13802. Statutory Employment Discrimination Claims

(a) Applicability of Rule

This rule applies to arbitrations involving a claim of statutory employment discrimination as defined in Rule 13100 (y). Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Number of Arbitrators

(1) Claims of $100,000 or Less

If the amount of a claim in a case involving an employment discrimination claim is $100,000 or less, the panel will consist of one arbitrator.

(2) Claims of More Than $100,000

If the amount of a claim in a case involving an employment discrimination claim is more than $100,000, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

(c) Composition of Panel

(1) One Arbitrator

If the panel consists of one arbitrator, the arbitrator will be a public arbitrator who will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise.

(2) Three Arbitrators

If the panel consists of three arbitrators, the arbitrators will all be public arbitrators, one of whom will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise. The arbitrator who meets the criteria in paragraph (c)(3) will serve as chairperson of the panel.

(3) Special Statutory Discrimination Claim Qualifications

A single arbitrator or chairperson of a three-arbitrator panel in a case involving a statutory discrimination claim must have the following qualifications:

(A) law degree (Juris Doctor or equivalent);
(B) membership in the Bar of any jurisdiction;
(C) substantial familiarity with employment law; and
(D) ten or more years of legal experience, of which at least five years must be in either:
   • law practice;
   • law school teaching;
   • government enforcement of equal employment opportunity statutes;
   • experience as a judge, arbitrator, or mediator; or
   • experience as an equal employment opportunity officer or in-house counsel of a corporation.

In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years.
For purposes of this rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator’s business or professional activities within the last five years.

(4) Waiver of Special Qualifications

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in subparagraph (3)(A) or (B) above.

(d) Fees

(1) For any claim of statutory employment discrimination submitted to arbitration that is subject to a predispute arbitration agreement, a party who is a current or former associated person shall pay a non-refundable filing fee according to the schedule of fees set forth in Rule 13900(a), provided that:

(A) In no event shall such a person pay more than $200 for a filing fee; and

(B) A member that is a party to such an arbitration proceeding under this rule shall pay the remainder of all applicable arbitration fees set forth in Rules 13900, 13901, 13902(a), 13902(b) and 13903.

(2) The arbitration fees described in subparagraph (1)(B) are not subject to allocation in the award. The panel, however, may assess to a party who is a current or former associated person those costs incurred under Rules 13502, 13510, 13512, 13513, 13514, 13601, and 13606.

(e) Awards

The panel may award any relief that would be available in court under the law. The panel must issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

(f) Attorneys’ Fees

The panel may provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.

13803. Coordination of Statutory Employment Discrimination Claims Filed in Court and in Arbitration

(a) Option to Combine Related Claims in Court

(1)(A) If a current or former associated person files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at FINRA against some or all of the same parties, a respondent who is named in both proceedings may, upon motion, compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent must notify the claimant in writing, before the respondent’s time to answer has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court, except as provided in paragraph (b).