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Labor and Employment Legal Update

EEOC Issues Guidance to Employees Regarding Discrimination Claim Waivers in Severance Agreements

In the current economic climate, layoffs and terminations of employees are occurring frequently. Many employers opt to offer enhanced severance benefits to employees in exchange for a release and waiver of any claims. With this in mind, the United States Equal Employment Opportunity Commission ("EEOC") recently issued a guidance document entitled "Understanding Waivers of Discrimination Claims in Employee Severance Agreements." The guidance is written in a question-and-answer format and is designed to aid employees in their understanding of waivers in severance agreements and to answer their concerns regarding the legality of agreements that contain discrimination claim waivers. The EEOC offers some insight as to how severance agreements and their waivers may be viewed by courts and the EEOC. The guidance also reveals how employees may try to avoid their obligations after signing a severance agreement with a waiver. Employers should be aware that their employees may refer to this document when presented with a severance agreement.

The guidance document can be viewed at http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html. It is organized as follows:

- Part II gives basic information about severance agreements
- Part III details when a waiver is valid
- Part IV focuses on waivers of age discrimination claims and compliance with the Older Workers Benefit Protection Act
- Appendix A offers a checklist with tips on what employees should do before signing a waiver in a severance agreement
- Appendix B provides a sample of an agreement offered to a group of employees giving them the opportunity to resign in exchange for severance benefits

Importantly, the EEOC concentrates on what is required for a "knowing and voluntary" release of an age discrimination claim under the Age Discrimination in Employment Act ("ADEA") and its amendment, the Older Workers Benefit Protection Act ("OWBPA"), and points out the following:

- A court held that a severance agreement was not enforceable when it was not written in a manner calculated to be understood
- A court held that fraud was a sufficient reason for finding that a waiver was invalid where a company initially told an employee, who signed a waiver, that he was terminated

because of a "reorganization" and later told him that he was discharged because of poor performance after hiring a younger person

- Employees cannot be required to return their severance pay if they file a charge with the EEOC after signing a waiver

What Should Employers Do Now?

Employers using severance agreements may wish to review the EEOC's guidance and evaluate their agreements in light of the EEOC's new guidance, and applicable federal and state laws.

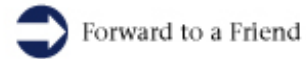
If you have any questions about implementing employee reductions or terminations, or drafting appropriate severance agreements, please contact one of the following attorneys:

Alice E. DeTora
adetora@rc.com
(860) 275-8234

Jean E. Tomasco
jtomasco@rc.com
(860) 275-8323

Britt-Marie K. Cole-Johnson
bcole-johnson@rc.com
(860) 275-8279

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