



TEXAS ARBITRATION MEDIATION SERVICES, INC.
EMPLOYMENT ARBITRATION RULES

1. Introduction

It is recommended by Texas Arbitration Mediation Services, Inc., that employers include in their arbitration agreement that arbitration shall be conducted by T.A.M.S. If this is done, the parties shall be deemed to have made these rules part of the arbitration agreement. However, the parties are free to make any changes in the rules to meet their needs.

2. Suspension of Administration

If any party seeks judicial intervention with respect to a pending arbitration, T.A.M.S. will suspend administration for a reasonable period of time to permit the party to obtain a stay of arbitration from the court. If the court denies a stay of arbitration, T.A.M.S. will lift the suspension and continue with the administration of arbitration.

3. Incorporation of Rules

If an employer intends to incorporate these rules or refer employer-employee disputes for resolution to T.A.M.S. in any employment ADR plan, the employer shall notify T.A.M.S. of its intention and provide T.A.M.S. with a copy of the ADR plan.

4. Designation of T.A.M.S. as Administrator

When parties provide for arbitration of employer-employee disputes by T.A.M.S. or when parties agree to arbitrate under T.A.M.S. rules, authority is given to T.A.M.S. to administer the arbitration. The authority and duties of T.A.M.S. are outlined in these rules.

5. Demand for Arbitration

Arbitration, in the absence of a joint request, shall be made by one of the parties (referred to as Claimant) by submitting a Request for Arbitration on forms provided by T.A.M.S. together with appropriate filing fee. Notice shall be served on the other party (referred to as Respondent) by providing a copy of the Request for Arbitration.

Arbitral proceedings shall be deemed to begin on the date on which the request for arbitration is received by the Respondent.

The Request for Arbitration shall include the following:

- Names, in full, description, and addresses of the parties.
- The facts supporting the claim, points at issue, and the relief of remedy sought.
- The relevant agreements, and in particular the ADR plan or the agreement to arbitrate, and such documents the party considers relevant or referenced to the documents or other evidence the party will submit.
- A proposal as to the number of arbitrators requested, if the parties have no prior agreement.

T.A.M.S. shall send a copy of the Request for Arbitration and documents filed to the Respondent for Answer.

The Respondent shall within thirty (30) days from receipt of the Request for Arbitration communicate its statement of defense in writing to Claimant and T.A.M.S. The Answer shall include:

- Comment on the proposals, if any, on the number of Arbitrators, unless otherwise agreed to by the parties.
- Reply to the particular of Claimant's claim, the points at issue, and the relief or remedy sought by Claimant.
- All relevant documents on which Respondent relies for its defense or may add a reference to the documents or other evidence it will submit.

In exceptional circumstances the Respondent may apply to T.A.M.S. for an extension of time for the filing of his Answer, defense and its documents, which period of time shall not exceed twenty (20) days.

A copy of the Answer and documents, if any, shall be communicated to Claimant and T.A.M.S.

6. Amendments

Unless otherwise agreed by the parties, a party may amend or supplement a claim or defense during the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

7. Counter Claims

If the Respondent wishes to file a counter-claim Respondent shall file the same with T.A.M.S., at the same time as the Answer is filed.

It shall be open to the Claimant to file a reply with T.A.M.S. within twenty (20) days from the date when the counterclaim was received.

8. Administrative Conference

After the Request for Arbitration and Answer has been received, any party may request, or T.A.M.S., in its discretion may schedule an administrative conference with the parties and /or representatives for the purposes of:

1. Organizing the arbitration;
2. Establish the means of selecting an arbitrator or arbitrators;
3. Explore whether mediation, prior to arbitration, is available option; and
4. Discuss with the parties any other administrative aspects of the case.

9. Arbitration Administrative Conference

Immediately after the appointment of the arbitrator(s), but no later than thirty (30) days thereafter, the arbitrator and/or administrator of T.A.M.S. shall conduct an arbitration conference with the parties and/or their representatives in person, to address the following specific matters:

1. Date, time, place and estimated duration of hearing;
2. Issues to be arbitrated;
3. Discuss discovery issues and resolve those issues;
4. Discuss the law, rules of evidence and burden of proofs that are to apply to the proceedings;
5. Exchange exhibits, list of witnesses and other documentation to be used by the parties;
6. Exchange of stipulations;
7. Identify expert witnesses and determine the scope of their testimony;
8. Need for a stenographic record;
9. Form of the Award;

10. Allocation of attorney's fees and costs; and
11. Any other issues relating to the subject or conduct of the arbitration.

10. Location of Arbitration Hearing

Unless otherwise agreed by the parties, all arbitration hearings shall be conducted in the offices and hearing rooms of Texas Arbitration Mediation Services, Inc. located at 615 E. Schuster, Bldg. 1, El Paso, Texas 79902.

11. Qualifications of Arbitrator

T.A.M.S. will provide the parties, upon request, biographical information of each arbitrator.

As a general rule, arbitrators in employment cases shall have the following qualifications:

1. Arbitrators shall be experienced in the field of employment law.
2. Arbitrators shall have no personal financial interest in the result of the proceedings.
3. Arbitrators have no relation in regards to the dispute or to the parties or their attorneys.

In all cases, prior to accepting the appointment, the arbitrator shall disclose any information that might be relevant to the standards of neutrality or any fact that may create an appearance of bias.

12. Disqualification of Arbitrator

The arbitrator may be disqualified by:

- The parties jointly challenging the qualification of the arbitrator by communicating an objection to T.A.M.S. in writing no later than fifteen (15) days after the appointment. T.A.M.S. shall replace the arbitrator whenever there is a joint objection unless the parties mutually agree to the appointment of the arbitrator.
- Any party challenging the qualifications of the arbitrator shall do so in writing to T.A.M.S. T.A.M.S. shall notify the other party of the objection being filed, giving the other party an opportunity to object to the disqualification request. T.A.M.S. shall conduct an Administrative Conference to resolve the objection. The decision of T.A.M.S. shall be final on the subject of disqualification and be binding on the parties.

13. Number of Arbitrator(s)

If the number of arbitrators is not specified by the parties, the dispute shall be heard and determined by one arbitrator.

If the parties cannot agree upon the number of arbitrators, T.A.M.S. shall have the authority to determine the number of arbitrators.

Parties are encouraged by T.A.M.S. to select a mutually acceptable arbitrator.

14. Arbitrator Unable to Perform Duties

If T.A.M.S. is advised that an arbitrator is unable to perform the duties of an arbitrator, T.A.M.S. shall declare a vacancy which vacancy shall be filled in accordance with these rules.

- Prior to the commencement of the hearing, if an arbitrator is unable to perform the duties of arbitrator, the parties shall attempt to mutually agree on the appointment of an arbitrator. If the parties are unable to agree T.A.M.S. shall have the authority to appoint the arbitrator.
- After commencement of the hearing, if an arbitrator is unable to perform the duties of arbitrator, the parties shall mutually agree on the appointment. If the parties are unable to agree T.A.M.S. shall have the authority to appoint the arbitrator.
- In the event there is a vacancy in a panel of arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing, unless the parties agree otherwise.

15. Representation

Parties may be represented by counsel or by any other person whom the parties designate. At least three (3) days prior to the Arbitration Administrative Conference or the dates set for a hearing, parties shall notify T.A.M.S. of the name and address of their counsel or representative.

16. Witnesses at Hearings

The arbitrator(s) shall have authority to exclude any witnesses from the hearing during the testimony of any other witness.

The arbitrator(s) shall have the sole discretion as to who may attend the hearing if they are not witnesses.

In all cases the parties and their counsel or representatives shall be in attendance and may not be excluded.

17. Confidentiality

All hearings shall be confidential, unless otherwise agreed to by the parties.

18. Oaths

Prior to the first hearing, each arbitrator or arbitrators shall take an oath of office as required by law. Arbitrator(s) may administer oaths to witnesses who testify at the hearing.

19. Decision

Decision and awards of the arbitrator must be:

- By majority of the arbitral tribunal; or
- Unanimous decision of the arbitral tribunal if expressly required by agreement or by law.

20. Ex Parte Communication

There shall be no ex parte communications with the arbitrator(s), unless otherwise agreed by the parties.

21. Postponements

The arbitrator(s) shall have the authority to postpone any hearing upon:

- The request of any party for good cause.
- The arbitrator's own initiative.
- The mutual agreement of the parties.

22. Order of Proceedings

A hearing shall be conducted in the following order:

- The arbitrator(s) shall advise the parties of the filing of the oath noting the presence of all parties, their counsel or representatives. The arbitrator(s) shall receive into the record the Demand and Answer, if any.

- The arbitrator(s) shall ask for statements clarifying the issues involved.
- The burden of proof and the burden of producing evidence shall follow the procedures outlined in the Texas Rules of Civil Procedure.
- Witnesses for each party shall be subject to direct and cross-examination.
- Parties shall be afforded a full and equal opportunity to present any evidence that the arbitrator(s) deem(s) material and relevant to the resolution of the dispute
- The arbitrator(s) shall receive in evidence, subject to objections, all documentary and other forms of evidence.

23. Non-attendance of a Party or a Representative

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. Before an award can be made solely on the default of a party, the arbitrator shall require the party who is present to present such evidence as the arbitrator may require for the making of the award.

24. Evidence

The legal rules of evidence shall be relaxed and the arbitrator shall have the sole discretion to receive and consider the relevance and materiality of the evidence offered.

All evidence must be presented in the presence of the arbitrator(s), parties, counsel or their representative, except where a party is in default, or has waived the right to be present.

The parties and arbitrator shall be authorized to subpoena witnesses or documents.

25. Use of Affidavits

Witnesses may testify by affidavit, subject to objections. However, the arbitrator(s) may receive and consider such affidavits and give them such weight as the arbitrator(s) deem(s) they are entitled to considering the objections made to their admission.

26. Post-hearing Filing of Documents or Other Evidence

All documents and additional evidence may be submitted to the arbitrator, subject to the agreement of the parties, directly with T.A.M.S. T.A.M.S. shall transmit such documents and evidence to the arbitrator. All parties shall have a reasonable opportunity to examine the documents and evidence and lodge any objections.

27. Interim Measures

Unless otherwise agreed by the parties, the arbitrator or arbitral tribunal, at the request of any party, may order interim measures of protection necessary concerning the subject matter of the dispute, including measures for the conservation of property.

Such interim measures may be entered in the form of an Interim Award.

The arbitrator or arbitral tribunal shall be entitled to require security for the cost of such measures.

A request for interim measures made by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

28. Settlement During Hearing

If, during the hearing or before the award is made, the parties agree on a settlement of the dispute, the arbitrator or arbitral tribunal, shall, if requested by both parties and accepted by the arbitrator or the arbitral tribunal, record the settlement in the form of an award on agreed terms.

No reasons shall be given for such award.

An award on agreed terms has the same status and effect as any other award on the substance of the dispute.

29. Closing of Hearing

The arbitration hearing shall close when:

- Parties advise the arbitrator or arbitral tribunal that there are no further proofs to offer or witnesses to be heard.
- If briefs are to be filed, or documents are to be filed, as provided in Rule 26 when such briefs or documents are filed.
- The date of closure of the hearing shall be the date set by the arbitrator or arbitral tribunal for the filing of the briefs or documents, whichever date is later.
- The time limit within which the arbitrator or arbitral tribunal is required to make an award shall commence to run upon closing of the hearing.

30. The Opening of Hearing

The hearing may be reopened by the arbitrator or arbitral tribunal upon:

- The initiative of the arbitrator or arbitral tribunal; or
- Application of any party for good cause.

Any application for reopening by any party must be made before the award is made.

31. Form and Content of Arbitral Award

The award shall be made by the arbitrator or arbitral tribunal no later than thirty (30) days from the date of closing of the hearing.

The award shall be:

- In writing;
- Signed by a majority of the arbitrators;
- Provide the written reasons for the award unless the parties agree otherwise; and
- Executed in the manner required by law.

The arbitrator or arbitral tribunal may grant any remedy or relief that:

- The arbitrator or arbitral tribunal deems just and equitable, including, any remedy or relief the parties would be entitled to as if the matter was heard in court; or
- The parties have agreed prior to the hearing, including the assessment of arbitration fees, expenses, administrative fees and arbitrator's or arbitral tribunal's compensation

The arbitrator's or arbitral tribunal's award shall be final and binding. Judicial review shall be limited, as provided by law.

32. Notification of Award

Once an award has been made, the arbitral institution, T.A.M.S., shall notify the parties that the award has been signed by the arbitrator or arbitral tribunal. Parties shall be furnished a copy of the final award by certified mail, return receipt requested, or personal service.

All costs of the arbitrator must be fully paid to T.A.M.S. before the award is released.

33. Entry of Judgment

It shall be presumed that parties to these procedures and rules promulgated by T.A.M.S. shall be deemed to have consented that judgment upon the arbitration award be entered in any federal or state court having jurisdiction.

34. Exclusion of Liability

Neither T.A.M.S. nor any arbitrator or arbitral tribunal shall be liable to any party for any act or omission in connection with any arbitration conducted under these procedures and rules.

[Fee Schedule on the following page.]



FEE SCHEDULE

Filing Fee

For employer-employee disputes involving one single arbitrator, a non-refundable filing fee in the amount of \$250.00 is payable in full by a filing party.

In cases before three (3) arbitrators, a non-refundable filing fee in the amount of \$500.00 is payable in full by a filing party when a claim is filed.

Administrative Fees

The following administrative fees are applicable:

Amount of Claim	Administrative Fee
Up to \$5,000,000	\$2,000.00

In any employer-employee dispute case which requires three (3) arbitrators, the minimum administrative fee is \$1,500.00.

When a claim or counter-claim is not for a monetary amount, the appropriate administrative fee will be determined by T.A.M.S.

Arbitrator Fees

Arbitrator Fees are charged on a per day basis. Fees are as follows:

1 Arbitrator	\$3,000-\$5,000 per day
3 Arbitrators	\$6,000.00 per day

Hearing Fees

T.A.M.S. does charge a daily hearing fee.

T.A.M.S. does not charge a fee for any administrative conference or arbitration administrative conference.

Postponement Fee

A party causing a postponement shall pay a fee of \$1,000.00 when the hearing is scheduled before a single arbitrator. A fee of \$2,000.00 is payable by a party causing a postponement of any hearing before an arbitral tribunal.

Refunds

No refund of the filing fee shall be made once the Demand for Arbitration has been filed.

No refund of the administrative fee shall be made once the Administrative Conference is scheduled by the parties or T.A.M.S.

No refund of the arbitrator's fee shall be made if Administrative Conference has been held and an Arbitrator has been chosen.