

FedArb's Mass Arbitration Framework

ADR-MDL™ Framework for Mass Arbitration Proceedings

A “Mass Arbitration” is deemed to exist when 20 or more individual claims by employees or consumers are submitted for arbitration by or with the assistance or coordination of the same law firms or organizations and where the claims are subject to a common set of factual and legal issues. FedArb's flexible framework provides individual arbitrations with nominal front-end filing fees.

1. FedArb's ADR-MDL procedure

- a. **Setup.** Companies must (i) submit their customer or employee claim form so that FedArb can integrate it into FedArb's automated case management system, (ii) execute an agreement with FedArb, and (iii) pay the annual subscription for the mass arbitration administration, implementation and technology maintenance.
- b. **Definition of Claimants.** Only claimants who have both completed the requisite identifying information and complied with all pre-filing requirements are allowed to file a claim. This requirement reduces front end filing fees by eliminating fees on duplicative or non-qualified claimants, which also helps the parties to better assess the scope of potential damages. All individual arbitrations are stayed.
- c. **Option for a Pre-Filing Fee motion.** Prior to the Company having to pay the filing fees on each submitted claim, the Company has the option of filing a Pre Filing Fee Motion. Prior to filing such a motion, the Company shall meet and confer with claimants' counsel and both sides shall undertake reasonable efforts to resolve disputed issues, including an obligation by the Company to use reasonable efforts to share information necessary for claimant's counsel to verify that the list of potential claimants are valid and have complied with all pre-filing requirements. After the meet and confer, the Company can bring a motion, which shall be limited to claimant's failure to comply with the contractual terms of the arbitration

agreement (e.g., submission of requisite identifying information, requirement to engage in informal resolution) or claimant's failure to make a *prima facie* claim. Such motion will be held promptly before a single former federal judge selected by FedArb in consultation with the parties' counsel. Simultaneous with the filing of its motion, the Company will pay FedArb a \$30,000 administrative fee for such a hearing in addition to the fees charged by the former federal judge conducting the hearing on such motion.

- d. **Payment of Nominal Filing Fees.** If the Company declines to bring a Pre-Filing Fee motion or after a decision has been rendered on the Pre-Filing Fee Motion, FedArb will issue an invoice for the Company to pay FedArb's filing fees of \$100 for each claimant based on the actual number of recognized claimants—either as submitted or as adjusted by the pre-filing fee hearing. Such fees must be paid to FedArb within 30 days.
- e. **MDL Tribunal.** Unless the Company's arbitration provision provides for a single arbitrator, a tribunal of three arbitrators selected from FedArb's panel will then hold a fully briefed hearing to decide (i) any dispositive motions the parties elect to bring (including counter claims); (ii) all discovery disputes; (iii) all common issues of fact or law; (iv) any common damages issues; and (v) any other motion either side deems relevant.. The goal is to reduce the number of individual issues that need to be arbitrated so that claimants entitled to damages can promptly be paid either by completing a claims form or by expedited arbitration.
- f. **Election to Submit a Claim or to Pursue Individual Arbitration.** Ninety (90) days after the Tribunal has rendered its decisions, claimants must elect either (a) to complete a Claims Submission Form with their individual information needed to process their claim, or (b) to proceed to individual arbitration with respect to facts specific to each claimant and consistent with the Tribunal's binding findings and decisions.
- g. **Individual Arbitrations.**

- i. Parties will use FedArb's FastTrack expedited arbitration rules (limited briefing, limited discovery, no post hearing briefs).
 - ii. Issues resolved by the ADR-MDL™ panel will be binding on the parties and be dispositive.
 - iii. Arbitrations will be virtual unless compelling facts and circumstances dictate otherwise, or unless the claim is for an amount in excess of \$100,000.
- h. **Mass Arbitration Rules Govern.** To the extent these Mass Arbitration procedures conflict with FedArb's general arbitration rules or the rules that the arbitration is being conducted under, these Mass Arbitration procedures supersede and govern with respect to the amount of any other filing fees.
- i. **Settlement**—Nothing in this framework shall prohibit the parties from settling any individual case or groups of cases.
- j. **Modifications to Mass Arbitration Framework**—FedArb reserves the right in its sole discretion to change the elements of this framework or any FedArb fees at any time. These modifications and FedArb fees shall govern any arbitration prior to any claimant submitting a valid claim form.

2. **Non-Mass Arbitration Filing Fee/Individual Claimant**

Submission. Individuals wishing to submit a non-mass claim shall pay a \$50 filing fee (which fee may be reduced or waived under applicable law) and each claimant shall fully complete and electronically submit a claims submission form as directed by the Company. Incomplete claims will not be accepted for filing. The Company will pay a \$1,500 filing fee for each such claim as well as the costs and fees for any individual arbitrations. Such arbitrations will proceed using FedArb's arbitration rules unless (1) more than 20 individual claims involving substantially identical factual and legal claims are filed, in which case all such individual claims will proceed under FedArb's Mass Arbitration Framework; (2) the claim is under \$100,000, in which case the matter will proceed using FedArb's FastTrack expedited arbitration rules; or (3) the arbitration agreement specifies that the arbitration is to be conducted pursuant to the rules of another

arbitral institutions (such as CPR, JAMS, AAA, etc.), in which case FedArb will administer the arbitration using those arbitration procedures, while still using FedArb's fee structure.

- a. **Individual Arbitrations.** For cases that go to individual arbitration, there will be a fixed FedArb administrative fee of \$1,000 per arbitration, with half to be paid upon the commencement of the selection of an arbitrator. Thirty (30) calendar days prior to the scheduled arbitration date the remaining \$500 will be owed. In addition, the Company will owe the fees and expenses charged by each individual arbitrator, who may require the payment of an advance deposit
 - b. Parties will use FedArb's FastTrack expedited arbitration rules and the arbitration proceedings will be virtual, unless compelling facts and circumstances dictate otherwise, or unless the claim is for an amount in excess of \$100,000
3. **Ad Hoc**—The parties can also agree to use FedArb to administer a mass arbitration using AAA, JAMS, CPR, ADR Services or any other rules specified in the governing arbitration agreement. FedArb's nominal filing fees are attractive and avoid the massive filing fees charged by many arbitral institutions. In addition to reduced filing fees, FedArb backends the cost of any actual arbitrations and gives the parties access to (a) the leading panel of federal judges and (b) a national panel that is not available using regional ADR providers.