

APPENDIX D

AMERICAN ARBITRATION ASSOCIATION  
CALIFORNIA EMPLOYMENT DISPUTE  
RESOLUTION RULES

**Effective June 1, 1995**

**Introduction**

Conflicts which arise during the course of employment, such as wrongful termination, sexual harassment, and discrimination based on race, color, religion, sex, national origin, age and disability have redefined responsible corporate practice and employee relations. Increasingly, corporations look to the American Arbitration Association as a resource in developing prompt and effective employment dispute procedures in contracts of employment, personnel manuals, and employee handbooks and as an administrator of dispute resolution procedures for employment-related disputes.

*The American Arbitration Association*

For almost seventy years, the American Arbitration Association has set the standards for the development of fair and equitable dispute resolution procedures. A not-for-profit, public service organization, the AAA is dedicated to the resolution of disputes through arbitration, mediation, factfinding and other conflict resolution techniques.

The development of the California Employment Dispute Resolution Rules and a select and diverse panel of impartial neutrals to hear and resolve disputes, is the most recent initiative by the Association to provide private, efficient and cost-effective procedures for employment disputes resolved outside the courtroom.

*California Employment Dispute Resolution Rules*

Following a study of the Association's Employment Dispute Resolution Rules by the Northern California Employment Advisory Committee, the American Arbitration Association has developed these Rules and assembled a select and diverse panel of impartial neutrals to hear and resolve employment disputes throughout California. The Rules, developed in cooperation with the representative Committee of advisors, make more explicit the authority of the arbitrator for non-union employment disputes. The membership of the Committee, created in 1993, is comprised of fourteen employment management and plaintiff attorneys, retired judges and full-time arbitrators.

**California Employment Dispute Resolution Rules***1. Applicable Rules of Arbitration*

The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter "AAA") or under its California Employment Dispute Resolution Rules. These Rules, and any amendment of them, shall apply in the form obtaining at the time the Demand for arbitration or the submission is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these Rules.

*2. AAA as Administrator of the Arbitration*

When parties agree to arbitrate under these Rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these Rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties, if any, and in these Rules, and may be carried out through such of the AAA's representatives as it may direct.

*3. Initiation of Arbitration*

Arbitration shall be initiated in the following manner.

- a. The parties may submit a joint request for arbitration.
- b. In the absence of a joint request for arbitration:

(i) The initiating party (hereinafter "Claimant[s]") shall:

(1) File a written notice (hereinafter "Demand") of its intention to arbitrate at any regional office of the AAA, within the time limit established by any applicable arbitration agreement. The filing shall be made in triplicate, and each copy shall include the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and requested hearing location.

(2) Simultaneously mail a copy of the Demand to the party (hereinafter "Respondent[s]").

(3) Include with its Demand the applicable filing fee, unless the parties agree to some other method of fee advancement.

(ii) The Respondent(s) shall file an answering statement (hereinafter "Answer") with the AAA within ten (10) days after the date of the letter from the AAA acknowledging receipt of the Demand. The Answer shall set forth a brief statement of the nature of the dispute and the issues presented. The Respondent(s) shall make its filing in duplicate with the AAA, and simultaneously shall mail a copy of the Answer to the Claimant.

(iii) The Respondent(s):

(1) May file a counterclaim with the AAA within ten (10) days after the letter from the AAA acknowledging receipt of the Demand. The filing shall be made in duplicate. The counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and remedy sought.

(2) Simultaneously shall mail a copy of any counterclaim to the claimant.

(3) Shall include with its filing the applicable filing fee provided for by these Rules.

(iv) The Claimant shall file an Answer to the counterclaim with the AAA within ten (10) days after the date of the letter from the AAA acknowledging receipt of the counterclaim. The Answer shall provide Claimant's brief response to the counterclaim and the issues presented. The Claimant shall make its filing in duplicate with the AAA, and simultaneously shall mail a copy of the Answer to the Respondent(s).

c. The form of any filing in these Rules shall not be subject to technical pleading requirements.

#### *4. Amendment of Demand*

Before the appointment of the Arbitrator, if either party desires to offer a new or different claim or defense, such party must do so in writing by filing a written statement with the AAA and simultaneously mailing a copy to the other party(s), who shall have ten (10) days from the date of such mailing within which to file an Answer with the AAA. After the appointment of the Arbitrator, a party may offer a new or different claim or defense only in the discretion of the Arbitrator.

#### *5. Administrative and Mediation Conferences*

Before the appointment of the Arbitrator, any party may request, or the AAA, in its discretion, may schedule an administrative conference with a representative of the AAA and the parties and/or their representatives. The purpose for the administrative conference is to organize and expedite the arbitration, explore its administrative aspects, establish the most efficient means of selecting an Arbitrator, and to consider mediation as a dispute resolution option. There is no administrative fee for this service.

At any time after the filing of the Demand, with the consent of the parties, the AAA will arrange a mediation conference under its Mediation Rules to facilitate settlement. The mediator shall not be any Arbitrator appointed to the case, except by mutual agreement of the parties. There is no administrative fee for initiating a mediation under AAA Mediation Rules for parties to a pending arbitration.

#### *6. Discovery*

The Arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the Arbitrator considers necessary to a full and fair exploration of the issues in dispute.

#### *7. Arbitration Management Conference*

As soon as possible after the appointment of the Arbitrator but not later than sixty (60) days thereafter, the Arbitrator shall conduct 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 proceedings. The specific matters to be addressed include:

- (i) the issues to be arbitrated;
- (ii) the date, time, place and estimated duration of the hearing;
- (iii) the resolution of outstanding discovery issues and establishment of discovery parameters;
- (iv) the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- (v) the exchange of stipulations and declarations regarding facts, exhibits, witnesses and other issues;
- (vi) the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
- (vii) the value of bifurcating the arbitration into a liability phase and damages phase;
- (viii) the need for a stenographic record;
- (ix) whether the parties will summarize their arguments orally or in writing;
- (x) the form of the award;
- (xi) any other issues relating to the subject or conduct of the arbitration;
- (xii) the allocation of attorney's fees and costs.

The Arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

There is no AAA administrative fee for an Arbitration Management Conference.

#### *8. Location of the Arbitration*

The parties may designate the location of the arbitration by mutual agreement. In the absence of such agreement before the appointment of the Arbitrator, any party may request a specific hearing location by notifying the AAA in writing and simultaneously mailing a copy of the request to the other party(s). If the AAA receives no objection within ten (10) days of the date of the request, the hearing shall be held at the requested location. If a timely objection is filed with the AAA, the AAA shall have the power to determine the location and its decision shall be final and binding. After the appointment of the Arbitrator, the Arbitrator shall resolve all disputes regarding the location of the hearing.

*9. Date and Time of Hearing*

The Arbitrator shall have the authority to set the date and time of the hearing in consultation with the parties.

*10. Qualifications to Serve as Arbitrator and Rights of Parties to Disqualify Arbitrator*

a. Standards of Experience and Neutrality

- (i) Arbitrators serving under these Rules shall be experienced in the field of employment law.
- (ii) Arbitrators serving under these Rules shall have no personal or financial interest in the results of the proceedings in which they are appointed and shall have no relation to the underlying dispute or to the parties or their counsel that may create an appearance of bias.

b. Standards of Disclosure by Arbitrator

Prior to accepting appointment, the prospective Arbitrator shall disclose all information that might be relevant to the standards of neutrality set forth in this Section or that may prevent a prompt hearing.

c. Disqualification for Failure To Meet Standards of Experience and Neutrality.

An Arbitrator may be disqualified in two ways:

- (i) No later than ten (10) days after the appointment of the Arbitrator, all parties jointly may challenge the qualifications of an Arbitrator by communicating their objection to the AAA in writing. Upon receipt of a joint objection, the Arbitrator shall be replaced.
- (ii) Any party may challenge the qualifications of an Arbitrator by communicating its objection to the AAA in writing. Upon receipt of the objection, the AAA either shall replace the Arbitrator or communicate the objection to the other parties. If any party believes that he objection does not merit disqualification of the Arbitrator, the party shall so communicate to the AAA and to the other parties within ten (10) days of the receipt of the objection from the AAA. The AAA shall hold an Administrative Conference to resolve the objection. The decision of the AAA on the subject of disqualification shall be conclusive.

*11. Number and Appointment of Neutral Arbitrators*

a. If the parties do not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator. If the parties cannot agree upon the number of Arbitrators, the AAA shall have the authority to determine the number of Arbitrators.

b. If the parties have not appointed an Arbitrator and have not provided any method of appointment, the Arbitrator shall be appointed in the following manner.

- (i) Immediately after it receives the Demand, the AAA shall mail simultaneously to each party a letter containing an identical list of the names of all Arbitrators who are members of the AAA California Employment Dispute Resolution Panel.
- (ii) Each party shall have ten (10) days from the date of the letter in which to select the name of a mutually acceptable Arbitrator to hear and determine their dispute. If the parties cannot agree upon a mutually acceptable Arbitrator, they shall so notify the AAA. Within ten (10) days of the receipt of that notice, the AAA shall send the parties a shorter list of Arbitrators who are members of the AAA California Employment Dispute Resolution Panel. Each party shall have ten (10) days from the date of the letter containing the revised list to strike any 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 of the listed persons shall be deemed acceptable to that party.
- (iii) The AAA shall invite the acceptance of the Arbitrator whom both parties have selected as mutually acceptable or, in the case of resort to the ranking procedure, the Arbitrator who has received the highest rating in the order of preference that the parties have specified.
- (iv) If the parties fail to agree on any of the persons whom the AAA submits for consideration, or if mutually acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the list of persons whom the AAA submits for consideration, the AAA shall have the power to make the appointment from among other members of the Panel without the submission of additional lists.

### *12. Vacancies*

If for any reason an Arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. The vacancy shall be filled in accordance with applicable provisions of these Rules.

In the event of a vacancy in a panel of neutral Arbitrators after the hearings have commenced, the remaining Arbitrator or Arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

### *13. Representation*

Any party may be represented by counsel or by any other person whom the party designates. A party who intends to be represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing or conference at which that person is first to appear. If a representative files a Demand or an Answer, the obligation to give notice of representative status is deemed satisfied.

### *14. Attendance at Hearings*

The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator also shall have the authority to decide whether any person who is not a witness may attend the hearing.

### *15. Confidentiality of Hearings*

The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

### *16. Postponements*

The Arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on his or her own initiative.

### *17. Oaths*

Before proceeding with the first hearing, each Arbitrator may take an oath of office and, if required by law, shall do so. The



Arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

*18. Majority Decision*

All decisions and awards of the Arbitrators must be by a majority, unless the unanimous decision of all Arbitrators is expressly required by the arbitration agreement or by law.

*19. Order of Proceedings and Communication with Arbitrators*

A hearing shall be opened by: (1) filing the oath of the Arbitrator, where required; (2) recording the date, time, and place of the hearing; (3) recording the presence of the Arbitrator, the parties, and their representatives, if any; and (4) receiving into the record the Demand and the Answer, if any. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination as approved by the Arbitrator.

With the exception of the Rules regarding the allocation of the burdens of proof and going forward with the evidence, the Arbitrator has the authority to set the Rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the Arbitrator deems material and relevant to the resolution of the dispute.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no ex parte communication with the Arbitrator, unless the parties and the Arbitrator agree to the contrary in advance of the communication.

*20. Arbitration in the Absence of a Party or Representative*

Unless the law provides to the contrary, 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. An award shall not be based 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.

*21. Evidence*

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Arbitrator deems necessary to an understanding and determination of the dispute. An Arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

*22. Evidence by Affidavit or Declaration and Post-Hearing Filing of Documents or Other Evidence*

The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the Arbitrator directs that documents or other evidence may be submitted to the Arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the Arbitrator, unless the parties agree to a different method of distribution. All parties shall be afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

*23. Inspection or Investigation*

An Arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The Arbitrator shall set the date and time, and the AAA shall notify the parties. Any party who so desires may be present during the inspection or investigation. In the event that one or all parties are not present during the inspection or

investigation, the Arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

*24. Interim Measures*

At the request of any party, the Arbitrator may take whatever interim measures it deems necessary with respect to the dispute, including measures for the conservation of property.

Such interim measures may be taken in the form of an interim award and the Arbitrator may require security for the costs of such measures.

*25. Closing of Hearing*

The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 22 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon closing of the hearing.

*26. Reopening of Hearing*

The hearing may be reopened on the Arbitrator's initiative, or upon application of a party for cause shown, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the Arbitrator may reopen the hearing and shall have thirty (30) days from the closing of the reopened hearing within which to make an award.

*27. Waiver of Oral Hearing*

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

*28. Waiver of Objection/Lack of Compliance with These Rules*

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the right to object.

*29. Extensions of Time*

The parties may modify any period of time by mutual agreement. The AAA or the Arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any extension.

*30. Serving of Notice*

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules; for any court actions in connection therewith; or for the entry of judgment on an award made under these procedures may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these Rules.

*31. The Award*

(a) The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the Arbitrator.

(b) The award shall be in writing and shall be signed by a majority of the Arbitrators and shall provide the written reasons for the award unless the parties agree otherwise. It shall be executed in the manner required by law.

(c) The Arbitrator may grant any remedy or relief that the Arbitrator deems just and equitable, including, but not limited to, any remedy or relief that would have been available to the parties had the matter been heard in court. The Arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as

provided in Sections 34, 35, and 36 in favor of any party and, in the event any administrative fees or expenses are due the AAA, in favor of the AAA.

(d) If the parties settle their dispute during the course of the arbitration, the Arbitrator may set forth the terms of the settlement in a consent award.

(e) The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any manner that may be required by law.

### *32. Release of Documents for Judicial Proceedings*

The AAA shall, upon the written request of a party, furnish to the party, at that party's expense, certified copies of any papers in the AAA's case file that may be required in judicial proceedings relating to the arbitration.

### *33. Judicial Proceedings and Exclusion of Liability*

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any Arbitrator in a proceeding under these Rules is or shall be considered a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

(d) Neither the AAA nor any Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these procedures.

### *34. Administrative Fees*

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The AAA schedule of fees in effect at the time the Demand for arbitration or submission agreement is received shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the Arbitrator in the award.

The AAA may, in the event of extreme hardship on any party, defer or reduce the administrative fees.

*35. Expenses*

Unless otherwise agreed by the parties, the expenses of witnesses for either side shall be borne by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the Arbitrator, AAA representatives, and any witness and the costs relating to any proof produced at the direction of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator directs otherwise in the award.

*36. Neutral Arbitrator's Compensation*

An appropriate daily rate and other arrangements will be discussed by the administrator with the parties and the Arbitrator. If the parties fail to agree to the terms of compensation, an appropriate rate shall be established by the AAA and communicated in writing to the parties.

Any arrangement for the compensation of a neutral Arbitrator shall be made through the AAA and not directly between the parties and the Arbitrator.

*37. Deposits*

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expenses of the arbitration, including the Arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

*38. Interpretation and Application of Rules*

The Arbitrator shall interpret and apply these Rules as they relate to the Arbitrator's powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be resolved by a majority vote. If that is not possible, either an Arbitrator or a party may refer the question to the AAA for final decision. All other procedures shall be interpreted and applied by the AAA.