



American Arbitration Association Initial Discovery Protocols for Employment Arbitration Cases

In Fall 2012, the American Arbitration Association (AAA®) brought together a working group to tailor initial discovery protocols for employment arbitration cases. These protocols were based on a pilot project on early discovery initiated in the federal courts (Initial Discovery Protocols for Employment Cases Alleging Adverse Action) that were intended to “encourage parties and their counsel to exchange the most relevant information and documents early in the case, to assist in framing the issues to be resolved and to plan for more efficient and targeted discovery.”

After a successful pilot program on arbitration cases in the Northeast, the AAA is now offering our *Initial Discovery Protocols for Employment Arbitration Cases* on all cases. Participation is voluntary, and subject to amendment by a designated arbitrator in consultation with the parties.

Highlights of the AAA Initial Discovery Protocols include:

- Limitation on production to a three-year time period before the date of the matter(s) in controversy, unless otherwise specified;
- Certification of accuracy by counsel or a party;
- Organization and labeling of documents and electronically stored information;
- 30-day time limitation on responses.

Required Production

By Both Employees and Employers:

- All communications between the parties (including other formal claims or charges) concerning the factual allegations or claims at issue in the arbitration;
- Documents concerning the formation, terms and conditions, and termination of the employment relationship;
- Documents concerning any application for (and receipt of) unemployment benefits and/or disability benefits.

By Employee:

- Diary, journal and calendar entries by the employee, and current resume;
- Documents concerning job search efforts and communications with potential employers;
- Identification of persons who have or may have knowledge of the facts concerning the claims or defenses;
- Description of categories and amounts of damages.



By Employer:

- Employee's personnel file and, if not included, performance evaluations and formal discipline reports or write-ups;
- Documents relied upon to make the employment decision(s) at issue;
- Relevant job descriptions, compensation and benefits documents, and workplace policies or guidelines;
- Table of contents and index of any employee handbook, code of conduct, or policy manual in effect;
- Documents concerning investigation(s) of any relevant complaint(s) about or made by the employee;
- Identification of employee's supervisor(s) and/or manager(s), other individual(s) involved in making the adverse action decision or with knowledge of the facts concerning the claims or defenses.