



THE AAA® CHECKLIST

Drafting Alternative Dispute Resolution Clauses for Executive/Negotiated Employment Contracts under AAA's Employment Arbitration Rules



When drafting, adopting or recommending a dispute resolution clause in an executive/negotiated employment contract, parties or their attorneys should give thought to some of the important elements outlined below. The purpose of our checklist is not to urge use of the provisions cited, but rather to suggest the range of possible options. For sample clauses, please go to our website at www.adr.org and for assistance developing clear and effective arbitration and mediation agreements, go to www.clausebuilder.org.

- Should the clause cover all disputes or only certain specific types of disputes?
- Should the clause have other ADR options such as mediation?
- Should the clause specify the qualifications of the arbitrator?
- Does the clause include a general choice of law?
- Would the complexity of contemplated cases call for the incorporation of the AAA's Procedures for Large Commercial Disputes?
- Will there be a need for the parties to seek emergency relief that would necessitate the inclusion of the AAA's Optional Rules for Emergency Measures of Protection?
- Should the clause incorporate the AAA's Expedited Procedures as an option?
- Are the Employment Arbitration Rules and Mediation Procedures referenced?
- Should the clause have a locale provision?
- Should the clause have provisions that defines the amount and scope of discovery?
- Should the clause include time frames that deal with time limits as it relates to discovery or hearings and how much is necessary?
- To be fully effective, "entry of judgment" language in domestic cases is important.

Include a fair method of cost sharing between the employer and employee, which requires the employer to pay a substantial portion of the administrative fees and the arbitrator's fees to ensure affordable access to the system for all employees. Or, include a statement that fees shall be paid in accordance with the AAA's Employment/Workplace Fee Schedule.

The parties are free to customize and refine the basic arbitration procedures to meet their particular needs. If the parties agree on a procedure that conflicts with otherwise applicable AAA rules, the AAA will almost always respect the wishes of the parties. A dispute resolution clause should address the special needs of the parties. An inadequate ADR clause can produce as much delay, expense and inconvenience as a traditional lawsuit. Drafting an effective ADR agreement is the first step on the road to successful dispute resolution.



Standard Arbitration Clause Executive/Negotiated Employment Contracts:

Any controversy or claim arising out of or relating to this employment contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association® in accordance with its Employment Arbitration Rules and Mediation Procedures and judgment on the award rendered by the arbitrator (s) may be entered in any court having jurisdiction thereof.

This Checklist is designed to provide parties and counsel with clear options for effective ways to structure an alternative dispute resolution procedure for an employment contract dispute.

The AAA developed the ClauseBuilder on-line tool – a simple, self-guided process-to-assist individuals and organizations in developing clear and effective arbitration and mediation agreements.

For further information about the American Arbitration Association's® (AAA) Employment services, please visit our website at adr.org/employment. To speak with an AAA Representative, please call toll free at 1.888.774.6904.



120 Broadway, 21st Floor
New York, NY 10271
Telephone: +1 800.778.7879
information@adr.org

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