



EMPLOYMENT DISCOVERY PROTOCOLS FACT SHEET

American Arbitration Association® Initial Discovery Protocols for Employment Arbitration Cases and Fair Labor Standards Act Cases

The American Arbitration Association (AAA®) has developed two sets of initial discovery protocols to encourage early exchange of documents and targeted discovery to increase the speed and efficiency of the arbitration process.

Initial Discovery Protocols for Employment Arbitration Cases

In the fall of 2012, the American Arbitration Association 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.”

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.

Initial Discovery Protocols for Fair Labor Standards Act (FLSA) Cases

In the fall of 2018, the American Arbitration Association brought together a working group to assess whether a protocol tailored to FLSA arbitration would benefit the process. The resulting protocols are based on *The Initial Discovery Protocols for Fair Labor Standards Act Cases Not Pleaded as Collective Actions* that were drafted by the Federal Judicial Center’s (FJC) Fair Labor Standard Act Protocols Committee to “encourage the parties and their counsel to exchange information and documents early in the case, help frame the issues to be resolved, and plan for more efficient and targeted discovery.”¹

¹ *Initial Discovery Protocols For Fair Labor Standards Act Cases Not Pleaded As Collective Actions (2018)*



Highlights of the AAA FLSA Initial Discovery Protocols include:

- Applies to claims alleging minimum wage and overtime violations under the FLSA;
- Early exchange of information and documents routinely requested in FLSA cases most likely to be useful in narrowing the issues for FLSA cases;
- Initial discovery must be provided no later than 30 days after the initial management conference;
- Relevant time period begins three years before the date the claim was filed;
- If the claim is asserted under a relevant state statute that has a statute of limitations longer than such time period, the length of that longer statute of limitations will apply;
- The Discovery provided for in the Initial Discovery Protocols is not subject to objection except on the grounds of privilege or work product.

Both sets of protocols, while not mandatory, are presumptively applicable to all AAA employment arbitration cases and AAA FLSA arbitration cases unless determined otherwise by the arbitrator or mutually agreed by the parties not to be applicable or appropriate.



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

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Visit us on the Web at adr.org

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