

Arbitration of Disputes and Employment at Will

County Board Approval: April 11, 2019
Reviewed by Personnel Committee: April 4, 2019

All Employees of Chippewa County are employees at will under Michigan law.

The only exceptions are employees covered by a union contract or employees that have a Chippewa County Board of Commissioners approved contract of employment. In these cases the employee's contract will determine their status as an employee.

As differences may arise between an employee and their supervisor, co-employee, or Chippewa County a method to resolve those differences is needed.

The Chippewa County Board of Commissioners adopts an arbitration of disputes policy.

This arbitration policy and program is effective 90 days after the date of adoption/approval stated above.

Seeking, accepting, or continuing employment with Chippewa County means that such employees all agree to resolve employment related claims against Chippewa County or other employees through the arbitration process and program stated below rather than through the court system.

COUNTY VERSION DATED 3-22-19 ARBITRATION AGREEMENT

PLEASE NOTE THAT YOUR CONTINUED EMPLOYMENT AFTER THE EFFECTIVE DATE OF THIS AGREEMENT OR PROGRAM TO ARBITRATE CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT OR PROGRAM TO ARBITRATE ALL DISPUTES AND CLAIMS.

A. The County and its employees (hereafter called "parties") expect that differences may arise between the employee, the county, or co-employees arising out of or relating to the employee's employment with the county or the termination of that employment.

B. The parties agree that resolution of any differences in the courts is rarely timely or cost-effective for either party.

C. The county and the employee accordingly wish to arbitrate claims in order to establish and gain the benefits of a speedy, impartial and cost-effective dispute resolution procedure.

D. THE PARTIES RECOGNIZE THAT THIS AGREEMENT TO ARBITRATE SHALL WAIVE EACH PARTIES RIGHT TO HAVE CLAIMS RESOLVED IN A JUDICIAL FORUM BY EITHER TRIAL BEFORE A JUDGE OR TRIAL BEFORE A JURY.

E. THE PARTIES RECOGNIZE THAT THIS AGREEMENT TO ARBITRATE SHALL REQUIRE EITHER PARTY TO COMMENCE ANY ACTION OR OTHER LEGAL PROCEEDING NOT MORE THAN 6

MONTHS AFTER THE EVENT COMPLAINED OF AND THEY AGREE TO WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY EXCEPT FOR ACTIONS UNDER THE FEDERAL FAIR LABOR STANDARDS ACT WHICH SHALL FOLLOW THE STATUTORY LIMITATIONS PERIOD AND CLAIMS UNDER THE FEDERAL AMERICANS WITH DISABILITIES ACT WHICH SHALL HAVE A 12 MONTH LIMITATIONS PERIOD.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

SECTION ONE.

AGREEMENT TO ARBITRATE

Except as otherwise provided in this agreement, the county and the employee consent to the resolution by arbitration of all claims or controversies for which a court otherwise would be authorized by law to grant relief, whether or not arising out of, relating to or associated with the employee's employment with the county, or its termination, which the county may have against the employee or that the employee may have against the county or against its officers, directors, employees or agents in their capacity as such or otherwise. The termination claims covered by this agreement include, but are not limited to: claims for wages or other compensation due; claims for breach of any contract or covenant, express or implied; tort claims, claims for discrimination, including but not limited to discrimination based on race, sex, religion, national origin, age, marital status, sexual orientation, disability or medical condition; claims for benefits, except as excluded in the following Section; and claims for violation of any federal, state or other governmental constitution, statute, ordinance or regulation.

SECTION TWO.

CLAIMS NOT COVERED BY THIS AGREEMENT

This agreement does not apply to or cover claims for workers' compensation benefits; claims for unemployment compensation benefits; claims by the county for injunctive or other equitable relief for unfair competition or the use or unauthorized disclosure of trade secrets or confidential information; and claims based upon an employee pension or other benefit plan the terms of which contain an arbitration or other non-judicial dispute resolution procedure in which case the provisions of such plan shall apply. Nothing in this agreement affects an employee's right to file a discrimination charge with an administrative agency such as THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, STATE OF MICHIGAN UNEMPLOYMENT COMMISSION, OR STATE OF MICHIGAN WORKERS COMPENSATION COMMISSION.

SECTION THREE.

ARBITRATION PROCEDURES

Any arbitration required by this agreement shall be conducted in accordance with the procedures specified in the UNIFORM ARBITRATION ACT at MCL 691.1681 and in accordance with the rules of appellate review, right to representation, and procedure as stated in REMBERT v. RYAN'S FAMILY STEAK HOUSES, INC. (a Michigan appellate court decision) as supplemented by the attached **EXHIBIT A** entitled "Arbitration Procedures," which is incorporated by reference.

SECTION FOUR.

CONSIDERATION

CONTINUED EMPLOYMENT AFTER THE EFFECTIVE DATE OF THIS AGREEMENT OR PROGRAM TO ARBITRATE ALL DISPUTES OR CLAIMS CONSTITUTES THE EMPLOYEE'S ACCEPTANCE OF THIS AGREEMENT TO ARBITRATE. Each party's promise to resolve their claims by arbitration in accordance with the provisions of this agreement, rather than through the courts, is consideration for the other party's like promise. In addition, the county's consideration of the employee's application for employment, transfer, or any current employees continued employment by county shall be a separate consideration for this agreement.

SECTION FIVE.

INTERSTATE COMMERCE

Employee understands and agrees that the county is engaged in transactions involving interstate commerce and that his or her employment involves such commerce.

SECTION SIX.

TERM; MODIFICATION AND REVOCATION

This agreement shall survive the employer-employee relationship between the county and the employee and shall apply to any termination claim whether it arises or is asserted before, during, or after termination of the employee's employment with the county. This agreement can be modified or revoked only by a writing signed by both parties that refers to this agreement and specifically states an intent to modify or revoke this agreement. In addition the county may, prior to the demand to arbitrate but not after, unilaterally upon 90 days advance written notice to the employee modify the arbitration procedures attached hereto at **EXHIBIT A**.

SECTION SEVEN.

CONSTRUCTION AND ENFORCEABILITY

Any issue or dispute concerning the formation, applicability, interpretation, or enforceability of this agreement, including any claim or contention that all or any part of this agreement is void or voidable, shall be subject to arbitration as provided in this agreement. The arbitrator, and not any federal, state, or local court or agency, shall have authority to decide any such issue or dispute. The decision of an arbitrator on any such issue or dispute, as well as on any termination claim submitted to arbitration as provided in this agreement, shall be final and binding upon the parties.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable. If any term or provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the legality, validity, and enforceability of the other terms and provisions shall in no way be affected thereby and said illegal, unenforceable or invalid term or provisions shall be deemed not to be part of this Agreement.

Employee and Employer agree that if any court of competent jurisdiction declares that any part of this arbitration provision is illegal, invalid or unenforceable, such a declaration will not affect the legality, validity or enforceability of the remaining parts of the arbitration provision and the illegal, invalid or unenforceable part will no longer be part of this arbitration provision.

Captions and section headings used in this agreement are for convenience of reference only and shall not be deemed part of the contents of this agreement and shall not affect its interpretation.

Either party may bring an action in any court of competent jurisdiction to compel arbitration under this agreement and to render judgement to enforce the arbitration award in accordance with the arbitrator's decision. Except as otherwise provided in this agreement, both the county and the employee agree that neither party shall initiate or prosecute any lawsuit or administrative action (other than an administrative charge of discrimination) that relates in any way to any termination claim covered by this agreement.

SECTION EIGHT.

NOT AN EMPLOYMENT AGREEMENT

This agreement is not, and shall not be construed to create, any contract of employment, express or implied.

SECTION NINE.

SOLE AND ENTIRE AGREEMENT

This is the complete agreement of the parties on the subject of arbitration of disputes, except for any arbitration provision contained in any pension or other benefit plan. This agreement supersedes any prior or contemporaneous oral or written agreement or understanding on the subject. In executing this agreement, neither party is relying on any representation, oral or written, on the subject of the effect, enforceability or meaning of this agreement, except as specifically set forth in this agreement.

SECTION TEN.

REQUIRED DEADLINE TO FILE CLAIMS

We agree that any action or suit against either of us arising out of or relating to the employment or termination of employment must be commenced not more than six months after the event complained of and we agree to waive any statute of limitations to the contrary except for actions under the Federal Fair Labor Standards Act which shall follow the particular statutory limitations period and claims under the Federal Americans with Disabilities Act which shall have a 12 month limitations period.

EXHIBIT A.

ARBITRATION PROCEDURES

SECTION ONE.

REQUIRED NOTICE OF ALL CLAIMS

The aggrieved party must, file a request for arbitration with the AMERICAN ARBITRATION ASSOCIATION (tribunal) on such forms as are required by the tribunal, and give written notice of any claim (including an appeal of an earlier decision rendered during the county's grievance process) to the other party within six months after the event complained of.

Written notice to the county, or its officers, directors, employees or agents, shall be sent or delivered to *the County Administrator* at the home office of the county. The employee will be given written notice at the last address recorded in the employee's personnel file.

The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based.

The notice shall be personally delivered to the other party or sent by certified or registered mail, return receipt requested.

SECTION TWO.

DISCOVERY

"Discovery" is the term used to describe the way each party can find out relevant information from the other party. Under this procedure, discovery consists of the following:

(a). Each party shall have the right to take the deposition of any individual and any expert witness designated by either party.

(b). Each party shall have the opportunity to obtain documents from the other side through a request for production of documents.

The subpoena right specified below applies to discovery. Additional discovery may be had only where the arbitrator so orders, upon a showing of substantial need. Any disputes regarding depositions, requests for production of documents or other discovery shall be submitted to the arbitrator for determination.

SECTION THREE.

DESIGNATION OF WITNESSES

At least *90* days before the arbitration, the parties must exchange lists of witnesses, including any experts, and copies of all exhibits intended to be used at the arbitration.

SECTION FOUR.

SUBPOENAS

Each party shall have the right to subpoena witnesses and documents for the arbitration by requesting a subpoena from the arbitrator. Any such request shall be served on the other party, who shall advise the arbitrator in writing of any objections that party may have to issuance of the subpoena within *20* calendar days of receipt of the request.

SECTION FIVE.

ARBITRATION PROCESS

Except as otherwise provided in this procedure, or by mutual agreement of the parties, any arbitration shall be administered by the AMERICAN ARBITRATION ASSOCIATION as tribunal in accordance with the then current employment arbitration procedures and rules of the American Arbitration Association.

The arbitration or any mediation shall be held in the City of Sault Ste. Marie Michigan.

Prehearing and post hearing procedures may be held by telephone or in person as the tribunal or arbitrator deems necessary. The parties will cooperate with each other to hold and schedule any arbitration in a manner to minimize the disruption and expense to the parties.

The arbitrator shall be selected as follows:

- (a). If the parties cannot agree on an arbitrator, the tribunal shall then provide the names of seven available arbitrators experienced in labor and employee law matters along with their resumes and fee schedules.
- (b). Each party may strike a single name on the list it deems unacceptable.
- (c). The parties shall strike names alternately until only one remains.
- (d). The party who did not initiate the claim shall strike first.

The arbitrator shall interpret only written: county policy; rules; or regulations and apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claims asserted. All remedies (legal or equitable) available under the applicable laws are preserved and are available for the Arbitrator to consider and order. Neither the Federal Rules of Evidence nor the Rules of Evidence of any State shall apply. In reaching his or her decision, the arbitrator shall have no authority to change or modify any lawful county written: policy, rule, or regulation or this agreement. The arbitrator, and not any federal, state or local court or agency, shall have exclusive and broad authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement, including but not limited to any claim that all or any part of this agreement is void or voidable. The arbitration shall be final and binding upon the parties.

The arbitrator shall have authority to entertain a motion to dismiss or motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

The Arbitrator shall arrange for a court reporter to provide a stenographic record of proceedings.

Either party, upon request at the close of hearing, shall be allowed to file a post hearing brief. The time for filing such brief shall be set by the arbitrator.

SECTION SIX.

LIMITATIONS ON THE ARBITRATORS AUTHORITY

The arbitrator shall render an award and opinion in writing and shall include findings of fact and conclusions of law in sufficient detail to allow meaningful judicial review of such decision. The arbitrator's award shall BE LIMITED BY AND SHALL recognize:

(i) it is employer's right in its sole and absolute discretion to determine the quality of the performance being given by an Employee. (ii) The employer has the right to command a high level of professionalism from Employees; and (iii) if the Arbitrator is satisfied that Employee did engage in the conduct complained of, or if the Arbitrator is satisfied that Employer reasonably believed that Employee engaged in the conduct complained of, the Arbitrator is not to determine what discipline she or he would have taken had she or he been in the position of Employer, but rather the Arbitrator must uphold the action taken by Employer.

SECTION SEVEN.

JUDICIAL REVIEW

Either party may bring an action in any court of competent jurisdiction to compel arbitration under this agreement within the times proscribed under this agreement, or to enforce the arbitration award within the time set by the Uniform Arbitration Act.

A party opposing enforcement of an award may not do so in an enforcement proceeding, but must bring a separate action in any court of competent jurisdiction to appeal and set aside the award. Such appeal action must be filed within 93 days of such award.

SECTION EIGHT.

ARBITRATION FEES AND COSTS

The parties shall equally share all such fees and costs. Each party will deposit funds for the party's share of the arbitrator's fee and expenses of the Arbitration, in an amount and manner determined by the tribunal.

(A). Each party shall pay for its, his or her own other expenses associated with the arbitration process and their own attorney fees, if any. However, if any party prevails on a statutory claim entitling the prevailing party to attorney fees or costs, or if there is a written agreement providing for fees or costs, then the arbitrator may award reasonable fees or costs to the prevailing party in accordance with such statute or agreement.

(B).The tribunal fees, the arbitrator's fees and his or her expenses are taxable as costs the arbitrator may apportion in any award decision.

When the subject matter of the arbitration concerns an Employee's claim to vindicate a Federal or State statutory right, as an alternative to this sections requirement that each party advance its share of the required forum fees and costs, the employee may request at the time the request for arbitration is filed that its advance deposit for the forum fees and costs be advanced by the County due to financial hardship of the employee. Before action on the merits of the primary claim commence the Arbitrator (at the initial expense of the County) shall determine if the required deposit shall be advanced on behalf of the Employee by the County. The inquiry made to determine this shall turn upon the employee's ability to pay its share of the forum fees and costs at issue or whether the forum's fees and costs in a particular case are so expensive as to deter arbitration by the class of such similarly situated employees by job description and socioeconomic background. This paragraph shall not impact the Arbitrator's authority to apportion the total of all fees and costs as allowed in subsection (A) and (B) above.

I acknowledge receipt of this arbitration policy.

, Employee