



# CVS Arbitration Policy Raises Concerns

**Former supervising pharmacist speaks out about a new opt-out option within a CVS training module he says could rob workers of their rights.**

By Kristin B. Frasch  
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A longtime former supervising pharmacist for CVS, the recently renamed pharmacy giant (now CVS Health) headquartered in Woonsocket, R.I., has put out public warnings to all current CVS employees about an arbitration policy introduced in a training module that he claims may compel them to give up their legal rights.

Anthony Tristano, who worked for CVS for more than 20 years, says the company's new CVS Health Arbitration of Workplace Legal Disputes Policy, announced in October as part of its LEARNet training module, pre-emptively asks employees to give up their rights to any class or collective action in any court.

A release sent out earlier this month detailing Tristano's concerns claims to quote from page 6 of the policy that they're asked "not just to go to arbitration instead of court, but to go to arbitration as a single individual party," something the policy states is supposed to form a mutually binding contract between CVS Health and its employees.

Attorneys representing Tristano, from the law firms of Neil H. Greenberg and Associates and Gordon Law Group, say in the release issued by both firms that the delivery of what the company calls its CVS Health Colleague Guide to Arbitration as part of the training module was especially disturbing because employees might be agreeing to the arbitration policy when they think they're simply completing a training exercise. The company's move, the release says, "created an uproar within the ranks of pharmacists, pharmacy interns, pharmacy techs and front-store employees."

"The training module includes a Click Yes button [agreeing to the policy], but no Click No button," the release states. "Instead, employees who want to opt out must send a [hard-copy] letter to a P.O. Box in Rhode Island stating their desire to opt out."

Tristano, it goes on, "urges all employees to read through the agreement carefully and understand that choosing to click the 'Yes' button may put them at a future disadvantage should they find themselves in legal disagreements with the pharmacy."

"In addition," it says, "Tristano worries that too many employees will click the button out of habit, with no idea what they have agreed to."

"I am deeply disturbed by what CVS is doing here, personally and professionally," Tristano says in the release. "This change in policy is intended to lead ... hundreds of thousands of employees nationwide down alternative pathways where rights provided to them may be compromised. It is being presented to the mass of employees through the same routine courses and I suspect that few comprehend the impact this has on their rights."

Neil H. Greenberg and Associates is also representing CVS employees in a class-action lawsuit filed in April on behalf of techs and front-store clerks in five states – Massachusetts, New York, Connecticut, Pennsylvania and New Jersey – contending the company is not paying employees for the time they need to complete the training module. Many, it claims, are completing courses online at home because they are simply too busy to finish them at work.

The fact that this arbitration policy is being presented in this way at this time, says Neil H. Greenberg, seems coercive and curious to say the least.

"Once you click into this particular course," he says, "you're locked in. You have a certain time to complete it and if you have to walk away, to do your job, and you let it expire, you have automatically agreed to the arbitration policy. You lose these rights by default. If you do get to the end, you either click Yes or you have to write a letter to a P.O. Box to opt out."

His message to employers and HR?

"Companies that attempt to compel their employees to surrender their rights to bring claims in state and federal courts through individual and class actions," says Greenberg, "must consider the long-term deleterious effect that it will have on the employees' morale and confidence that the company is going to treat them fairly."

In addition, he says, arbitration is a difficult, no-win legal setting for lower-paid employees who may find themselves victimized or discriminated against by an employer and can't afford, let alone find, an attorney. "In arbitration," he says, "there is generally no appeal."

On the contrary, says Mike DeAngelis, CVS' director of public relations, "CVS Health has implemented a voluntary arbitration program to resolve legal disputes between employees and the company."

"In general," he says, "arbitration is less formal, more efficient and less time-consuming than the traditional court process, and employees who choose to participate in the program will have the ability to make the same claims and recover the same remedies."

"The arbitration program does not replace CVS Health's existing employee-dispute-resolution procedures," he adds. "It

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The arbitration program does not replace CVS Health's existing employee-dispute-resolution procedures, he adds. It also does not prevent employees from making benefit claims or filing complaints with any federal, state or local agencies."

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Indeed, says Zachary D. Fasman, a partner at New York-based employment law firm Proskauer, there's nothing wrong with CVS' approach, so long as employees were made aware of the policy within the training module and wool was not overtly being pulled over their eyes.

"Employers put out arbitration policies all the time," he says. "[Arbitration provides] good ways to avoid costly disputes for both sides, and there are many ways to communicate them. Even how they're signed – or if they're signed – really depends on the employer.

"What I always tell my clients [doing this or contemplating doing this]," Fasman says, "is to make sure they're bringing to the attentions of the employees that this is the way the company wants to do business. That's where employers can get into trouble, where they're not ensuring that all employees are aware of the policy."

Despite the fact that the evolving debate and discussion about the legalities of arbitration policies and procedures continues at the National Labor Relations Board and in the court, he says, what CVS is doing is, for the most part, standard operating procedure.

In a recent *HREOnline*™ "Legal Clinic" column, Keisha-Ann G. Gray, a partner in the labor and employment law department of Proskauer and co-chair of the department's employment litigation and arbitration practice group, writes that, "as arbitration agreements have become more popular, courts have started to raise concerns about whether certain [ones] are fair to employees."

The "concept behind this analysis," she writes, "is whether the agreement is unconscionable. Unconscionability is a contract term that essentially means a clause or agreement is so unfair to one party that it 'shocks the conscience.'"

In sum, she adds, "enforceability will turn on whether your arbitration agreement is perceived to be procedurally and/or substantively unconscionable. In order to increase the chances it will be upheld, HR, in conjunction with legal, should carefully consider the overall fairness of the clauses through the eyes of a neutral [party]."

No court proceedings have been scheduled at this point pertaining to Tristano's concerns and oral arguments for the class-action lawsuit have yet to be scheduled.

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