in the case unless all parties agree in writing.

There is no additional filing fee for the parties in a pending arbitration to start an AAA mediation of the case. (AAA Employment Rule 7.)

Emergency or Interim Relief

Before the AAA appoints the arbitrator, a party may obtain emergency relief in the arbitration only if the parties have agreed to the AAA Employment Rules' Optional Rules for Emergency Measures of Protection:

- In the arbitration agreement.
- By separate agreement.

(AAA Employment Rule O-1).

Applying for Emergency Relief

Under the Optional Rules for Emergency Measures of Protection, the party needing emergency relief notifies the AAA in writing, with a copy to each party. The notification must include:

- The nature of the relief sought.
- The reasons the party needs urgent relief.
- The reasons the party is entitled to the relief.
- A statement certifying that the requesting party notified all other parties or an explanation of the steps the requestor took in good faith to notify other parties.

The requestor may make the notification by email, fax, or other written communication. (AAA Employment Rule O-1.)

Appointing the Emergency Arbitrator

Within one business day of receiving the notice, the AAA appoints a single emergency arbitrator from a special panel of emergency arbitrators. The emergency arbitrator must immediately disclose any conflicts or facts that could affect the arbitrator's impartiality. (AAA Employment Rule O-2.)

Any party that challenges the appointment of the emergency arbitrator must do so within one business day of the AAA's notice of the appointment (AAA Employment Rule O-2).

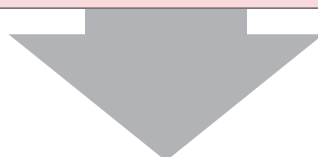
Emergency Proceedings

Within two days of being appointed, the emergency arbitrator must set a schedule for the proceedings, which may be held:

- By live hearing.
- By telephone.
- By videoconference.
- On written submissions.

(AAA Employment Rule O-3.)

The emergency arbitrator may apportion the costs associated with the application for emergency relief, subject to the power of the case arbitrator to apportion costs in the final award (AAA Employment Rule O-8). The emergency arbitrator's powers end when the AAA appoints the case arbitrator, unless the parties have agreed that the emergency arbitrator may be an arbitrator in the case. (AAA Employment Rule O-5.)



Appointing the Case Arbitrator

Unless the parties otherwise agree, a single arbitrator selected from the AAA's roster of arbitrators experienced in employment law hears an employment dispute (AAA Employment Rule 12(a) and (b)). If the arbitration agreement names the arbitrator or a process for arbitrator appointment, that designation or method applies (AAA Employment Rule 13(a)).

Strike and Rank Appointment

The parties appoint an arbitrator through a "strike and rank" process in cases where they have not:

- Previously agreed on a specific arbitrator.
- Agreed to use party-appointed arbitrators.
- Agreed on an alternate method for appointing the arbitrator.

(AAA Employment Rule 12.)

Soon after the claimant files the demand for arbitration, the AAA sends each party an identical list of arbitrators from the AAA's employment roster. If the parties agree to an arbitrator from the list, they notify the AAA and it appoints that arbitrator. (AAA Employment Rule 12(c).)

If the parties do not agree on a listed arbitrator, each party must, within 15 days from the date the AAA transmits the list of potential arbitrators:

- Strike any objectionable names on the list.
- Number the remaining names in order of preference.
- Return the list to the AAA, but not each other.

(AAA Employment Rule 12(c)(i)-(ii).)

The AAA reviews the lists and appoints the arbitrator on which it finds a consensus (AAA Employment Rule 12(c)(ii)). If there is no consensus, the AAA makes the appointment from its roster of employment arbitrators (Employment Rule 12(c)(iv)).

Party-Appointment

If the parties have agreed to use party-appointed arbitrators, the AAA honors their selections (AAA Employment Rule 13(a)). The parties should name their appointed arbitrators in their pleadings or soon after.

If the arbitration agreement specifies a period of time within which an arbitrator must be appointed and any party fails to make the appointment within that period, the AAA may make the appointment (AAA Employment Rule 13(c)).

If the agreement is silent on the deadline for appointing an arbitrator, the AAA notifies the appointing party to appoint an arbitrator. The appointing party must appoint an arbitrator within 15 days of the notice or the AAA may make the appointment. (AAA Employment Rule 13(d)).

Selecting the Chair

A three-person arbitration panel requires a chairperson. The chairperson may be selected by:

- The parties, using the "strike and rank" process.
- The two party-appointed arbitrators.
- The AAA.

If the party-appointed arbitrators are to select the chair, they must do so within the time the parties specified in their agreement. If the parties' agreement does not provide a deadline for the appointment the AAA sends the party-appointed arbitrators:

- A notice instructing them to make the appointment within 15 days.
- A list of arbitrators from which to make the appointment.

(AAA Employment Rules 14(b) and (c).)

The AAA may appoint the chairperson if:

- The parties agree that the AAA may make the appointment.
- The party-appointed arbitrators fail to appoint the chairperson within:
 - the time specified in the parties' agreement; or
 - 15 days after receiving the AAA's notice.

(AAA Employment Rule 14(a).)

Arbitrator Challenges

Each arbitrator appointed or proposed for appointment must disclose to the AAA any circumstance likely to give rise to a justifiable doubt about his impartiality or independence. This obligation continues throughout the arbitration, and extends to party-appointed arbitrators, unless the parties have agreed in writing to appoint non-impartial arbitrators. (AAA Employment Rule 15.)

An arbitrator may be disqualified for:

- Partiality or lack of independence.
- Inability or refusal to perform his duties with diligence and in good faith.
- Any grounds for disqualification provided by applicable law.

(AAA Employment Rule 16(a).)

The AAA may determine whether an arbitrator should be disqualified:

- When a party objects to an arbitrator.
- On the AAA's own initiative.

The AAA's decision on disqualification is final and binding. (AAA Employment Rule 16(b).)

If the parties agree in writing that the party-appointed arbitrators are non-neutral, the arbitrators cannot be disqualified for partiality or lack of independence (AAA Employment Rule 16(a)(iii)).

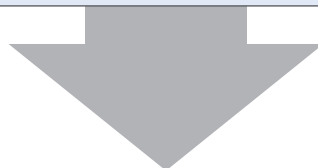
Arbitrator Vacancy

Solo Arbitrator

If a solo arbitrator becomes unable or unwilling to serve, the AAA may replace the arbitrator under the applicable arbitrator appointment rule (AAA Employment Rule 18).

Member of a Three-Person Panel

If a seat on a three-person panel becomes vacant after the hearings begin, the remaining arbitrators may decide to continue with the hearing and determination of the controversy, unless the parties agree otherwise. When the AAA appoints a substitute arbitrator, the panel of arbitrators may determine whether it is necessary to repeat all or part of any prior hearings. (AAA Employment Rule 18.)



Pre-Hearing Matters

Arbitration Management Conference

The AAA holds a telephonic arbitration management conference within 60 days after the arbitrator's appointment (AAA Employment Rule 8). The parties should be prepared to discuss:

- Any disputes over the AAA's determination of whether the dispute arose from an individually-negotiated employment agreement or an employer-promulgated plan.
- The issues to be arbitrated.
- Bifurcation.
- Amendment of claims.
- The date, time, place, and estimated duration of the hearing.
- Discovery matters, including:
 - the types of discovery that will be available;
 - the schedule for discovery; and
 - the procedure for resolving discovery disputes.
- Pre-hearing exchanges.
- The names of witnesses, including experts, and scope of witness testimony.
- Whether there will be a stenographic record.
- Whether the parties will present pre-hearing briefs or opening statements.
- The need and permissibility of having witnesses appear by:
 - telephone;
 - videoconference;
 - affidavit;
 - deposition; or
 - any other means.
- The form of award.

The arbitrator issues an order reflecting his decision on the matters discussed at the arbitration management conference. The arbitrator may conduct additional conferences as needed. (AAA Employment Rule 8.)

Discovery

The arbitration agreement may dictate the timing, manner, or scope of information exchange in arbitration proceedings. If it does not, the arbitrator has the discretion to order any discovery he deems necessary. The forms of permissible discovery include:

- Depositions.
- Interrogatories.
- Document requests.
- Any other discovery device the arbitrator deems necessary.

(AAA Employment Rule 9.) Under the [Employment Due Process Protocol](#), employees should have access to information that is reasonably relevant to the dispute prior to the arbitration, including depositions.

The AAA Employment Rules permit the arbitrator to issue subpoenas at the request of any party or independently (AAA Employment Rule 30).

If the arbitrator deems a site inspection or investigation necessary, the arbitrator sets the date and time. If any party cannot attend, the arbitrator provides an inspection report to the parties and affords them an opportunity to respond. (AAA Employment Rule 31.)

Motions

A party must request permission before making a dispositive motion. The arbitrator will allow a party to file a dispositive motion only if he determines that the motion is likely to succeed and dispose of or narrow the issues in the case. (AAA Employment Rule 27.)

The Hearing

The parties in an employment arbitration usually present their evidence at a live hearing. If the parties agree to waive live hearings, they must do so in writing. If the parties cannot agree on the procedure for submitting the case to the arbitrator, the arbitrator decides the procedure. (AAA Employment Rule 35.)

Notice

The arbitrator sets the date, time, and place for the hearing. Unless otherwise agreed by the parties or directed by the arbitrator, the AAA provides notice to the parties at least ten days in advance of the hearing date. (AAA Employment Rule 10.)

Postponements

A party needing to postpone a scheduled hearing should contact the opposing party for consent and alternative hearing dates before requesting the postponement from the AAA. If the other party does not consent, the requesting party should advise the AAA. The parties should not contact the arbitrator directly.

The arbitrator must postpone any hearing if all parties request it. In addition, the arbitrator may postpone a hearing:

- On request of one party, for good cause shown.
- On the arbitrator's own initiative.

(AAA Employment Rule 24.)

Conduct of the Hearing

Order of Proof

The conduct of the proceedings is generally at the broad discretion of the arbitrator but due process requires the arbitrator to:

- Treat each party equally.
- Give each party:
 - the right to be heard; and
 - a fair opportunity to present its case.

The claimant usually presents its evidence first, followed by the respondent. The parties bear the same burdens of proof and production as would apply if they had brought their claims in court.

The arbitrator has the authority to manage the proceedings as efficiently as possible. Sometimes this may result in:

- The bifurcation of proceedings.
- A change in the order of proof.
- A direction to the parties to focus on specific issues.
- The presentation of evidence by alternative means such as video conferencing.

(AAA Employment Rule 28.)

Evidence

The presentation of evidence need not conform to state or federal evidentiary rules.

The parties must present all evidence in the presence of the arbitrator and all of the parties, except where:

- Any of the parties is absent in default or has waived the right to be present.
- The parties and the arbitrator agree otherwise.

(AAA Employment Rule 30.)

An arbitrator or other person authorized by law may subpoena witnesses or documents on the request of any party or independently. Requesters must serve copies of any requests on all parties to the arbitration. All parties have the right to examine subpoenaed evidence and object. (AAA Employment Rule 30.)

Waiver of Objection

Any party that proceeds with the arbitration knowing that the arbitrator or any party has not complied with any provision or requirement of the AAA Employment Rules and fails to object in writing has waived the right to object (AAA Employment Rule 36).

Closing the Hearing

The arbitrator closes the hearing when either:

- All parties have offered all of their evidence and witnesses, and they will not file post-hearing briefs.
- The parties have filed all post-hearing briefs.

(AAA Employment Rule 33.)

The arbitrator may reopen the hearing at any time before he makes the award, as follows:

- On the arbitrator's initiative.
- By direction of the arbitrator on application of a party.

Unless the parties agree, the arbitrator may not reopen the hearing if doing so would prevent him from issuing the award within a time period required in the parties' arbitration agreement. (AAA Employment Rule 34.)



The Award

Timing and Requirements

Timing

Unless the parties agree otherwise, the arbitrator must make the award no later than 30 days from, as applicable, either:

- The closing date of the hearing.
- The date of the AAA's transmittal of final statements and proof to the arbitrators.

(AAA Employment Rule 39(a).)

Contents

The award must:

- Dispose of all claims submitted.
- Apportion the arbitration costs and fees
- Provide reasons for the disposition of each claim, unless the parties agree otherwise.

(AAA Employment Rule 39(c) and (d).)

Formal Requirements

The award must be:

- In writing.
- Signed.
- Executed as legally required (for example, notarized in some jurisdictions).
- For three-person panels, by majority decision unless the law or arbitration agreement requires otherwise.

(AAA Employment Rule 39(c).)

Changes to the Award

The arbitrator may not redetermine the merits of any claim he has already decided. He may modify an award only to correct ministerial errors not affecting the merits. The kinds of errors for which an arbitrator may modify an award include:

- Clerical.
- Typographical.
- Technical.
- Computational.

(AAA Employment Rule 40.)

Any party who wants the award modified must submit the modification request to the AAA:

- Within 20 days after the AAA transmits the award.
- With a copy to all other parties.

The other parties have ten days to respond to the request. The arbitrator decides the request within 20 days after the AAA forwards to the arbitrator the last response by a party. (AAA Employment Rule 40.)

Costs and Fees

Based on an estimate from the arbitrator and the projected AAA hearing administration fees, the AAA bills the parties periodically for deposits to ensure payment of arbitration costs and fees. The AAA provides an accounting and returns any unexpended balance at the end of the case. (AAA Employment Rule 46.)

If one party does not meet its payment obligations the other party may advance the required funds to avoid having the proceedings suspended for non-payment. If the required funds remain unpaid, the arbitrator may suspend or terminate the proceedings. (AAA Employment Rule 47.)

The AAA's filing and hearing administration fees vary, depending on:

- The role of the party (employer or employee).
- The amount in controversy.
- The number of arbitrators.
- Whether the arbitration is brought under:
 - an employer-promulgated ADR plan; or
 - an individually-negotiated employment agreement.

The complete [Employment Fee Schedule](#) may be downloaded from the AAA website.

Cases Brought Under Employer-Promulgated ADR Plans

Employee v. Employer		Employer v. Employee	
Employee Costs	Employer Costs	Employee Costs	Employer Costs
<p>Unless the plan provides for the employee to pay a lower amount, the employee claimant pays:</p> <ul style="list-style-type: none"> ■ A \$200 initial filing fee, regardless of the amount in controversy or the number of arbitrators. ■ No hearing administrative fee. 	<p>Unless the plan provides for the employer to pay more, the respondent employer pays a non-refundable fee as follows:</p> <ul style="list-style-type: none"> ■ \$1,350 if the case is before a single arbitrator. ■ \$1,800 if the case is before three or more arbitrators. ■ In most cases, the employer pays all of the arbitrator's compensation, except if an arbitrator determines that an employee's claim or counterclaim: <ul style="list-style-type: none"> ■ was filed for purposes of harassment; or ■ is patently frivolous. <p>AAA arbitrators have stated rates of compensation. Parties must make any arrangements for compensation with the AAA and not directly with the arbitrator. (AAA Employment Rule 44.)</p>	<p>The employee respondent pays no fees.</p>	<p>The employer claimant pays the following fees:</p> <ul style="list-style-type: none"> ■ If the case is before a single arbitrator: <ul style="list-style-type: none"> ■ a non-refundable fee of \$1,550; and ■ \$350 per day for each hearing day. ■ If the case is before three or more arbitrators: <ul style="list-style-type: none"> ■ a non-refundable fee of \$2,000; and ■ \$500 per day for each hearing day.

Cases Brought Under Individually-Negotiated Employment Contracts

The employer and employee share equally the filing and hearing administration fees. The fees vary from \$1,550 to more than \$20,000, depending on the amount in controversy. Consult the Employment Fee Schedule for more information.