

## Preliminary Relief in Arbitration

**A** historical drawback to arbitration was that parties couldn't obtain emergency relief from an arbitrator to preserve the status quo pending the full arbitration. Parties seeking emergency relief needed to go to court to obtain a temporary restraining order or preliminary injunction. Nearly all federal and state courts allowed parties to do so to prevent irreparable harm, and the injunction (if issued) would stay in place until the final arbitration award was issued.



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relief in the public along with the time and expense of court-mandated rules, briefing, discovery and evidence.

Aware of this gap, the major arbitration providers (AAA, JAMS, and CPR) have developed new rules and procedures for arbitrators to issue preliminary relief.

This procedural gap ran counter to some of the reasons parties like arbitration. Instead of the speed, economy, and confidentiality the parties sought, they ended up litigating their preliminary

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Under each set of rules, when a clause provides for arbitration administered by one of those administrators, a party in need of emergency relief applies for that relief with the administrator. The administrator then promptly appoints an emergency arbitrator. Either party can challenge the arbitrator for bias.

Assuming no bias, the emergency arbitrator sets a schedule to hear the evidence with all the flexibility that arbitration allows. Testimony can be given in writing, or by phone, or by video, all as the arbitrator deems fair. The arbitrator can ask for briefs or dispense with them. Nothing is open to the public.

If the emergency arbitrator issues an award, the emergency arbitrator retains authority over the matter until the parties choose their regular arbitrator in the ordinary course. Arbitrators generally have the power to issue sanctions for failure to comply with their orders.

These procedures have not been in place long, and have been invoked only about ten times to date. Thus there's no track record as to how well the process works, but it's well thought out and a good development for those who prefer the economy, speed, and confidentiality of arbitration.

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