

FAQ's for the Employment-Related Mass Claims Protocol

- What is the Employment-Related Mass Claims Protocol?
 - The Protocol is a procedure designed by CPR to help with the administration of a mass of arbitration claims that are of nearly an identical nature brought against the same company.
- What are claims of a nearly identical nature?
 - Claims of a “nearly identical nature” are claims that arise out of a factual scenario and raise legal issues so similar one to another that application of the Protocol will reasonably result in an efficient and fair adjudication of the claims.
- Why was this Protocol necessary?
 - It can be difficult to bring resolution efficiently and effectively when many, nearly identical claims are brought at the same time. The Protocol is designed to facilitate resolution in a more effective and efficient manner.
- How does the Protocol work?
 - When more than 30 individual employment-related notices of arbitrations are initially filed with CPR under the CPR Administered Rules or commenced under the CPR Non-Administered Rules, the Protocol provides that CPR will randomly select, from amongst the total filed arbitrations, a group of 10 to be “Test Cases.” The lawyers for each side can nominate another 5 per side. These 10-20 Test Cases will proceed to arbitration first, and a neutral arbitrator will be assigned to each Test Case. These cases should finish in most circumstances within 120 days with a written decision from the arbitrator. In order to protect the confidentiality of each claimant, CPR will remove the identifying information about each claimant from the decisions, and then these anonymized decisions will be given to a mediator selected by both sides to help resolve the cases. Working with both sides, the mediator will be able to use these anonymized decisions to better understand the nature of these cases and what factors are important in determining the outcome, and to try and find a solution for resolving all of the remaining arbitration cases without individual arbitration of each case. The mediator and the lawyers for both sides will have 90 days to come up with a solution, which will likely be an objective set of criteria that can be applied to make an offer to settle each remaining arbitration. If they can come up with such a solution, then an offer to settle will be made to each remaining claimant. Each claimant can accept the offer and resolve his or her case or reject it and proceed with an individual arbitration. If the mediation does not produce an objective set of criteria that can be applied to make an offer to each claimant, then either the defense or the claimants can opt out of arbitration and proceed in court or still choose to proceed with individual arbitrations of each remaining claim.
- When does the Protocol apply?
 - The Protocol applies only if: 1) there is an agreement between the employer and the claimant that provides for arbitration under the CPR Rules for Administered or Non-Administered Arbitrations; 2) the employer has agreed to afford each claimant the due process protections specified on CPR’s website; 3) there is a specific reference in the agreement to the Protocol and the employer has provided access to the then current version of the Protocol to the claimant prior the claimant’s acceptance of the agreement; 4) the employer has not in its arbitration agreement with the employee fundamentally altered the terms of the Protocol; and 5) more than 30 individual employment-related notices of arbitration asserting arbitration claims of a nearly identical nature have been filed with CPR against the same employer in close proximity one to another. (If an arbitrator has already been appointed for an arbitration that is of a nearly identical nature,

- the arbitration shall not count toward the greater than 30 arbitrations necessary to trigger the Protocol.) Once the Protocol has been applied to claims asserted in a notice of arbitration, the employer will not pursue any amendments to any contract with the worker that would modify the procedures set forth in the Protocol as they apply to those claims asserted without consent by the worker expressly accepting such modification(s).
- What does the Administrative Arbitrator do?
 - The Administrative Arbitrator is an independent arbitrator working with CPR who will help facilitate management of the cases under the Protocol. Thus, if there is a disagreement between the parties as to whether claims are of a “nearly identical nature” (defined above), the Administrative Arbitrator is authorized to resolve that dispute quickly. The Administrative Arbitrator is also able to determine whether the Test Cases should be increased by up to 5 more nominated by each side. The Administrative Arbitrator may provide other assistance as well, such as helping coordinate discovery across cases, as agreed by the parties or as determined by CPR.
 - What are test cases? What is the purpose of the test cases?
 - The Test Cases are the initial cases that will proceed to arbitration. Experience with the Test Cases and decisions made on those cases are intended to help inform all parties participating in the mediation process and make it more likely everyone can come to a global solution for resolving all the cases. Reasoned awards deciding from between 10-20 cases should provide enough information about the nearly identical claims to optimize the chances for global resolution.
 - Why are the other cases paused during the test cases?
 - The objective of the initial phase of the Protocol is to drive toward resolution of the cases as a whole without spending resources on more arbitrations than are necessary. So, during the Test Case phase and during the Mediation process, the other cases are paused with all rights preserved to give everyone a chance to explore a global resolution. CPR believes that this procedure will actually encourage faster overall resolution of mass claims – especially when compared to the substantial delay that employees inevitably face while waiting for appointment of an arbitrator for, and the proceedings on, their claim when their claim is one of hundreds or thousands of mass arbitrations filed at the same time.
 - What is the purpose of the mediation?
 - The purpose of the mediation is to identify a substantive methodology for resolving the remaining arbitrations. The substantive methodology can vary but will likely involve identifying objective criteria the parties agree upon that can be used to make an offer to resolve each and every remaining arbitration.
 - How is the mediator selected?
 - Once the reasoned awards from the Test Cases have been finalized, the parties will all be given a chance to promptly agree upon a mediator; if CPR determines that this agreement is not or will not be forthcoming promptly, it will nominate three candidates for the role, and the parties shall have 7 days to agree upon whom they wish to select from the three nominees or 15 days to send in their rankings for each of the three. The mediator with the lowest combined score will be selected. If for any reason this procedure fails to select a mediator, CPR shall promptly appoint a suitable mediator from its list of 3 nominees.
 - How will the mediation work?
 - The anonymized reasoned awards from the Test Cases will be provided to the mediator and to the counsel involved in the mediation. Using this information and whatever additional information would be helpful, the mediator and counsel for the parties will work

together to arrive at an objective set of criteria that can be used to make an offer to resolve each and every remaining arbitration.

- Following the mediation, how will claimants be able to settle their cases?
 - If the mediation is successful in arriving at an objective set of criteria that can be used to make an offer to resolve each and every remaining arbitration, then the parties and the mediator should also determine how to approach each and every claimant to present the offer for his or her consideration. If the claimant accepts the offer, then an agreement to settle will be drawn up. If the claimant rejects the offer, then his or her case will proceed to individual arbitration.
- Can the parties still settle their arbitrations even if the mediation is unsuccessful?
 - Yes, nothing stops the parties at any time (before, during or after the mediation process) from reaching an agreement to settle their individual arbitrations or groups of arbitrations, even if the mediation process was not successful in identifying an agreed-upon methodology for resolving the remaining arbitrations.
- Why do the parties get to opt-out of the arbitration process and go to court if the mediation process was unsuccessful?
 - If the mediation was unsuccessful, then it may be that arbitrations will not be the most efficient and effective way for resolving these claims. Accordingly, all the parties are given the option to exit the arbitration process and go to court.
- Can a class action be formed upon opting-out?
 - That is an open question and should be discussed with the lawyers working on your matter.
- What about arbitrations asserting claims of a nearly identical nature that were not brought early enough to be part of the mediation process? Will they be given a chance to opt out and go to court if the mediation was unsuccessful? Will they be given offers if the mediation was successful?
 - The option to opt-out of arbitration and go to court will be extended to all claimants bringing newly commenced arbitrations who were not previously provided with this opt-out option and whose arbitrations have not proceeded to conclusion. Such claimant shall have 60 days from the commencement of their arbitration or 60 days from the close of the mediation period, whichever is longer, to opt-out of arbitration and go to court. This option will not be extended to such claimants once a newly initiated mediation process, if any, results in an agreed-upon substantive methodology to make an offer to resolve each and every remaining arbitration. At that point, such claimants will be given a chance to resolve their claims or proceed with arbitration. If the mediation process was successful, any newly filed arbitrations of a nearly identical nature should be extended an offer to resolve the arbitration, which the claimant may accept, or reject and proceed with arbitration.
- How will the remaining arbitrations proceed for claimants that do not settle or opt out?
 - CPR and each selected arbitrator shall proceed with as many arbitrations simultaneously as possible. If the mediation was unsuccessful, then those claimants who have decided to forgo the opportunity to opt out and go to court will have their arbitrations proceed in accordance with the random numbers assigned to their cases when they were filed. If the mediation was successful but a claimant chooses to proceed with arbitration, the sequence shall be determined by the timing of notifications of a rejection of settlement and whatever other factors are necessary for the efficient and orderly arbitration of the remaining claims. The object will be to resolve as many arbitrations as quickly as possible.

- Are the parties free to submit their arbitrations to other arbitral providers?
 - The parties are always free to agree to submit their arbitrations to other providers and be subject to their rules and fee structures. CPR is interested in facilitating prompt resolution of these matters and will not stand in the way of the parties seeking additional arbitral resources if they believe that will be helpful.
- How long will these arbitrations take?
 - Our objective, as the Protocol notes, is to proceed with as many arbitrations simultaneously as practicable. Like with the test cases, the arbitrators for these cases should render final, reasoned awards in most circumstances within 120 days of the initial prehearing conference, and any extensions of time that would result in a longer period of time should be approved by CPR. Our entire ethos – and that of the Protocol – is around efficiency. Precisely how long this will take will turn on how many arbitrations there are after the mediation process is complete. CPR will also continue to explore innovative ideas with the parties around discovery and other issues to help expedite matters.
- Why does only the claimant get to nominate the arbitrators?
 - By allowing the claimant to nominate arbitrators, the Protocol reduces the risk of the repeat-player concern, whereby since the employer is in each case, it may have a benefit in nominating the same arbitrator repeatedly. In addition, this should make the process more efficient.
- How does the arbitration selection process work under the Protocol?
 - In order to make the arbitration selection process as efficient as possible, CPR first ensures that the list of arbitrators from which the nominees are chosen by the employee (the “Master List”) is free of arbitrators with any fundamental conflicts. CPR does this by presenting the Master List of qualified arbitrators to the employer approximately every 6 months during the pendency of the mass claims to ensure that objections to any candidate’s independence or impartiality in serving in these matters are raised and determined by an independent Challenge Review Committee at the outset. The only ground for raising an objection at this point is if there is justifiable doubt as to the arbitrator’s independence or impartiality. Having these objections decided up front will speed the process of selecting the arbitrators in individual cases. After the Challenge Review Committee resolves any objections, the Master List is then presented to each claimant whose arbitration is proceeding. The claimant, and not the employer, will then be asked to nominate 3 arbitrators from the Master List. CPR will then check with the nominated arbitrators to determine whether they have any disclosure of information that could raise conflicts in the particular case, what their availability is, and what their rates are. This information will be shared with the parties to the arbitration. At this time, if either party has objections related to appointing one of the nominated arbitrators in the particular matter, they may raise them. CPR, and if applicable, its Challenge Review Committee, will resolve these objection(s), and then appoint any of the three candidates for whom no objection is sustained and who is available to handle the arbitration within a reasonable timeframe.
- What is the Challenge Review Committee?
 - The Challenge Review Committee is a group of three independent arbitrators who are assigned to resolve challenges or objections to particular arbitrators serving in arbitrations. For more information, see [this link](#).