

Texas Arbitration Mediation Services, Inc.

EMPLOYMENT ARBITRATION RULES OF TAMS
Amended and Effective June 1, 2007

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EMPLOYMENT ARBITRATION RULES OF TAMS
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INTRODUCTION

Because of federal and state law changes, and court decisions interpreting employment laws, employers and employees now see arbitration as a method to promptly resolve workplace disputes. Arbitration (and mediation) are becoming more common in contracts of employment, personnel manuals, and employee handbooks.

Employer and employees face workplace disputes in such cases as wrongful termination, sexual harassment, or discrimination based on race, color, religion, sex, national origin, age, disability, and unlawful disparate treatment of employees with caregiving responsibilities.

These rules have been developed for employers and employees who wish to use a private alternative to resolve their workplace disputes. All complaints will be heard by an impartial person (arbitrator) with wide range experience in the employment field.

TAMS founded in 1991 has dedicated mediators and arbitrators who have the expertise to resolve disputes through mediation or arbitration. These rules provide for a fair and equitable procedure that provides a private, efficient and cost-effective mechanism for out-of-court settlement of workplace disputes. The policy of TAMS, guided by federal and state law, is to recognize its obligation to act in an impartial manner, but more importantly, to ensure fairness and equity, to both employers and employees. In the event that TAMS determines that an employer's plan deviates from minimum due process standards as set forth in these rules, TAMS may decline to administer cases under that plan.

TAMS Employment Arbitration Rules apply to employer-promulgated plans and individually-negotiated employment agreements or contracts.

The services of TAMS shall conclude with the transmittal of the award. A judgment on the award can be entered in a court having appropriate jurisdiction.

Administrative Fees

TAMS charges a filing fee based on the amount of claim or counterclaim. This administrative fee information which is included with these rules, allows parties to control the administrative fee.

TAMS does not charge or bill for a *case service fee*.

The fees cover administrative costs of TAMS; fees do not cover arbitrator compensation or expenses, if any, reporting services, interpreter expenses, arbitrator's time spent in preparation of the award, or any post-award charges incurred by parties in enforcing the award.

A-1 Employer-Promulgated Plans

The parties shall be deemed to have made these rules as part of the employer-promulgated plan whenever the plan provides for arbitration by TAMS under its Employment Arbitration Rules. These rules and amendments shall apply at the time when a demand or submission for arbitration is submitted to TAMS. Nothing in these rules prohibit or limit the parties from varying from the procedures set out in these rules if agreed upon by the parties in writing and notice is given to TAMS. After the arbitrator is appointed, the consent of the arbitrator, to any modification shall be required.

A-2 Individually-Negotiated Employment Agreements or Contracts

The parties shall be deemed to have made these rules as part of any employment agreement or employment contract whenever the agreement or contract provides for arbitration by TAMS under its Employment Arbitration Rules, or in the absence thereof, by mutual agreement of the parties. These rules and amendments shall apply at the time when a demand or submission for arbitration is submitted to TAMS. Nothing in these rules prohibit or limit the parties from varying from the procedures set out in these rules if agreed upon by the parties in writing and notice is given to TAMS. After the arbitrator is appointed, the consent of the arbitrator, to any modification shall be required.

All cases shall be administered in accordance with Sections A-1 through A-51 of these rules.

A-3 TAMS and Delegation of Duties

When parties agree to the use of these rules, or when provided for in an arbitration agreement and arbitration is initiated under these rules, the parties authorize TAMS to administer the dispute. The authority and duties of TAMS are contained in these rules and may carried out by TAMS or its representative as it may direct.

A-4 Roster of Arbitrators

TAMS shall maintain a roster of arbitrators, which roster shall be available to all parties, upon demand or submission to arbitration.

A-5 **Initiation under an Employer-Promulgated Plan**

Arbitration under an employer-promulgated plan shall be initiated by:

- (a) The initiating party (“claimant”) giving the other party (“respondent”) written notice, within the period of time specified in the employer-promulgated plan, of its intention to arbitrate (the demand). The demand shall contain a statement concerning the dispute, names and addresses of all parties, amount involved and any other pertinent information regarding the claim.
- (b) The claimant shall file two (2) copies of the demand and two (2) copies of the employer-promulgated plan together with appropriate filing fee as provided in the schedule included in these rules.
- (c) TAMS shall confirm in writing notice of such filing to the parties.
- (d) Respondent may file an answer in duplicate with TAMS within 15 days after confirmation of notice of filing of the demand is sent by TAMS. If respondent files an answer, respondent shall send copy of answer to claimant and TAMS. If respondent is asserting a counterclaim, the answer shall contain the nature of the counterclaim, and the amount involved. If a counterclaim is made, the party making the counterclaim shall forward to TAMS the appropriate fee provided in the schedule in these rules.
- (e) If no answer is filed respondent will be deemed to deny the claim. Failure to file an answer shall not operate to delay the arbitration.
- (f) Parties in their statements shall provide descriptions of their claims in sufficient detail to make all facts of dispute clear to the arbitrator.
- (g) The form of any filing in these rules shall not be subject to technical pleading requirements.

A-6 **Initiation under an Individually-Negotiated Employment Agreement or Contract**

Parties to any existing dispute may commence an arbitration under these rules by filing with TAMS two (2) copies of a written submission to arbitrate under these rules. All submissions shall be signed by all parties. The submission shall contain a statement of the nature of the dispute, names and addresses of all parties, amounts of claims and counterclaims, if any, together with appropriate filing fee as provided in the schedule included with these rules.

A-7 Changes of Claims

If either party desires to make any new or different claim or counterclaim after filing of the initial claim, it must be made in writing and filed with TAMS. The party asserting the new claim or counterclaim shall provide a copy to the other party, who shall have 15 days from the date of such transmission within which to file an answer. After the arbitrator is appointed, no new or different claim may be submitted except with the arbitrator's consent.

TAMS upon receiving the different claim or counterclaim shall determine the appropriate filing fee as provided in the schedule included with these rules and shall notify all parties of the *new appropriate fee* which shall be paid upon receiving notice of the appropriate fee amount due from TAMS.

A-8 Jurisdiction

- (a) The arbitrator shall have the power to rule on the issue of jurisdiction, including any objection 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 which contains an arbitration clause. The arbitration clause shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitrator that the contract is null and void shall not render invalid the arbitration clause.

- (c) A party must object to (1) the jurisdiction of the arbitrator or (2) the arbitrability of the claim or counterclaim at the time the answer is filed to the claim or counterclaim is filed and the arbitrator may rule on such objections as a preliminary matter or as part of the final award.

A-9 Mediation

At any stage of the arbitration proceedings, the parties may agree to mediate the dispute. The mediator shall not be an arbitrator appointed to the case. Where the parties agree to mediate under TAMS rules, no additional administrative fee is required; however, TAMS shall determine the mediator's fees and notify all parties.

A-10 Administrative Conference

TAMS may conduct an administrative conference, in person or by telephone, with the parties or their representatives. The conference shall address such issues as arbitrator

selection, potential mediation of the dispute, exchange of information, a timetable for hearings and other administrative matters.

A-11 Fixing of Locale

The parties may mutually agree on the locale where arbitration is to be held. It shall be presumed that the locale shall be El Paso County, Texas, unless a party files an objection with TAMS, and after notice and hearing, the locale shall be determined by the parties. If the parties are unable to determine locale, TAMS shall have the power to determine locale, and its decision shall be final and binding.

A-12 Appointment from Roster

If the parties cannot mutually agree on the appointment of an arbitrator(s) the arbitrator(s) shall be appointed in the following manner:

- (a) TAMS shall send to each party to the dispute an identical list of names or persons chosen from TAMS roster. TAMS encourages the parties to agree to an arbitrator(s) from the submitted list and advise TAMS of their agreement.
- (b) If the parties are unable to agree on an arbitrator(s), each party shall have 10 days from transmittal date in which to strike 2 names objected to and return the list to TAMS. TAMS shall have the power to appoint an arbitrator(s) from the name(s) not objected to by the parties. If a party or parties does not return the list within the 10 day period, TAMS shall have the power to appoint an arbitrator(s) from the list submitted.
- (c) The arbitrator(s) named must meet the standards of § A-14 with respect to impartiality and independence unless the parties mutually agree otherwise.

A-13 Number of Arbitrators

The dispute shall be heard and determined by one (1) arbitrator, unless the arbitration agreement or TAMS in its discretion, directs that three (3) arbitrators be appointed. Any party may request three (3) arbitrators in the demand or answer.

A-14 Disclosure

- (a) Any person appointed as an arbitrator has a duty to disclose to TAMS any reason or reasons likely to give rise to any doubt as to the

arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration.

- (b) Any person appointed as an arbitrator shall disclose any past or present relationship with the parties or their representatives.
- (c) Upon receipt of such information TAMS shall communicate the information to the parties or their representatives.
- (d) In order to encourage disclosure by arbitrator, such disclosure is not to be construed as an indication that the arbitrator considers that the disclosed information is likely to effect impartiality or independence.

A-15 Disqualification of Arbitrator

Any arbitrator shall be subject to disqualification for:

- (a) partiality or lack of independence,
- (b) inability or refusal to perform the duties of an arbitrator with diligence and in good faith, and
- (c) any grounds for disqualification provided by law.

A-16 Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator.

A-17 Vacancies

- (a) If for any reason an arbitrator is unable to perform the duties of the office, TAMS shall declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearing has commenced, the remaining arbitrator or arbitrators may

continue the hearing and determine the controversy, unless the parties agree otherwise.

- (c) In the event of the appointment of a substitute arbitrator, the panel shall determine solely at their discretion whether it is necessary to repeat all or part of any prior hearings.

A-18 Preliminary Hearing

- (a) At the request of any party or the arbitrator(s), the arbitrator(s) may schedule a preliminary hearing. The preliminary hearing may be conducted by telephone at the arbitrator's discretion.
- (b) The purpose of the preliminary hearing shall be to discuss the future conduct of the case, clarification of issues and claims, a schedule for the hearings and any other preliminary matters.

A-19 Exchange of Information

At the request of any party or arbitrator, the arbitrator may direct:

- (a) production of documents and other information, and
- (b) identification of all witnesses to be called.

At least ten (10) 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 any dispute(s) concerning the exchange of information.

A-20 Date, Time, and Place of Hearing

TAMS shall set the date, time, and place of hearing. The parties shall respond in a timely manner to requests for hearings dates and be cooperative in scheduling the date, and adhere to the established hearing schedule. TAMS shall send notice of hearing to parties and their representatives at least ten (10) days in advance of the hearing date, unless otherwise agreed by the parties.

A-21 Attendance at Hearings

All arbitration hearings shall be private, unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall have the power to require exclusion of any witness, other than a party or representative of a party, during the testimony of any other witness.

A-22 Oaths

Before proceeding with the hearing, the arbitrator(s) shall take an oath of office. The arbitrator(s) may require witnesses to testify under oath administered by any duly qualified person, including the arbitrator(s).

A-23 Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and notify all other parties, including TAMS, of these arrangements at least three (3) days in advance of the hearing. The requesting party shall pay the costs of the record. The transcript shall be made available and provided to the arbitrator and the other party or parties if the arbitrator determines that the transcript is the official record of the proceedings.

A-24 Interpreters

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

A-25 Postponements

Postponements shall be subject to *postponement fees as provided in the schedule included in these rules.*

A-26 Arbitration in the Absence of a Party or Representative

The arbitration may proceed in the absence of a party or representative who, after notice, fails to appear or fails to obtain a postponement. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

A-27 **Conduct of Proceedings**

The arbitrator shall:

- (a) allow claimant to present evidence to support claim.**
- (b) allow respondent to present evidence in support of its defense and evidence on its counter-claim, if any.**
- (c) allow parties to question witnesses.**
- (d) have right to submit questions to witness.**
- (e) have right to vary this procedure, provided parties are treated equally and shall give each party the right to be heard and given a fair opportunity to present its case.**

The arbitrator shall conduct the proceeding with a view to expediting the resolution of the dispute and has the discretion to direct order of proof and request of the parties to focus their presentation on issues of the dispute.

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

A-28 **Evidence**

- (a) all parties may offer evidence that is relevant and material to the dispute.**
- (b) all evidence shall be taken in presence of arbitrator(s) and all parties, except when party is absent, has waived right to be present, or party is in default.**
- (c) conformity to legal rules of evidence shall not be necessary.**
- (d) the arbitrator shall determine admissibility, relevance, and materiality of the evidence offered, subject to objections by any party.**
- (e) the arbitrator or any other person authorized by law to subpoena witnesses may do so upon the request of any party.**

A-29 **Evidence by Affidavit and Post-Hearing Filing of Documents or Other Evidence**

- (a) The arbitrator may receive declarations or affidavits as evidence and will decidethe weight to be given to such declarations and affidavits, after consideration of any objection made by any party.**

- (b) The parties or the arbitrator may agree to the filing of documents or evidence after the hearing. All documents or evidence shall be filed with TAMS for transmission to arbitrator.

A-30 Inspection or Investigation

The arbitrator shall have the discretion to make an investigation or inspection in connection with the case. TAMS shall set the date and time and notify all parties. Any party who so desires may be present at such investigation or inspection. The arbitrator shall make an oral or written report to the parties who shall have an opportunity to comment.

A-31 Interim Measures

The arbitrator may:

- (a) take whatever interim measures that may be necessary, including injunctive relief and measures to protect and conserve and dispose of perishable goods.
- (b) issue interim measures in the form of an interim award, and arbitrator may require security for costs of such measures.

A-32 Closing Hearing

In the event that the parties do not have any further proofs to offer or witnesses to be heard, the arbitrator shall declare the hearing closed. If briefs or written closing statements are to be filed, the hearing shall be closed upon receipts of the briefs or written closing statements. If documents are to be filed as provided in § A-28 and the date for receipt is later than the filing of briefs or closing statements, the later date shall be closing date of hearing.

The time limit for the arbitrator to make an award shall be 30 days upon closing of the hearing.

A-33 Reopening of Hearing

Any party may request or the arbitrator may request that the hearing be reopened at any time before the award is made. If reopening the hearing would delay the making of the award within the specific time, the parties must agree to an extension of time.

A-34 Waiver of Rules

Any party who proceeds with the arbitration and who fails to object in writing that any requirement of these rules have not been complied with, shall be deemed to have waived the right to object.

A-35 Extensions of Time

The parties, with the exception of the time for making an award, may modify any period of time by mutual agreement and shall notify TAMS of any such agreements.

A-36 Serving of Notice

Any notice required by these rules shall be served on a party by mail addressed to the party, or its representative at the last known address or by personal service.

A-37 Majority Decision

When the panel consists of more than one arbitrator, a majority of the arbitrators must make all decisions, unless prohibited by law or by the arbitration agreement.

A-38 Time of Award

The award shall be made by the arbitrator no later than 30 days from the date of the closing of the hearing.

A-39 Form of Award

All awards shall be in writing and signed by the arbitrator(s) and executed in the manner required by law.

The arbitrator need not render a reasoned award unless the parties request such an award prior to the appointment of the arbitrator(s).

A-40 Scope of Award

The arbitrator may:

- (a) grant any relief or remedy that the arbitrator deems just and equitable and within scope of the agreement of the parties, including specific performance of a contract.

- (b) in addition to the final award, the arbitrator may assess and apportion the fees, expenses, and compensation provided in *A-45, A-46, and A-47* as the arbitrator determines is appropriate.
- (c) access interest at such rate authorized by law.
- (d) award attorney's fees as authorized by law or as authorized by the arbitration agreement.

A-41 Award upon Settlement

If the dispute is settled by the parties during the course of the arbitration and if requested, the arbitrator may set forth the terms of the settlement in a CONSENT AWARD.

A-42 Delivery of Award to Parties

TAMS shall deliver the award by placing the award or copy thereof in the mail addressed to the parties or their representatives at last known address.

A-43 Modification of Award

Any party, upon notice to the other parties, may request through TAMS to correct any clerical, typographical, or computation errors in the award. The arbitrator is not empowered to redetermine the merits of any claim or counter-claim already decided.

Modification notice shall be given within 10 days after the transmittal of an award and other parties may response within 5 days. The arbitrator shall dispose of the request within 10 days after transmittal by TAMS to the arbitrator of the request and response.

A-44 Release of Documents for Judicial Proceedings

Upon written request of a party, TAMS shall furnish to the party, at party's expense, certified copies of any papers in TAMS'S possession that may be required in judicial proceeding relating to the arbitration.

A-45 Applications to Court and Exclusion of Liability

- (a) neither TAMS nor any arbitrator in a proceeding under these rules is a necessary or proper party in any judicial proceeding relating to the arbitration.

- (b) parties to an arbitration proceeding under these rules shall be deemed to have consented that judgment upon the award may be entered in any court of competent jurisdiction.
- (c) parties to an arbitration proceeding under these rules shall be deemed to have consented that neither TAMS nor any arbitrator shall be liable for damages or any other type of relief, including injunctive relief, for any act or omission in connection with the arbitration proceeding under these rules.

A-46 *Administrative Fees*

TAMS shall prescribe an initial filing fee. The fee shall be advanced by the party or parties making a claim or counterclaim.

A-47 *Expenses*

The expenses of arbitration, including travel expenses and other expenses of the arbitrator shall be borne equally, unless parties agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any party or parties.

A-48 *Neutral Arbitrator's Compensation*

- (a) arbitrators shall be compensated at a rate consistent with the arbitrator's rate of compensation.
- (b) arrangement for the compensation of a neutral arbitrator shall be made through TAMS and not directly between the parties and the arbitrator.

A-49 *Deposits*

TAMS may require the parties to deposit in advance of any hearings such sums of money as it deems necessary.

A-50 *Interpretation and Application of Rules*

- (a) the arbitrator shall interpret and apply these rules as they relate to the arbitrator's powers and duties.
- (b) all other rules shall be interpreted and applied by TAMS.

A-51 Suspension for Nonpayment

If all charges made by TAMS have not been paid in full, TAMS shall so inform the parties in order that the requirement payment be made. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has been appointed, TAMS may suspend the proceedings.

Fees

These initial fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee
<u>Above \$0 to \$10,000.00</u>	<u>\$300.00</u>
<u>Above \$10,000 to \$75,000</u>	<u>\$750.00</u>
<u>Above \$75,000 to \$100,000</u>	<u>\$1,000.00</u>
<u>Above \$100,000 to \$150,000</u>	<u>\$1,500.00</u>
<u>Above \$150,000 to \$300,000</u>	<u>\$2,500.00</u>
<u>Above \$300,000 to \$500,000</u>	<u>\$3,500.00</u>
<u>Above \$500,000 to \$1,000,000</u>	<u>\$5,000.00</u>
<u>Above \$1,000,000 to \$5,000,000</u>	<u>\$7,000.00</u>
<u>Above \$5,000,000 to \$10,000,000</u>	<u>\$10,000.00</u>

Fees for claims in excess of \$10 million shall be a base fee of \$12,000.00 plus .01% of the amount of claim above \$10 million, capped at \$50,000.00.

Postponement Fees

Postponements of arbitration hearings are discouraged as they disrupt the schedules of TAMS and the arbitrator(s). In the event that a postponement becomes necessary, the party seeking the postponement shall pay a postponement fee in accordance with the following schedule:

Number of days set for Arbitration	Postponement Fee
<u>1</u>	<u>\$2,000.00</u>
<u>2</u>	<u>\$4,000.00</u>
<u>3</u>	<u>\$6,000.00</u>
<u>4</u>	<u>\$8,000.00</u>
<u>5</u>	<u>\$10,000.00</u>
<u>6-10</u>	<u>\$15,000.00</u>

TAMS may adjust the postponement fees at its discretion if it is able to re-schedule the appointed arbitrator(s) time to another case during the days(s) of the scheduled arbitration hearing.

Refund Policy

The following refund policy shall be applicable in all arbitration cases:

Before selection of Arbitrator(s)

If a case is settled or withdrawn from arbitration before the arbitrator(s) has been selected, none of the initial fee will be refunded. If the arbitrator(s) fees have been paid, before the selection of the arbitrator(s), all of the arbitrator's fees shall be refunded.

After selection of Arbitrator(s)

If a case is settled or withdrawn from arbitration after the arbitrator(s) has been selected, none of the initial fee or arbitrator's fee shall be refunded.