

TOWN PUMP, INC. POLICIES & PROCEDURES MANUAL

SUBJECT: MANDATORY ARBITRATION

Policy # 1327
Owner: Human Resources
Effective: December 31, 2003

STATEMENT OF POLICY: Disputes between Town Pump, Inc. and its employees can be costly and time-consuming for both parties, particularly when they end up in court or administrative actions. In order to gain the benefits of a speedy, impartial, and cost-effective dispute resolution procedure, Town Pump, Inc. and its employees have agreed to submit their disputes to binding arbitration.

Mandatory Arbitration of All Claims:

Except as specifically provided, this arbitration policy covers all matters directly or indirectly related to an employee's recruitment, employment, or termination of employment.

The claims covered by this agreement include but are not limited to:

- (a) Claims for breach of express or implied contract or covenant;
- (b) Claims for wrongful termination;
- (c) Claims for violation of employment policies;
- (d) Tort claims;
- (e) Claims for violation of the statutory duties imposed on employers and/or employees;
- (f) Claims for monetary relief, attorney's fees, and/or reinstatement, promotion or similar personal equitable relief, under state or federal law, for discrimination, harassment, or retaliation on the basis of race, creed, religion, color, national origin, age, sex, physical or mental disability, marital status, pregnancy, or military status;
- (g) Claims for benefits, including benefits claimed under an employee pension or benefit plan unless the plan contains an arbitration or other non-judicial resolution procedure, in which case the provisions of the plan shall apply.

The only claims excepted from this agreement for binding arbitration are claims for class-wide injunctive relief sought in the public interest, requests for criminal prosecution, claims under minimum wage, overtime compensation, or unemployment compensation laws, workers' compensation claims, and any other claims that may not be made subject to binding arbitration agreements.

As to all claims covered by this agreement, neither Town Pump, Inc. nor its employees shall proceed with an administrative action on a claim covered by this agreement or initiate a court action except to compel arbitration or enforce an arbitrator's award. All covered claims shall instead be submitted to final and binding arbitration before a neutral arbitrator pursuant to the provisions of the Montana Uniform Arbitration Act or, where applicable, the Federal Arbitration Act.

Waiver of Right to Administrative Remedies and Right to Trial by Jury

In agreeing to arbitrate the above identified claims, Town Pump and its employees knowingly and voluntarily waive any and all rights they have to a jury trial of these claims or to seek monetary relief for such claims before a commission or administrative agency.

Demand for Arbitration

In the event of a dispute, either party may initiate arbitration by serving a written demand for arbitration on the other party. The demand must be served within the time provided by the statute of limitations applicable to the claim. The demand shall be typewritten or legibly printed and shall include (1) a brief statement of the nature of the dispute; (2) the date when the dispute first arose; (3) the names, work locations, and telephone numbers of employees or other persons with knowledge of the dispute; and (4) the relief requested by the aggrieved party. The party against whom the demand is made shall serve a response within 10 days after receipt of the demand and may raise counterclaims in the response. The response shall be typewritten or legibly printed and shall state all defenses and counterclaims and shall provide the names, work locations, and phone numbers of persons with knowledge of the dispute. The demand and response shall be served by certified mail, return receipt requested, as follows:

Employer:	Town Pump Legal Department P.O. Box 6000 Butte, MT 59702	Employee:	At his or her current address as it appears in employment records or as provided in a demand for arbitration
-----------	---	-----------	---

If applicable law so permits, a party may demand that the Town Pump grievance procedures be exhausted before proceeding with arbitration.

Selection of Arbitrator

Within 15 days of service of the response to a demand for arbitration or within 15 days of the date upon which response was due if no response was served, each party shall provide the other party with a list of proposed arbitrators. Arbitrators proposed by the parties shall have no personal or financial interest in the results of the proceedings and shall have no relationship to the underlying dispute or to the parties or their counsel that might create an appearance of bias. A proposed arbitrator (1) must be an experienced arbitrator; (2) must be available to act as arbitrator, (3) must be neutral in respect to the parties and dispute at issue; (4) must have a law degree or equivalent education and experience in legal matters, and (5) must be sufficiently qualified by education and experience to arbitrate the issues in dispute. The parties will make best efforts to agree on the arbitrator to be selected from among those proposed. If a party fails to participate in the selection process or if the parties fail to agree, an arbitrator shall be selected as provided in the Montana Uniform Arbitration Act.

Payment of the Fees and Costs of Arbitration

The parties shall split the arbitrator's fees and the costs of arbitration; provided, however, that an employee's share of such fees and costs shall not exceed \$125.00 unless otherwise provided in the arbitration award. Upon good cause shown, the arbitrator may require Town Pump to pay part or all of the employee's share of the fees and costs of arbitration. The fees and costs shall be paid when and as directed by the arbitrator.

Procedure

Except as herein provided, the arbitration proceedings shall be governed by the Montana Uniform Arbitration Act.

1. *Counsel*—The parties may represent themselves in arbitration or may be represented by counsel of their choice. If an employee chooses not to be represented by an attorney at the arbitration hearing, Town Pump will also participate without an attorney.
2. *Venue*—The arbitration hearing will be held at a place in Montana convenient to the employee and arbitrator.
3. *Motions*--The arbitrator will have the authority to decide motions dispositive of all or part of any claim.
4. *Hearing*—The hearing will be conducted as directed by the arbitrator. Only the parties and their witnesses and attorneys may attend the hearing. Witnesses may be sequestered at the request of a party. A video recording may be made of the hearing. Any party desiring a stenographic record shall arrange and pay for the record.
5. *Evidence*--The Montana Rules of Evidence will apply; provided, however, that strict adherence to the technical requirements of the Rules shall not be required, and the arbitrator shall apply the Rules only for the purpose of protecting the fact-finding process.

Award

1. The arbitrator may only determine the dispute submitted to him or her and shall decide all issues submitted in accordance with applicable law as applied to the facts established.
2. The arbitrator may grant any relief provided by substantive law that would be available in a court. However, in no event shall the arbitrator award relief greater than that sought by a party.
3. If the arbitrator finds that an employee was lawfully terminated, the arbitrator must uphold the termination and shall have no power to reduce the termination to some lesser disciplinary action.
4. If an employee requests reinstatement, Town Pump shall have the right to object to reinstatement and to request that the arbitrator make an alternative monetary award.
5. The arbitrator shall issue a written award within 14 days of the conclusion of hearing or the submission of post-hearing briefs, whichever is later. The award shall state the facts and law on which it is based. The award shall not be published or made available to persons other than the parties and their attorneys.

Attorney's Fees and Costs

1. Except where applicable law provides for an award of attorney's fees to a prevailing party, the parties shall pay their own attorney's fees and costs; provided, however:
 - (a) That the provisions of Rule 68 of the Montana Rules of Civil Procedure shall apply to a written offer of settlement made by a party.
 - (b) That a party who pursues post-arbitration proceedings and fails to obtain more favorable relief shall pay the other party's attorney's fees and costs incurred in those proceedings.
2. Where an award of fees and costs is provided for by law, such fees and costs shall be included in arbitrator's award. In determining the amount of fees to be awarded, the arbitrator shall be guided by applicable law, including the "lodestar" formula, taking into account the efficiency and economy provided by arbitration.

2. A party shall be entitled to payment of fees and costs incurred in enforcing an award.

Waiver

In the event that the parties mutually agree that a claim covered by this policy should be decided by a court or administrative agency rather than through binding arbitration, the parties may waive their right to arbitration, provided that such waiver is in writing and signed by the parties.

Definitions

1. "Employee" shall include all legal representatives, heirs, and assigns.
2. "Town Pump, Inc." shall include employees of Town Pump, Inc. acting or alleged to be acting within the scope of their employment.

Not an Employment Agreement

This agreement to arbitrate is not and shall not be construed to create any contract of employment, express or implied, nor shall these provisions be construed in any way to change the status of an employee from at-will.

Term

The parties' agreement to arbitrate shall survive the employment relationship between Town Pump and its employees and shall apply to any covered claim whether it arises or is asserted during or after termination of the employee's employment with Town Pump, Inc.

Severability

In the event that any provision of these Procedures is determined by the Arbitrator or by a court of competent jurisdiction to be illegal, invalid, or unenforceable to any extent, such term or provision shall be enforced to the extent permissible under the law and all remaining terms and provisions shall continue in full force and effect.

Modification

Town Pump may terminate this policy or may from time to time modify this policy; provided, however, that any such modification shall continue application of state and federal arbitration laws and shall not materially affect an employee's right to a full and fair hearing before a neutral arbitrator. No termination or modification of this policy shall apply to a pending arbitration or to a dispute arising prior to the modification or termination.