




# *Exchange*

*Employee Dialog System*



Our commitment to  
employee access and  
dispute resolution

*Exchange Administrator:*

Phone: 210-558-5005

Watts: 888-876-4344

# ***EXCHANGE***

## **Reader-Friendly-Short-N-Sweet-4-1-1**

This is a very brief overview of the Exchange Dispute Resolution program (How to Use the Program). The “legalese” version is posted in the Exchange booklet at [www.ancira.org](http://www.ancira.org) > Forms/Reference > Exchange.



BUT – if you ever have a situation where you feel things are working to your disadvantage, as a condition of being employed with this company, we’ve agreed we won’t sue. Instead, we use Exchange. And all employees have accepted this as “the rule” for final resolution of any legal disputes.

First: Let your supervisor know.

If your supervisor is given the opportunity to resolve/explain/relieve the issue or complaint, but for some reason can’t...

Second: Involve the Department Manager.

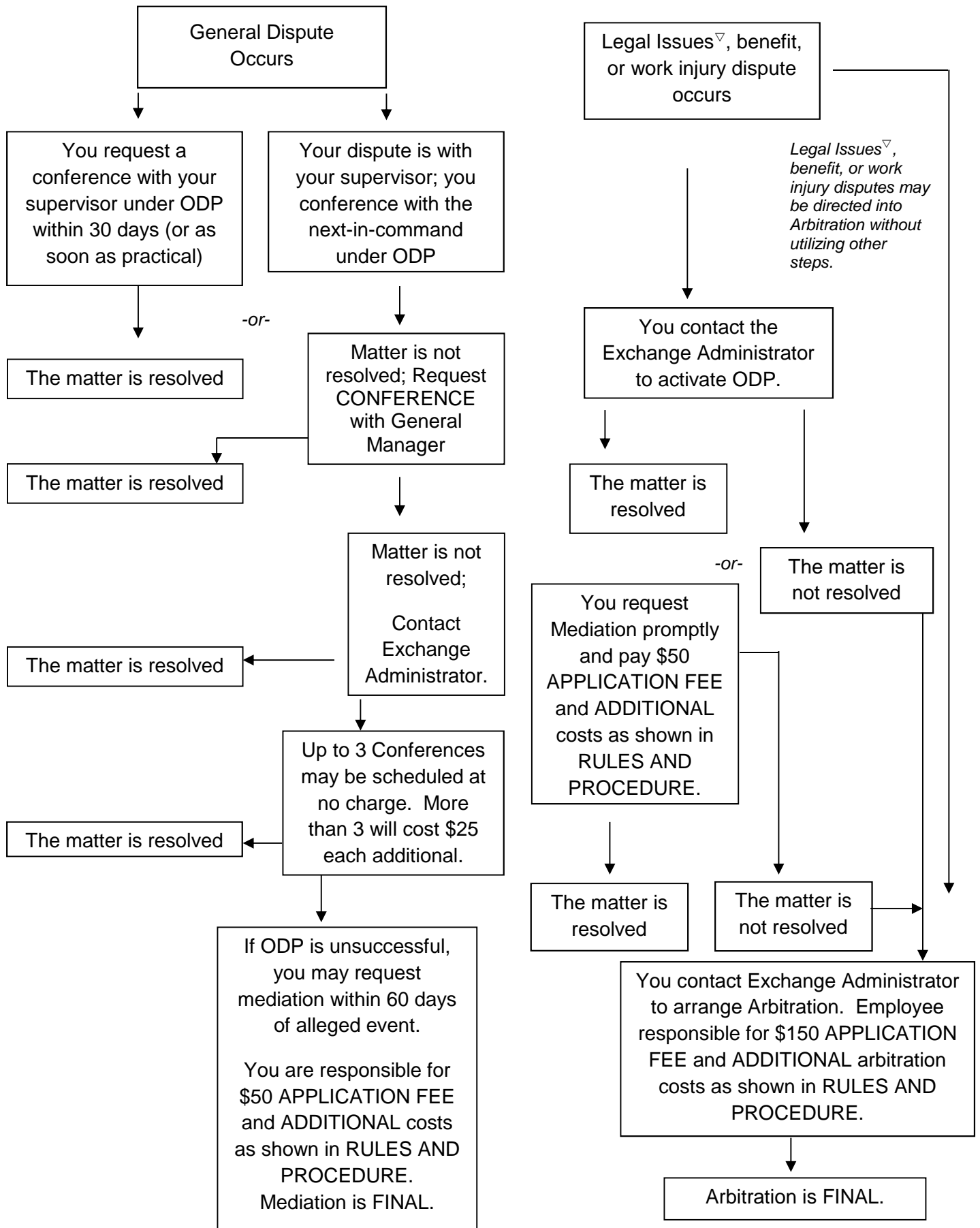
If your Department Manager is unable to resolve/explain/relieve the issue or complaint...

Third: Involve your store’s General Manager.

Your General Manager will in most all cases have final authority for resolving any issue that may arise. There are very rare & specific cases (such as those involving a legal dispute) that may require the involvement of Human Resources and/or the Exchange Program to reach resolution.

If you’ve exhausted the internal remedies outlined above and you want to pursue additional resolution of your complaint, we can implement Open Dialog to work through your complaint, involve senior management, or others. You can have your complaint addressed up-front without having the expense of an attorney. For serious disputes, we may even arrange to have an official Mediator hear the sides of the story, or if it’s a serious legal<sup>▽</sup> matter, you may request to jump straight to Arbitration. In those extremely rare cases where a dispute isn’t resolved through the other options, formal Arbitration will be the final decider. You’d arrange this with the Exchange Administrator and pay a filing fee of \$150 to get started. You may decide you want an attorney to represent you. When explaining your dispute that you have, you will need to tell your attorney you are subject to mandatory binding arbitration so proper channels can be observed. The arbitrator has full authority to make awards just as a judge would. You have the ability to recover anything you might win in the court system, subject only to the limitations set forth in the **Exchange** program. There are no appeal options for either you or the employer except as set forth in the Exchange Rules and Procedures for Arbitration.

# EXCHANGE



# **EXCHANGE**

## ***Employee Dialog System***

### **A commitment to employee access and dispute resolution**

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Amendments

Exchange Administrator:

Valerie Tackett     210-558-5005 or watts# 888-876-4344

Designated Arbitration / Mediation Authority:

Conflict Solutions of Texas

10999 IH-10 West, Ste. 800, San Antonio, TX 78230

Phone: 210.694.4103

Fax: 210.694.4120

Web: [www.csoftx.com](http://www.csoftx.com)

If Conflict Solutions of Texas is unable or unwilling to administer the arbitration and provide arbitrators then, and only then:

American Arbitration Association

13727 Noel Road

Dallas, Texas 75240

Phone: (972) 702-8222

Web: <https://www.adr.org/>

To Our Valued Employees:

Our mission is to work harmoniously together to provide our customers the service they deserve. Regardless of which entity employs you, we all want security and a place we can enjoy working while earning a living. Commendably, our team tends to have few disputes and they're quickly resolved by employees and their supervisors when they do occur.

But, in good companies (just as in good families) disputes or problems can happen sometimes and it takes dedicated effort – working together – to resolve them. Disputes may become a serious issue when communication lines break down. Knowing this, we've developed a unique resolution program; one that reduces delays and disruption and promotes "win-win" dialog between the people involved.

**Exchange** is our answer for promoting that win-win dialog. I strongly encourage you to read the information kit that will be provided to you for better understanding of the program and its benefits. We're confident **Exchange** can help us fairly resolve employment issues or disputes in a timely, cooperative manner. If you have any questions, please direct them to our **Exchange** Administrator. The number is listed on page one of the information booklet.

Thanks for your continuing support and commitment to your employer and to our dispute resolution system.

Sincerely,

*Ernesto Ancira, Jr.*  
President

## FORMAL NOTICE TO EMPLOYEES:

Effective April 1, 2004, Ancira Auto Group\* adopted and implemented Exchange and effective July 13, 2015, amended the Exchange program to more aptly align with the Federal Arbitration Act. If you accept or continue your employment after July 13, 2015 you are agreeing (renewing your agreement) **to resolve through this process instead of through the court system all Legal Issues<sup>∇</sup>**, work injury claims not otherwise governed by the exclusive remedy provisions of the Texas Workers Compensation Act (as amended) and benefits claims.

Ancira Auto Group retains the right to modify or discontinue Exchange at any time, however modification or discontinuance shall not apply to any dispute of which the employer had actual notice of on the date of modification or termination. Exchange is a program designed to resolve disputes promptly and on a cost effective basis. Exchange includes a provision for resolution of certain employment issues through mandatory binding arbitration pursuant to the Federal Arbitration Act. Acceptance of and participation in Exchange is a condition of employment. A copy of Exchange, as amended, which includes rules for arbitration, is available by accessing [www.ancira.org](http://www.ancira.org) > Forms & Reference > Exchange or a copy will be provided at your request.

Receipt of the foregoing formal notice is acknowledged by me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_(year)

Store:	Dept:	Job Title:	EEID#
Print Name:		Signature:	

Please print today's date in the space provided above, complete the Store & Identification Information, then sign and return to your manager promptly. You are welcome to direct any questions you have to your manager or Human Resources.

\* Ancira Auto Group and Ancira Auto Group Dealers\* is a general term used to indicate any one of the following independent employers: Ancira Enterprises, Inc.; The Ancira-Winton Chevrolet, Inc.; The Ancira-Winton Chevrolet, Inc. dba Ancira Volkswagen; The Ancira-Winton Chevrolet, Inc. dba Ancira Kia; Ancira Motor Co. dba Ancira Chrysler Jeep Dodge Ram; Ancira Fiat; Ancira Nissan, Inc.; Ancira Eagle Pass Automotive, Inc.; Floresville Ford Mercury, Ltd.; Ancira Buick GMC Truck & Motorhomes, Inc.; Ancira RV Boerne; Ancira Travel Villa; Ancira VW Laredo, or those dealerships that may be acquired following the inception date of this policy.  
**The 'employer' is the location in which you work or as stated on your W-2.**

<sup>∇</sup> The term "Legal Issues" when used in the Exchange document refers to disputes involving legally protected rights relating to employment such as protection from discrimination on the basis of age, race, sex, religion, national origin, sexual harassment, or specific, alleged or implied legally protected benefit or work injury disputes not subject to the exclusive remedy provisions of the Texas Workers Compensation Code, as amended. The term includes, but is not limited to, claims arising under federal or state law such as the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1991 and 1996, the Equal Pay Act of 1963, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Employee Retirement Income Security Act of 1974 (ERISA), the Equal Employment Opportunity Act of 1972, the Family and Medical Leave Act of 1993 (FMLA) and the Worker Adjustment Retraining and Notification Act (WARN), the Texas Commission on Human Rights Act, the Texas labor Code §21.001 et. Seq., including without limitation, the non-discrimination provisions of §21.051, 21.055, 21.056, 21.059, 21.101, 21.105, 21.106, 21.128, §451.001, or arising under common law including, but not limited to, claims arising from negligence, gross negligence, wrongful termination, breach of contract, retaliatory discharge, fraud, misrepresentation, conspiracy, constructive discharge, intentional infliction of emotional distress, invasion of privacy, assault, sexual harassment, libel, slander or defamation including without limitation, self-compelled publication.

## **Introduction**

Our employment goals focus on job satisfaction and a harmonious work environment. But even the best intentions and work environment can't always prevent workplace problems.

### **For Everyone's Benefit**

We've developed a better way to resolve all workplace disputes that ensures full access for employees and a step-by-step process to find agreeable solutions.

It's called

### ***Exchange: Employee Dialog System***

And it's designed with a mission in mind: If there's an employment dispute between an employee, supervisor, or co-worker, we can resolve it together – with mutual interest to reach a fair solution and without attorneys and long court battles.

### **Using Exchange**

If at any time you have questions regarding the process, you are welcome to call the Exchange Administrator for assistance. Your first line of resolution – and the cornerstone of Exchange – is the employer's Open Dialog Policy. This information kit is designed to answer your questions and clearly explain the entire program.

### ***The Open Dialog Policy (ODP)***

When difficult situations happen at work, you may feel there is no place to go to resolve them. But ODP recognizes that resolving disputes can be a win-win situation. Working out problems when they're small often prevents the misunderstandings that occur when communication breaks down. When people stop talking to each other, they focus on their anger or hurt feelings and often imagine things to be even worse instead of being able to look at things objectively. You and the employer stand the best chance of resolving problems by tackling them together through the Open Dialog Policy before it reaches crisis point.

### ***What is the Open Dialog Policy?***

It's another name for "open door" access to chain-of-command. It means you can use this voluntary process to arrange a meeting with your immediate supervisor or a higher level of management ... without fear of retaliation. Although you are encouraged to solve your problem at the closest point to your position as possible, you may take your issue as far up the chain-of-command as needed.

### ***Why is the Open Dialog Policy the cornerstone of Exchange?***

Historically, problems that go unresolved are due to a breakdown in communication. By encouraging a thorough use of our internal communication lines we help ensure an eventual success and resolution of a dispute. Use of the Open Dialog Policy also fosters a spirit of teamwork and unity that nurtures mutual respect and thus strengthens our ties with one another.

### ***Why is participation in Exchange a condition of employment?***

Exchange is designed to provide prompt, fair resolution of disputes without long, costly, complicated legal dramas. For success, we need commitment from everyone. By offering Exchange as a condition of employment, we ensure everyone's future interest in the success of Exchange.

# Basics of *Exchange*

▽Throughout the Exchange document, when the term “Legal Issues” is used, it means disputes involving legally protected rights relating to employment such as protection from discrimination on the basis of age, race, sex, religion, national origin, sexual harassment, or specific, alleged or implied legally protected benefit or work injury disputes not subject to the exclusive remedy provisions of the Texas Workers Compensation Code, as amended. The term includes, but is not limited to, claims arising under federal or state law such as the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1991 and 1996, the Equal Pay Act of 1963, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Employee Retirement Income Security Act of 1974 (ERISA), the Equal Employment Opportunity Act of 1972, the Family and Medical Leave Act of 1993 (FMLA) and the Worker Adjustment Retraining and Notification Act (WARN), the Texas Commission on Human Rights Act, the Texas labor Code §21.001 et. Seq., including without limitation, the non-discrimination provisions of §21.051, 21.055, 21.056, 21.059, 21.101, 21.105, 21.106, 21.128, §451.001, or arising under common law including, but not limited to, claims arising from negligence, gross negligence, wrongful termination, breach of contract, retaliatory discharge, fraud, misrepresentation, conspiracy, constructive discharge, intentional infliction of emotional distress, invasion of privacy, assault, sexual harassment, libel, slander or defamation including without limitation, self-compelled publication.

Exchange steps are laid out as follows:

## 1. **Open Dialog Policy (Chain-of-Command)**

Utilize the employer’s open communication procedures as set forth in the employer’s policy manual. Address your issue directly with your supervisor or next level of authority with whom you’re comfortable.

## 2. **Human Resources / Exchange Administrator Consultation**

Your employer utilizes consultation services from Ancira Enterprises, Inc. You are welcome to contact the consultation office at 210-558-5005 for assistance resolving a problem or dispute which has not been successfully resolved through the chain-of-command. The Exchange Administrator handles most of the details involved in running Exchange, including: review of your options; fact finding; helping you “open doors”; answering your questions; arranging a Conference, Mediation, or Arbitration; and overseeing the program. The Exchange Administrator is available to you any time during the Exchange process by calling 210-558-5005 or 888-876-4344.

## 3. **Conference**

- Talk to a higher management level in your chain of command.
- Try mediation.
- Arbitrate certain legal, benefit, or work injury claims.

## 4. **Mediation**

Mediation is used to reach final resolution of employment disputes which are not Legal Issues<sup>▽</sup>. Exchange requires you to participate in a Conference before requesting Mediation. Mediation affords both parties the opportunity to be heard by a neutral third party. Mediation is not required as a necessary step prior to pursuing Arbitration in Legal Issues<sup>▽</sup>.

## 5. **Arbitration**

Exchange requires arbitration of certain Legal Issues<sup>▽</sup>. You may be asked to participate in a Conference and possibly in Mediation before pursuing Arbitration, although neither is mandatory. Arbitration is final and binding. It is established through a mutual selection process and both parties provide testimony and evidence to the Arbitrator(s) who will render a final decision in the matter that all parties will be bound to comply with.





## Advantages of ODP (Open Dialog Policy)

- *It helps you help yourself.*
- *Management is committed to it.*
- *It makes early and faster problem solving more likely.*
- *It ensures management hears what you've got to say.*
- *You get your questions answered and learn about your options in an open setting.*
- *You have the help of every level within the organization to resolve a problem.*
- *It's flexible.*
- *It's free.*

## *Exchange* Conference

You will be able to resolve most routine employment and/or co-worker problems through your employer's Open Dialog Policy (ODP). If it is not successful, however, you can request a conference with the Exchange Administrator [210-558-5005] who will help you evaluate what other steps may be advisable. There is a timeline. Conference requests should be made to the Exchange Administrator within 30 days of an alleged event resulting in the dispute that you have been unable to resolve through the ODP, although reasonableness of delays will be considered. See Rules and Procedures for a thorough overview of timelines and reporting requirements.

### **What is a Conference?**

A conference is a meeting (either in person or by telephone) in which you and the Exchange Administrator talk about your dispute and choose a process for resolving it. The goal of the conference is to help you find a way to work out your dispute. You may decide to do any of the following:

- Restart the Open Dialog (ODP) process through a supervisor or mid-level management. Once you've had the opportunity to conference with the Exchange Administrator, you may see additional areas of communication that should be pursued, or avenues for negotiation which may previously have gone unnoticed.
- Seek a secondary Exchange Conference with upper management. This would be arranged by the Exchange Administrator and provide you with further dialog opportunities and, in all likelihood, final and fair resolution. Up to 3 Conferences are available at no charge to the employee.
- Try Mediation. You may agree to pursue resolution through mediation. For non-legal disputes, the mediator will be a neutral third-party who will listen objectively while you and the other party tell your stories. The mediator is a trained listener who will not advise or make decisions for you. For legal disputes, the mediator will be assigned through the Designated Mediation/Arbitration Authority. Mediation will involve a filing fee and additional costs as specified in this information kit.
- Go to Arbitration. In cases involving Legal Issues<sup>▽</sup>, or benefit or work injury claims, you may choose to arbitrate your dispute to reach a final and binding resolution. Arbitration under Exchange is your final opportunity for resolution of Legal Issues<sup>▽</sup> and benefit and work injury claims as you have by your continued employment agreed to waive any right to pursue such claims in court. The decision to pursue arbitration requires a filing fee be paid toward the setup expenses. A portion of this fee is waived if previously paid to activate mediation. The process and additional costs for arbitration are fully outlined in this information kit.

Exchange requires you to participate in a Conference before you talk to a Vice-President or higher (unless your job is directly subordinate to a VP). However, in cases involving Legal Issues<sup>▽</sup> and benefit and work injury claims, arbitration may be used as a first step.

To request an Exchange Conference, simply call the Exchange Administrator.



## *Advantages of the Exchange Conference*

- Keeps a healthy dialog flowing between you and the decision-makers.
- Ensures you are heard by those who can make changes, if needed.
- Earns respect among participants who learn the value of different perspectives.
- Gives you fair opportunity to express yourself.
- Allows creative outlet to problem-solve and improve the organization.

## *Exchange* Mediation

After discussing your options with the Exchange Administrator and pursuing resolution through Conference(s), you may decide Mediation is needed. For most people, this is a final step in the process because in the case of Mediation, you are telling your story to a neutral third party who is trained to facilitate the communication between the disputing parties and help you reach an acceptable outcome.

### **What is mediation?**

It is often the most straightforward and cost-effective method of examining and resolving disputes. A mediator will help the parties get their stories “on the table”, share relevant facts and opinions, and assist the parties to reach a solution. It is a non-binding process, which means if it fails there is still another level of resolution available.

If it is a legal dispute relating to Legal Issues<sup>▽</sup>, benefits, and worker injury claims, or other legal matters, the mediation will be administered through the Designated Mediation/Arbitration Authority.

### **Typical Mediation Steps:**

A request for mediation is processed through the Exchange Administrator. There is a time limit for requesting mediation. Obviously, dialog will already have taken place in the form of an Exchange Conference(s). In the event the Exchange Conference has not yielded a final outcome, the following steps may be put in motion:

- You inform the Exchange Administrator within 60 calendar days following an alleged event resulting in the dispute that you wish to engage in Mediation. This can be done with a phone call or in writing, whichever you prefer.
- You submit your application and filing fee to initiate the process.
- A mediation date is scheduled for you and the other party to meet with the mediator who will guide your discussion and help you work out your differences.

If the Mediation process does not resolve the problem, there are several options available:

- Meet with the Exchange Administrator to discuss whether it would be beneficial to re-try the Open Dialog process.
- Select a different mediator.
- Arrange a Conference through the Exchange Administrator to meet with an Executive committee to discuss the problem.



## *Advantages of Mediation*

- Gives both sides the opportunity to tell their stories.
- Gives both sides a neutral third party perspective.
- Reduces hostilities between the parties and promotes meaningful dialog.
- Identifies what's important.
- Emotional and factual issues get separated to enable clearer communication.
- Opens opportunity for creative solutions.
- Helps you help yourself to reach win-win solutions.
- Structures an agreeable compromise and settlement of the issues.
- Considerably lower costs to employee and employer.

## *Exchange* Arbitration

In matters involving Legal Issues<sup>∇</sup>, benefits, or worker injury claims that are unable to be resolved in the first steps of *Exchange*, either you or employer may request arbitration. The steps leading to arbitration are not a requirement in these matters. In fact, arbitration may be activated as a first step. However, the use of the steps ensures the best possibility of resolution and provides the maximum opportunity for the parties to find mutually agreeable solutions to the problem – which should benefit everyone involved. Arbitration under *Exchange* is your final opportunity for resolution of Legal Issues<sup>∇</sup> and benefit or work injury claims as you have, by your continued employment, agreed to waive any right to pursue such claims in court.

► Requests for arbitration should be made in writing, sent by certified mail, return receipt requested, to the Exchange Administrator as soon after the event resulting in the dispute as possible. All *Exchange* arbitrations will utilize arbitrators through the Designated Mediation/Arbitration Authority.

### **What is Arbitration?**

When an otherwise unresolved legal dispute is submitted for a final, binding decision by a neutral, professional arbitrator, it is called arbitration. Both parties to the dispute present their arguments at a hearing before the arbitrator. There isn't a jury and it is less formal than court, but it is governed by rules of procedure and legal standards of conduct that are similar to a courtroom setting. You may, subject to the Exchange Rules and Procedures for Arbitration, introduce documents into evidence. Further, you may, subject to certain limitations, conduct discovery to prepare for the hearing. If the arbitrator finds in your favor, you can be awarded the same substantive relief that would otherwise be available through an actual court process.

All arbitrations under *Exchange* will be administered by and will utilize arbitrators from Conflict Solutions of Texas. If Conflict Solutions of Texas is unable or unwilling to administer the arbitration or provide arbitrators, then and only then, arbitration will be administered by and will utilize arbitrators from American Arbitration Association as designated on page 1 and 2 of *Exchange*.

<sup>∇</sup> The term "Legal Issues", when used in this document, refers to disputes involving legally protected rights relating to employment such as protection from discrimination on the basis of age, race, sex, religion, national origin, sexual harassment, or specific, alleged or implied legally protected benefit or work injury disputes not subject to the exclusive remedy provisions of the Texas Workers Compensation Code, as amended. The term includes, but is not limited to, claims arising under federal or state law such as the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1991 and 1996, the Equal Pay Act of 1963, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Employee Retirement Income Security Act of 1974 (ERISA), the Equal Employment Opportunity Act of 1972, the Family and Medical Leave Act of 1993 (FMLA) and the Worker Adjustment Retraining and Notification Act (WARN), the Texas Commission on Human Rights Act, the Texas labor Code §21.001 et. Seq., including without limitation, the non-discrimination provisions of §21.051, 21.055, 21.056, 21.059, 21.101, 21.105, 21.106, 21.128, §451.001, or arising under common law including, but not limited to, claims arising from negligence, gross negligence, wrongful termination, breach of contract, retaliatory discharge, fraud, misrepresentation, conspiracy, constructive discharge, intentional infliction of emotional distress, invasion of privacy, assault, sexual harassment, libel, slander or defamation including without limitation, self-compelled publication.

## Typical Arbitration Steps (Summary):

- If you have a Legal Issue, or a benefit, or a work injury claim, you may choose to pursue resolution through arbitration. Claims made through arbitration require you to contact the Exchange Administrator to schedule an evaluation conference and provide written notice of your request to the Exchange Administrator.
- If after the conference you determine arbitration to be your next step, you will pay a \$150 processing fee payable to the employer to activate the process. If you already paid the processing fee in Exchange Mediation for this same issue, you are not required to pay a separate processing fee for arbitration. If you meet the requirements to be excused from the payment of costs as provided for in Rule 145 of the Texas Rules of Civil Procedure, and you deliver to the Exchange Administrator the statement and evidence required in Rule 145, you will be excused from the payment of the \$150 processing fee.
- The arbitration process does not require the use of lawyers. However, you may choose to be represented by a lawyer. If you hire a lawyer to represent you at an arbitration, you are responsible for all the expenses and fees of your attorney. However, as part of the arbitration, the arbitrator is granted authority and may choose to award either you or the employer reasonable attorney's fees to be paid by the other as part of the decision, but only to the extent that such attorney's fees would have been recoverable had the matter been resolved by a court of competent jurisdiction. See the Rules and Procedures for details on your further obligations.
- The Exchange Administrator will coordinate with THE DESIGNATED MEDIATION/ARBITRATION AUTHORITY to begin the process of arbitration. THE DESIGNATED MEDIATION/ARBITRATION AUTHORITY will provide both you and the employer a list of qualified candidates from which a single/sole arbitrator will be selected for the specific dispute. If the parties fail to agree, THE DESIGNATED MEDIATION/ARBITRATION AUTHORITY will assign the arbitrator.
- THE DESIGNATED MEDIATION/ARBITRATION AUTHORITY schedules a hearing in accordance with the Exchange rules and procedure. At the hearing, testimony may be given, and documents may be offered into evidence.
- Upon completion of the hearing, the arbitrator will issue a final, written, binding decision and provide copies of the decision to both parties and the matter will be closed.



## *Advantages of Arbitration*

- ▶ Confidentiality.
- ▶ Accessibility.
- ▶ Objective results.
- ▶ Easier, less costly process.
- ▶ Offers you a guaranteed hearing of the merits of your dispute.
- ▶ Simplicity. You don't have to be a legal expert and know legal "jargon" to navigate the arbitration process.
- ▶ Get prompt resolution (unlike the civil court process); on average disputes are resolved in under 9 months with arbitration. Litigation on the other hand may take 2-3 years for resolution.



## *Exchange Questions and Answers*

### **1. Is Exchange for any problem that happens at work?**

The Open Dialog Policy incorporates the full range of formal communication available to you. ODP replaces what you may know as “open door policy”. The Exchange Conference and Mediation avenues should meet any other dispute resolution needs that do not involve Legal Issues<sup>▽</sup> (as defined in Exchange), or benefits, or work injury claims. For Legal Issues<sup>▽</sup>, benefits, or work injury claims, Exchange offers both mediation and arbitration which is administered through the The Designated Mediation/Arbitration authority/association. Whether or not a dispute truly involves Legal Issues<sup>▽</sup>, benefits, or work injury claim/s is to be determined through arbitration.

### **2. What happens if I quit, am fired or laid off?**

Exchange Arbitration applies to Legal Issues<sup>▽</sup>, as well as benefit or work injury claims you may have against your employer. Other options may be available under Exchange. Exchange does not modify the At-Will Employment doctrine subscribed to by the employer, so any dispute is first weighed against this policy. Further, activating Exchange does not change the employment relationship, or modify job performance requirements.

### **3. Do I have to go through every step in any dispute issue?**

No. In matters involving a Legal Issue, or a benefit or work injury claim, you may proceed straight from the Conference to Arbitration for a final and binding decision. In other issues, it is best to follow the various steps of communication to ensure your concerns are heard and each party has made the best effort to find a solution.

### **4. What if my dispute involves an on the job injury?**

Your employer offers insurance coverage for work related injuries that is governed by the Texas Workers Compensation Act. Any dispute regarding your on the job injury should be reported to the insurance claims adjuster assigned to you, the Risk Manager consultant and, if needed, the Texas Workers Compensation Commission. If the dispute falls outside the governing boundaries set forth in the Texas Workers Compensation Act, it becomes a matter to be resolved through Exchange. Otherwise, any grievance shall be resolved in accordance with Texas Workers Compensation Act, as amended.

### **5. What's the limit on what I can be awarded through arbitration?**

The arbitrator has full authority to make awards just as a judge would. You have the ability to recover anything you might win in the court system, subject only to the limitations set forth in the Exchange program. There are no appeal options for either you or the employer except as set forth in the Exchange Rules and Procedures for Arbitration.

### **6. Are all Ancira Auto Group\* employees covered?**

Yes. Employees – whether active or inactive -- who continue employment as of the inception date of Exchange, as amended, and employees hired after this date are covered automatically by Exchange.

**7. What about the EEOC and similar state or federal authorities?**

You are free to contact any government regulatory agency with your employment concerns. Exchange will apply to any relief you might have previously sought through the courts, so it may also affect individual relief available through these agencies. Our hope is that Exchange is so effective, you have no need to go anywhere else.

**8. What's in it for me as an employee?**

Exchange was designed to promote better communication access to employees and resolve disputes promptly – before they end up in a courtroom costing us all a lot of money and peace of mind for however long it takes for the courts to resolve. Legal battles are a tremendous burden on all concerned and there's only "win or lose" for the parties involved. With Exchange, we're promoting win-win solutions and ensuring our future employment stability.

**9. Can I go to court if I have a dispute that relates to a Legal Issue, a benefit, or a work injury claim?**

No. By accepting employment and/or continuing your employment with an Ancira auto dealer, after the inception date of April 1, 2004, and subsequent of the amendment date(s) as issued, you have agreed to submit to binding arbitration and you have waived the right you would otherwise have had to go to court to resolve disputes with our employer that relate to Legal Issues<sup>▽</sup>, benefit, or worker injury claim.

\* Ancira Auto Group and Ancira Auto Group Dealers\* is a general term used to indicate any one of the following independent employers: Ancira Enterprises, Inc.; The Ancira-Winton Chevrolet, Inc.; The Ancira-Winton Chevrolet, Inc. dba Ancira Volkswagen; The Ancira-Winton Chevrolet, Inc. dba Ancira Kia; Ancira Motor Co. dba Ancira Chrysler Jeep Dodge Ram; Ancira Fiat; Ancira Nissan, Inc.; Ancira Eagle Pass Automotive, Inc.; Floresville Ford Mercury, Ltd.; Ancira Buick GMC Truck & Motorhomes, Inc.; Ancira RV Boerne; Ancira Travel Villa; Ancira VW Laredo, or those dealerships that may be acquired following the inception date of this policy.

**The 'employer' is the location in which you work or as stated on your W-2.**

## Exchange COSTS AND FEES

In the event action takes place under mediation and/or arbitration, the employee shall be responsible for an Application Fee(s) (as shown on the chart below).

Level	Application Fee (paid by EMPLOYEE)	Maximum Time for Filing (calendar days following event)
1. Open Dialog Process	No Cost to Employee	within 30 days after the alleged event resulting in the dispute
2. Conference 1	No Cost to Employee	n/a – inclusive with ODP
3. Conference 2	No Cost to Employee	n/a – inclusive with ODP
4. Conference 3	No Cost to Employee	n/a – inclusive with ODP
5. Additional Conference	\$25	n/a – inclusive with ODP
6. Mediation	\$50	Within 60 days after the alleged event resulting in the dispute
7. Arbitration Available for Legal Issues <sup>∇</sup> only.	\$150 (\$50 credit if previously submitted for mediation)	Within the applicable limitations period

In addition to the Application Fee(s) the employee shall be responsible for his/her share of all Mediation/Arbitration Costs. Mediation/Arbitration Costs are defined as filing, service and other fees paid to the Designated Mediation/Arbitration Authority, the mediator's or arbitrator's fees, all expenses of the mediator/arbitrator including charges for postage, copying, telephone calls, travel expenses, charges of the mediator or arbitrator for providing or obtaining a place to conduct mediation or arbitration, and all other fees or expenses charged by the Designated Mediation/Arbitration Authority or the mediator or the arbitrator in connection with the mediation or arbitration. The employee's share of Mediation/Arbitration Costs shall be determined according to the Mediation/Arbitration Cost structure (as set forth in the table below).

### **Mediation and Arbitration Fees Structure**

Employee Gross Average Current Annualized Income	EMPLOYER'S PORTION of MEDIATION/ARBITRATION COSTS*	EMPLOYEE'S PORTION of MEDIATION/ARBITRATION COSTS*
Under \$40,000 per year	90%	10%
\$40,000 - \$75,000 per year	80%	20%
Over \$75,000 per year	70%	30%

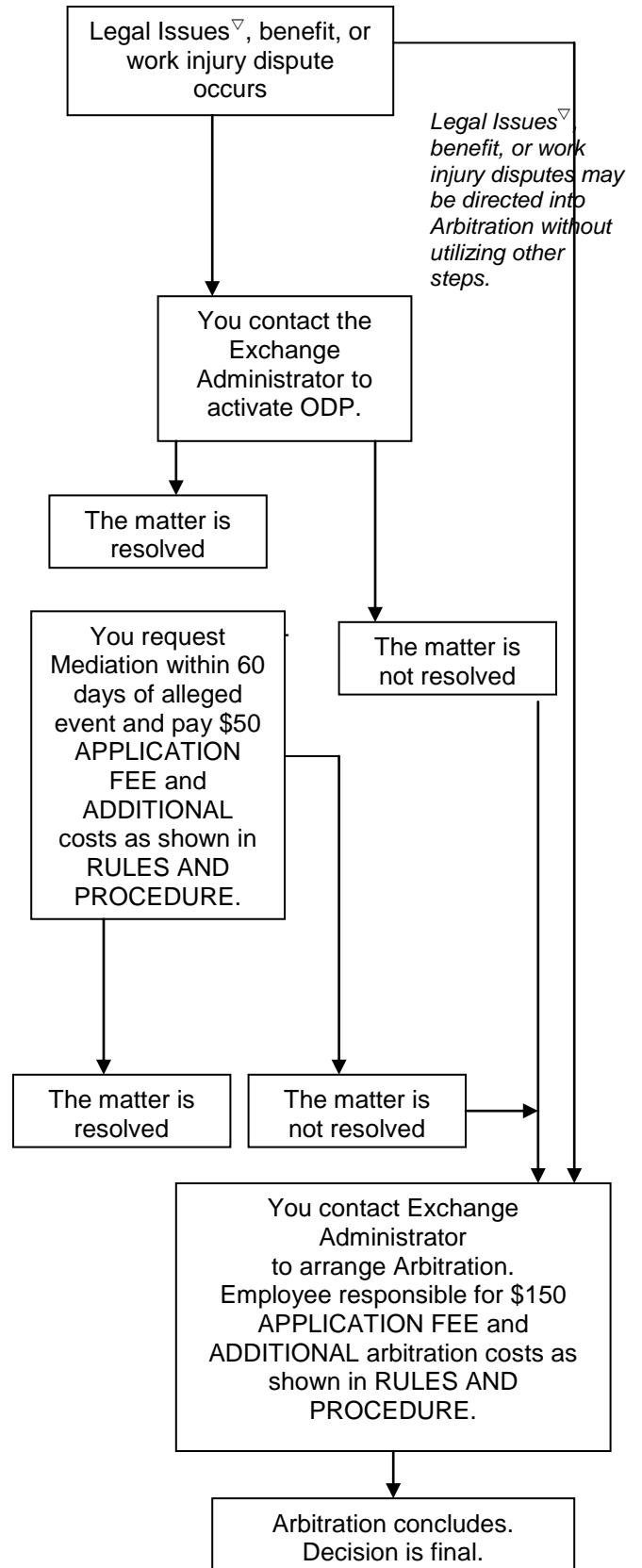
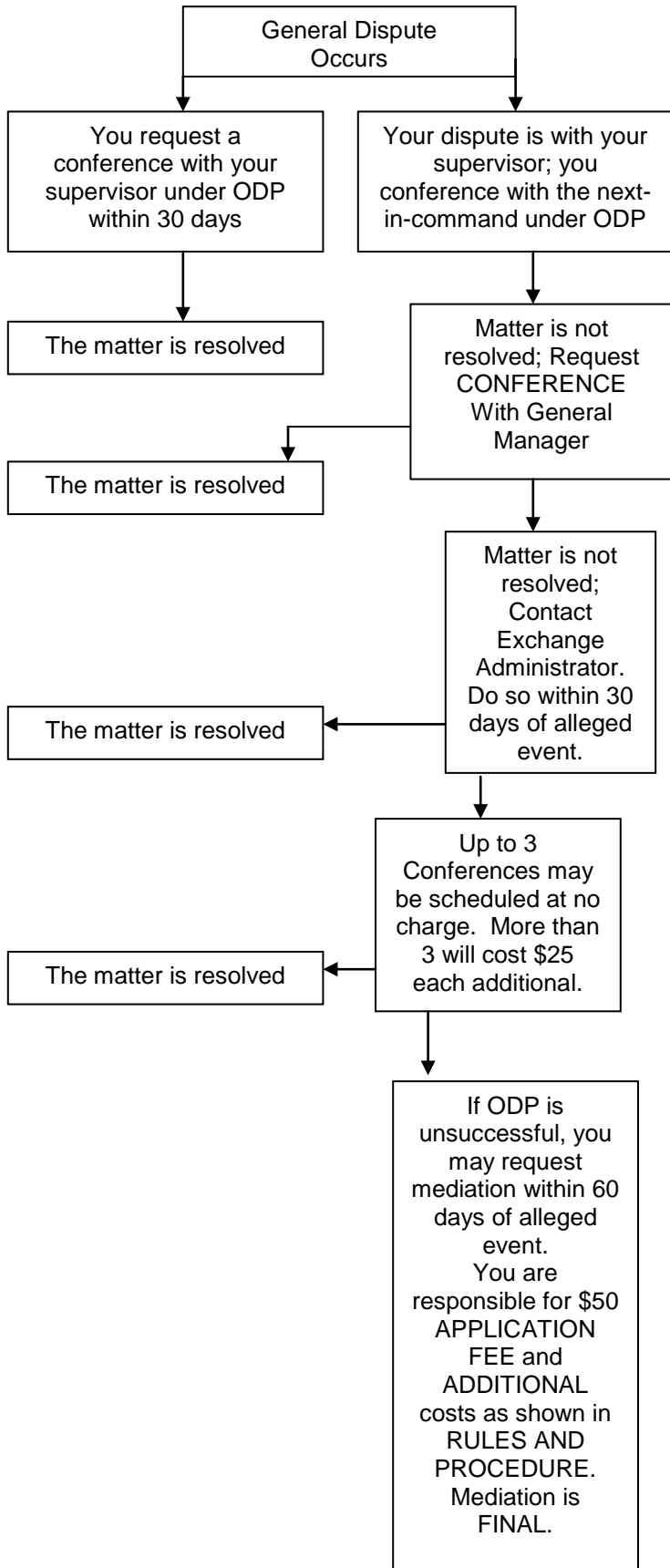
In addition to the Application Fee and the employee share of all Mediation/Arbitration Costs, the employee shall be solely responsible for the payment of all fees and expenses incurred by or on behalf of the employee in connection with any mediation or arbitration including, but without limitation, fees of the employee's attorney, filing fees, copy charges, fees incurred in obtaining or serving subpoenas, court reporters fees, deposition costs, travel expenses, and all other fees not specifically including within the definition of Mediation/Arbitration Costs as set forth above. All other costs and expenses incurred by or on behalf of the employee, resulting from the mediation or arbitration process, and not otherwise addressed in the definition of Mediation/Arbitration Costs above, shall be the sole responsibility of the employee.

Employee and employer shall each be responsible for the payment of their own attorney's fees, if any, incurred in connection with any mediation or arbitration. However, in the event of arbitration, the arbitrator is authorized, but not required, to make an award to the prevailing party for -Continued next page

<sup>∇</sup> "Legal Issue" as defined by Exchange.

any attorney's fees incurred by the prevailing party which are found to be necessary and reasonable, but only to the extent that such attorney's fees would have been recoverable had the matter been resolved by a court of competent jurisdiction. However, if the employee proves, and the arbitrator finds, that the Application Fee or the fee splitting provisions of Exchange would operate to prohibit the employee from fully and effectively vindicating the employee's statutory rights, the arbitrator is empowered to reform the fee splitting provisions as needed to ensure that the employee will not incur arbitration costs in such an amount as would deter enforcement of statutory rights in the arbitral forum.

# EXCHANGE



## *EXCHANGE RULES AND PROCEDURE for ARBITRATION: PLAN DESCRIPTION*

The Designated Mediation/Arbitration Authority has exclusive authority to determine arbitrability of any dispute submitted under Exchange and shall enforce Exchange Rules and Procedure. Exchange does not authorize or allow class action arbitration. The claims of each employee shall be subject to a separate arbitration. Arbitrations of claims by multiple employees in a single arbitration are also prohibited. Ancira Auto Dealers is engaged in "commerce" as defined in Section 1 of the Federal Arbitration Act (FAA) and the FAA governs all aspects of Exchange arbitration. It is intended that all Legal Issues<sup>▽</sup> be resolved without litigation, and through mandatory and binding arbitration as a last resort. If any court or arbitrator should find or hold that the Exchange program or any part thereof is unenforceable for any reason, then such court or arbitrator shall reform the Exchange program, or the offending part thereof, as may be necessary to make it enforceable while leaving all other portions intact.

### **INITIAL SUBMISSIONS**

Within 20 calendar days of the selection of an arbitrator, the employee shall provide to the arbitrator and employer a WRITTEN STATEMENT OF CLAIM setting for the employee's complaint or claim with sufficient specificity to give fair notice to the employer of the legal and factual basis of the complaint or claim asserted and sufficient to allow the employer to reasonably provide a defense. The arbitrator on his/her own may, and at the request of the employer shall, determine the sufficiency of the employee's Written Statement of Claim or any Amended Written Statement of Claim. If the Written Statement of Claim or any Amended Written Statement of Claim is found to be deficient, the arbitrator shall point out the specific deficiencies and provide the employee with a reasonable opportunity to cure the deficiency. If the employee fails to cure the deficiencies within a reasonable amount of time as set by the arbitrator, then the arbitrator shall dismiss the employee's complaint with prejudice and enter an award in favor of the employer.

Within 20 calendar days of the receipt of the employee's Written Statement of Claim, or any Amended Written Statement of Claim, the employer shall either object to the sufficiency of it and request a determination by the arbitrator or provide to the employee and the arbitrator a Written Statement of Employer's Affirmative Defenses. The employer's Written Statement of Affirmative Defenses shall be sufficiently specific to allow the employee to reasonably provide its defense to such affirmative defenses.

The arbitrator on his/her own may, and at the request of the employee shall, determine the sufficiency of the employer's Written Statement of Affirmative Defenses. If the Written Statement of Affirmative Defenses is found to be deficient, the arbitrator shall point out the specific deficiencies and provide the employer with a reasonable opportunity to cure such deficiencies. If the employer fails to cure such deficiencies within a reasonable time as set by the arbitrator, then the arbitrator shall disregard any affirmative defense to which such deficiencies apply.

Within 60 calendar days after the employer makes a Written Statement of Affirmative Defenses which is not objected to, or within 60 days of a determination that a Statement of Affirmative Defenses is sufficient, the employee shall provide to the employer and the arbitrator a written disclosure setting forth the following:

- 1) The amount and method of calculating of any monetary damages sought by the employee including any claim for compensatory and punitive damages
- 2) The nature of any non-monetary relief sought by the employee
- 3) The name and current address and telephone number of all persons with knowledge of facts relevant to any claim or complaint of the employee or any the defense of the employer and a brief statement, of the persons relevant knowledge

- 4) The name and current address and telephone number of any expert witnesses upon which the employee intends to rely and, with respect to each such experts, a statement of their qualifications as an expert, the general substance of the experts mental impressions and opinions and a brief summary of the basis for such impressions and opinions.

Within 60 calendar days after the employer's receipt of the employee's disclosure, the employer shall provide to the employee and the arbitrator a written disclosure setting forth the following:

- 1) The name and current address and telephone number of all persons with knowledge of facts relevant to any claim or complaint of the employee or any defense of the employer and a brief statement of the person's relevant knowledge
- 2) The name and current address and telephone number of any expert witnesses upon which the employer intends to rely and, with respect to each such experts, a statement of their qualifications as an expert, the general substance of the experts mental impressions and opinions and a brief summary of the basis for such impressions and opinions.

### **DISCOVERY**

Once the Written Statement of Claim and Written Statement of Affirmative Defenses have been made the parties may, subject to the discretion of the arbitrator, engage in discovery. The Arbitrator has exclusive authority to determine the necessity and reasonableness of discovery up to the maximum allowable as specified below:

- Track 1: Applies to all proceedings where the amount of damages sought is less than \$10,000
  - Each party shall be permitted a maximum of 3 oral depositions of fact witnesses, 15 interrogatories, and 20 requests for admission.
- Track 2: Applies to all proceedings where the amount of damages sought is \$10,000 to \$50,000 or where any non-monetary relief is sought.
  - Each party shall be permitted a maximum of 5 oral depositions of fact witnesses, 1 deposition of an expert witness, 20 interrogatories, 20 requests for admission, and 20 requests for production.
- Track 3: Applies to all proceedings where the amount of damages sought is over \$50,000
  - Each party shall be permitted a maximum of 5 oral depositions of fact witnesses, 2 depositions of expert witnesses, if any, 20 interrogatories, 20 requests for admission, and 20 requests for production.

When oral depositions are permitted under Track 1, 2, or 3, no person shall be deposed for more than 5 hours by the party requesting the deposition and cross examination shall be limited to 3 hours.

All discovery must be completed not less than 30 days prior to the arbitration hearing.

The arbitrator may permit greater discovery than is provided for within the Exchange program only if the party seeking greater discovery proves and the arbitrator finds that the discovery provided for under Exchange is insufficient to allow for a fair opportunity for the presentation of the complaining party's claims or defenses.

### **BURDEN OF PROOF**

As to all complaints and claims asserted by the employee in the Written Statement of Claim, the employee shall have the burden of proof by the preponderance of the credible evidence as if the complaints or claims had been asserted in a court of competent jurisdiction and the employer shall be deemed to have made a general denial as to all such complaints and claims. As to all affirmative defenses asserted in the Written Statement of Affirmative Defenses, the employer shall have the burden of proof by the preponderance of the credible evidence as if the affirmative defenses had been asserted in a court of competent jurisdiction. This provision is not intended to alter the burdens of proof or the shifting of burden of proof provided in the state or federal substantive law applicable to the claims asserted.

### **PRE HEARING DISCLOSURES**

At least 20 business days prior to any scheduled hearing, both parties must provide to each other and the arbitrator a written disclosure of the following:

- name, address and phone number of any attorney or other person who will attend and participate in the arbitration;
- names of all witnesses which the party intends to question during arbitration and the current phone numbers and addresses for each;
- a copy of any document that the party intends to rely upon at the hearing;
- a list of all other exhibits or tangible things that the party intends to rely upon at the hearing.

### **PRELIMINARY OR DESPOSITIVE MATTERS OR MOTIONS**

Arbitrator shall have authority to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by phone or in person as the arbitrator deems necessary. The arbitrator shall have the authority to rule on a motion to dismiss and/or a motion for summary judgment by either the employee or the employer and shall apply the standards governing such motions under Federal Rules of Civil Procedure 12 and 56. The time for filing such a motion shall be determined by the arbitrator. The arbitrator will rule on such motions at least 10 calendar days prior to the scheduled hearing of the arbitration specific to the merits of the Legal Issues<sup>▽</sup>, or benefit, or work injury claim. However, in ruling on a motion or prehearing dispute or in reaching a decision, the arbitrator shall apply the governing substantive law (and the law of remedies, if applicable) of the State of Texas or federal law, or both, as applicable to the claim(s) asserted. In deciding other procedural or evidentiary issues, the Texas Rules of Evidence and the Texas Rules of Civil Procedure shall apply.

### **PROCEDURES FOR HEARING**

Prior to formal presentation of witnesses and other evidence, both parties shall present a brief opening statement which shall explain the party's factual and legal position on the issue(s). Claiming party presents first and will be offered the opportunity to rebut the defending party's evidence. Each party will then have the opportunity to present a brief closing statement. Both parties are entitled to present, with the permission of the arbitrator, a post-hearing brief. The time for filing such briefs, as well as any page limitations will be determined by the arbitrator.

Either party may request court reporting of the proceedings. However the costs of the reporting will be fully payable by the requestor and will not be included with the cost and fee schedule or employer allowance values. Transcripts will be made available to the non-requester upon payment by the non-requester of one-half of the cost of the reporting and of the cost of the transcript.

### **AVAILABLE RELIEF**

The arbitrator shall have the authority to fashion any award and remedy available under the state or federal law governing the claims involved. This authority to fashion an appropriate remedy includes the authority to fashion an equitable, non-monetary remedy. Additionally the authority to fashion an award or remedy includes the authority to award reasonable attorney's fees to the prevailing party, whether the employer or the employee, where such an award would be permitted under the law governing the claims involved if the claim had been asserted in court.

The arbitrator shall be permitted to award punitive damages where such damages are available, and only to the extent available, pursuant to current caps, limitations, or burdens of proof provided by the laws of the state of Texas or federal law or both, as applicable to the claims asserted - under the prevailing law applicable to the type of claim(s) raised and found to be warranted by the arbitrator, as if such claims had been brought in a court. If the arbitrator determines the claim to be subject to punitive damages, the arbitrator shall take into account the employer's role in supporting the expense of arbitration; therefore the punitive damages shall be adjusted and recovery would be the net after said expenses.



### **VENUE**

Unless otherwise agreed in writing by the employee and employer, all arbitration hearings shall be conducted in the county where the employee was employed at the time of the causal event to the dispute. However, at the discretion of the arbitrator, preliminary hearings may be conducted by telephone conference in which case it shall not matter where the parties or the arbitrator are located while participating in the preliminary hearing by telephone conference.

### **ARBITRATOR'S DECISION**

Upon rendering a decision, the arbitrator will provide the written decision, along with the factual and legal basis for the award in writing within 30 days after the conclusion of the arbitration hearing.

### **CONFIDENTIALITY**

All proceedings conducted in arbitration shall be confidential. No documents, transcripts, or other matters used in connection with the arbitration shall be made public or be used in any manner other than for the purpose of the arbitration or proceedings to compel arbitration or enforce or set aside the arbitration. In addition, the parties may request the arbitrator issue a protective order ensuring the confidentiality of the proceedings. The arbitrator will have the authority to make appropriate rulings to safeguard the confidentiality of the proceedings.

Further, either the employee or the employer may seek an injunction or other court order from a court of competent jurisdiction protecting such party from any actual or threatened disclosure of confidential information in violation of this provision.

### **APPEAL RIGHTS**

The decision of the arbitrator shall be binding and final. There shall be no appeal from the arbitrator's decision except that an arbitrator's award shall be subject to judicial review where:

1. The award is arbitrary or capricious;
2. The award is the result of or tainted by the arbitrator's prejudice or partiality;
3. The award is the result of fraud, mistake, or misconduct as would imply bad faith or failure to exercise an honest judgement;
4. The award is beyond the authority granted under Exchange or is upon a matter not subject to or submitted to arbitration under Exchange.

### **REFORMATION**

It is intended that all Legal Issues<sup>▽</sup> be resolved without litigation, and through arbitration as a last resort. Therefore, if any court or arbitrator should find or hold that the Exchange program, or any part thereof, is unenforceable for any legal reason then such court or arbitrator shall reform the Exchange program, or the offending part thereof, as may be necessary to make it enforceable.

## **ENFORCEMENT**

An award by an arbitrator shall be enforceable in any court of competent jurisdiction. Venue for any enforcement action shall be in the county of the employee's employment at the time of the causal event to the dispute unless otherwise mutually agreed by both parties.

## **CONCLUSION**

Exchange works for each of us by

- providing you with a viable avenue for any dispute
- strengthening our official communication lines
- promoting understanding and appreciation of the different perspectives that will always exist among us
- encouraging fair treatment and wise management practices
- and saving all involved from the emotional upheaval and expense that comes with legal court battles.

Working together is key to remaining a successful group in our profession and keeping us focused on why we're here: to serve our customer.