

# SUPPLEMENTAL EMPLOYMENT CASE PROCEDURES



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## RULE 1. WHEN EMPLOYMENT CASE PROCEDURES APPLY

- A. Unless the parties otherwise agree, this Supplemental Employment Case Procedures Rule shall apply in cases where the parties' arbitration agreement expressly provides for CBADR arbitration under its Employment Case Procedures or otherwise provides for CBADR arbitration in an individual employment agreement, an application for employment or an employee personnel manual and the dispute subject to the arbitration arises from alleged adverse action by an employer against an employee. The parties are encouraged to agree to the applicability of this Rule in other cases where the dispute arises from an employment relationship.
- B. Unless otherwise provided in these Employment Case Procedures, all of the other CBADR Arbitration Rules shall apply for cases proceeding in accordance with these Procedures.

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## RULE 2. TIME LIMIT FOR FINAL HEARING

When these Employment Case Procedures apply, the Arbitrator must issue his or her award within six (6) months after his or her appointment unless the parties agree otherwise or the Arbitrator in his or her discretion orders that additional time is needed for the fair determination of the case.

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## RULE 3. DISCOVERY

It is the intent of these Employment Case Procedures that, in order to complete proceedings within the six-month time limit, discovery is to be focused on those matters most relevant to employment cases, as applied to the specific claims in the particular case. Accordingly, unless otherwise agreed by the parties or the Arbitrator by order allows, discovery shall be limited to the following:

- A. Production of all documents upon which the party relies that support of that party's case in chief on its claim(s), counterclaim(s), or in defense of the same, by the date set at the Preliminary Hearing.
- B. Production of all documents, including ESI, described in the CBADR Employment Case Initial Discovery Protocols. All parties are required to produce without making any request for production all of the documents described in these Protocols by the date or dates set in the Preliminary Conference Order.

- C. After approval as to form and content by the Arbitrator at the Preliminary Conference or a specified later date set at the Preliminary Conference:
  - 1. production of documents, including ESI, at the request of a party from another party that are (i) shown to be relevant and material to the outcome of the case, (ii) not in the possession of or otherwise available to the requesting party, and (iii) are narrowly drawn and reasonably and specifically described as to subject matter and content so that the requested documents can be readily identified and produced by requested party without undue burden;
  - 2. issuance of up to twenty (20) interrogatories, including all discrete subparts, addressed to another party;
  - 3. unless otherwise agreed or ordered by the Arbitrator, taking no more than ten (10) total hours of oral depositions of one or more specifically identified deponents by each side.

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## RULE 4. REQUIRED DISCLOSURES.

By the date set at the Preliminary Conference, but not later than twenty-one (21) days prior to the Final Hearing, the parties shall deliver to the Arbitrator and exchange with all other parties the following:

- A. All documents, marked with exhibit numbers, upon which they intend to rely and offer as evidence during their case in chief at the Final Hearing;
- B. The name, business and residence address, and summary of the direct evidence (or written witness statement) of every fact witness to be called in the party's case in chief. The Arbitrator may exclude all testimony from any witness not identified by a party and may also exclude any specific testimony for which reasonably complete disclosure was not made in the summary of such witness' direct evidence. No disclosure of rebuttal evidence is required;
- C. The name, business address and professional qualifications of every expert witness who will offer any expert opinion evidence at the Final Hearing. In addition, the party offering expert opinion evidence shall also disclose in writing to all other parties all opinion'ss that each expert will express and the basis and reasons for such opinions along with all facts or data considered by the witness in forming such opinions and any exhibits that will be used to summarize or support the opinions. The Arbitrator may exclude from evidence at the Final Hearing any expert opinion not disclosed in accordance herewith.

# SUPPLEMENT TO EMPLOYMENT CASE PROCEDURES – PART (C)(2)



As part of the Supplemental Employment Case Procedures in the Cincinnati Bar Alternative Dispute Resolution (“CBADR”) Arbitration Rules governing disputes relating to employment cases, the parties without having to make any request are required to produce all of the documents described in the following CBADR Employment Case Initial Discovery Protocols (“Protocols”). The date by which each party shall be required to produce the documents described in the Protocols is to be set at the Preliminary Conference, ordinarily about 20 days after such conference.

The Protocols are patterned after The Initial Discovery Protocols for Employment Cases Alleging Adverse Action published by the Federal Judicial Center (<https://www.fjc.gov/sites/default/files/2012/DiscEmpl.pdf>) in November 2011 and now used in many federal district courts throughout the United States. The Protocols are intended to expedite the discovery process and early exchange of the most relevant information and documents in employment cases where typically the documentary evidence material to the outcome of the case is within well-defined categories of files and documents. Importantly, Part (C) of the Supplemental Employment Case Procedures also requires that each party disclose all documents relied upon in support of its case in chief for claims and defenses and, with the approval as to form and content by the Arbitrator at the Preliminary Conference, allows for additional specific document requests, up to 20 interrogatories, and up to 10 hours of oral depositions.

In addition to the Protocols, the Arbitrator in Employment Cases is to issue the Model Protective Order in the form set out immediately after these Protocols at the Preliminary Conference unless a party for good cause shows that the circumstances of the case require a modified protective order or that no protective order is appropriate.

## PART 1: INTRODUCTIONS AND DEFINITIONS

### RULE 1. DEFINITIONS

The following definitions apply to cases proceeding under the Initial Discovery Protocols.

- A. *Concerning*. The term “concerning” means referring to, describing, evidencing, or constituting.
- B. *Document*. The terms “document” and “documents” include writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information (“ESI”) and other data or data compilations stored in any medium from which information can be obtained either directly, or, if necessary after translation by the responding party into reasonably usable form.
- C. *Identify (Documents)*. When referring to documents, to “identify” means to give, to the extent known: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) the author(s), according to the document; and (v) the person(s) to whom, according to the document, the document (or a copy) was to have been sent; or, alternatively, to produce the document.
- D. *Identify (Persons)*. When referring to natural persons, to “identify” means to give the person’s: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to the Claimant or Respondent. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
- E. *Claimant*. The employee who seeks relief in this arbitration.
- F. *Respondent*. The employer defending an employee’s claim for relief in this arbitration.

## RULE 2. INSTRUCTIONS

- A. For this Initial Discovery, the relevant time period begins three years before the date of the adverse action, unless otherwise specified.
- B. This Initial Discovery is not subject to objections except with respect to ESI upon the grounds that discovery of such information is not reasonably accessible because of undue burden or cost, provided that the objecting party affirmatively shows in its response such undue burden or cost.
- C. If a partial or incomplete answer or production is provided, the responding party shall state the reason that the answer or production is partial or incomplete.
- D. This Initial Discovery is subject to the requirement of timely supplementation and correction upon the producing party’s learning that any part is incomplete or incorrect and must be signed by counsel or the party (if unrepresented), which certifies that to the best of the person’s knowledge, information and belief formed after reasonable inquiry the disclosure is complete and correct as of the time it is made and that all responses and any objections are not interposed for any improper purpose.
- E. This Initial Discovery is to be produced either as they are kept in the usual course or business or organized and labeled corresponding to the categories of the request; and, with regard to ESI, the Initial Discovery must be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.



## PART 2: PRODUCTION BY CLAIMANT (EMPLOYEE)

### RULE 3. DOCUMENTS THAT CLAIMANT (EMPLOYEE) MUST PRODUCE TO RESPONDENT (EMPLOYER).

- A. All communications concerning the factual allegations or claims at issue in this arbitration between the Claimant and the Respondent.
- B. Claims, lawsuits, arbitrations, administrative charges, and complaints by the Claimant that rely upon any of the same factual allegations or claims as those at issue in this arbitration.
- C. Documents concerning the formation and termination, if any, of the employment relationship at issue in this arbitration, irrespective of the relevant time period.
- D. Documents concerning the terms and conditions of the employment relationship at issue in this arbitration.
- E. Diary, journal, and calendar entries maintained by the Claimant concerning the factual allegations or claims at issue in this arbitration.
- F. The Claimant's current resume(s).
- G. Documents in the possession of the Claimant concerning claims for unemployment benefits, unless production is prohibited by applicable law.
- H. Documents concerning: (i) communications with potential employers; (ii) job search efforts; and (iii) offer(s) of employment, job description(s), and income and benefits of subsequent employment. (The Respondent shall not contact or subpoena a prospective or current employer to discover information about the Claimant's claims without first providing the Claimant 30 day's notice and an opportunity to file a motion for a protective order or a motion to quash such subpoena. If such a motion is filed, contact will not be initiated, or the subpoena will not be served until the motion is ruled upon.)
- I. Documents concerning the termination of any subsequent employment.
- J. Any other document(s) upon which the Claimant relies to support the Claimant's claims.

## RULE 4. INFORMATION THAT CLAIMANT (EMPLOYEE) MUST PRODUCE TO RESPONDENT (EMPLOYER).

- A. Identify persons the Claimant believes to have knowledge of the facts concerning the claims or defenses at issue in this arbitration, and a brief description of that knowledge.
- B. Describe the categories of damages the Claimant claims.
- C. State whether the Claimant has applied for disability benefits and/or social security disability benefits after the adverse action, whether any application has been granted, and the nature of the award, if any. Identify any document concerning any such application.

## PART 3: PRODUCTION BY RESPONDENT (EMPLOYER)

### RULE 5. DOCUMENTS THAT RESPONDENT (EMPLOYER) MUST PRODUCE TO CLAIMANT (EMPLOYEE).

- A. All communications concerning the factual allegations or claims at issue in this arbitration among or between:
  1. The Claimant and the Respondent;
  2. The Claimant's manager(s), and/or supervisor(s), and/or the Respondent's human resources representative(s).
- B. Responses to claims, lawsuits, arbitrations, administrative charges, and complaints by the Claimant that rely upon any of the same factual allegations or claims as those at issue in this arbitration.
- C. Documents concerning the formation and termination, if any, of the employment relationship at issue in this arbitration, irrespective of the relevant time period.
- D. The Claimant's personnel file, in any form, maintained by the Respondent, including files concerning the Claimant maintained by the Claimant's supervisor(s), manager(s), or the Respondent's human resources representative(s), irrespective of the relevant time period.
- E. The Claimant's performance evaluations and formal discipline.
- F. Documents relied upon to make the employment decision(s) at issue in this arbitration.



- G. Workplace policies or guidelines relevant to the adverse action in effect at the time of the adverse action. Depending upon the case, those may include policies or guidelines that address:
  - 1. Discipline;
  - 2. Termination of employment;
  - 3. Promotion;
  - 4. Discrimination;
  - 5. Performance reviews or evaluations;
  - 6. Misconduct;
  - 7. Retaliation; and
  - 8. Nature of the employment relationship.
- H. The table of contents and index of any employee handbook, code of conduct, or policies and procedures manual in effect at the time of the adverse action.
- I. Job description(s) for the position(s) that the Claimant held.
- J. Documents showing the Claimant's compensation and benefits. Those normally include retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation.
- K. Agreements between the Claimant and the Respondent to waive jury trial rights or to arbitrate disputes.
- L. Documents concerning investigation(s) of any complaint(s) about the Claimant or made by the Claimant, if relevant to the Claimant's factual allegations or claims at issue in this arbitration and not otherwise privileged.
- M. Documents in the possession of the Respondent and/or the Respondent's agent(s) concerning claims for unemployment benefits unless production is prohibited by applicable law.
- N. Any other document(s) upon which the Respondent relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the adverse action.

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**RULE 6. INFORMATION THAT RESPONDENT (EMPLOYER) MUST PRODUCE TO CLAIMANT (EMPLOYEE).**

- A. Identify the Claimant's supervisor(s) and/or manager(s).
- B. Identify person(s) presently known to the Respondent who were involved in making the decision to take the adverse action.
- C. Identify persons the Respondent believes to have knowledge of the facts concerning the claims or defenses at issue in this arbitration, and a brief description of that knowledge.
- D. State whether the Claimant has applied for disability benefits and/or social security disability benefits after the adverse action. State whether the Respondent has provided information to any third party concerning the application(s). Identify any documents concerning any such application or any such information provided to a third party.
- E. Identify persons currently employed by Respondent or previously employed within the prior three years against whom Respondent has disciplined or taken other adverse action where such disciplinary or adverse action was taken for conduct or reasons reasonably similar to that alleged by the Claimant in this arbitration. For each such person, state the disciplinary or other adverse action against such employee and describe the conduct involved or other reasons for such action.