

## [ Alerts and Updates ]

### EEOC Provides Guidance for Employers Preparing Employee Separation Agreements

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Does your company use or has it considered using severance or release agreements to obtain waivers of claims from terminated or laid-off employees? If so, do the documents you use provide all the protection your company needs? If not, in light of the current economic downturn, should you reconsider obtaining release agreements from separated employees? The Equal Employment Opportunity Commission ("EEOC") recently released additional assistance for employers considering questions such as these.

#### Understanding Waivers of Discrimination Claims in Employee Severance Agreements

On July 15, 2009, the EEOC issued a [technical assistance document](#) that offers guidance to both employers and employees on the rules and requirements for enforceable waivers of discrimination claims in employee separation agreements. The document, which is presented in a question-and-answer format, provides a general discussion of separation agreements. The EEOC describes the contents of a valid release of claims, as well as the more specific requirements for enforceable waivers of claims by employees ages 40 and over, under the Older Workers Benefit Protection Act ("OWBPA").

In addition, the EEOC document provides a checklist of issues for employees to consider prior to signing a separation agreement, as well as a sample release agreement for use by employers.

During the EEOC meeting at which the document was presented, Acting EEOC Chairman Stuart Ishimaru reported that age discrimination claims filed with the EEOC increased by 29 percent between fiscal years 2007 and 2008. With the rising age of today's workforce and the economic downturn triggering increased numbers of employee terminations, the EEOC anticipates that the number of age discrimination claims will continue to rise.

Release agreements will continue to be a tool for employers to use when separating employees, regardless of age. However, the benefit of minimizing litigation risks may result only from the use of waiver documents that are fully enforceable under the technical requirements of the OWBPA, as well as other applicable laws.

#### What This Means for Employers

Employers that have decided to terminate or lay off an employee may want to consult with legal counsel about the potential risks and benefits of the use of written waivers and to develop an appropriate release agreement that may help to minimize the risk of litigation by the separated employee. In addition, employers currently using release agreements when separating employees may want to review these documents with legal counsel to ensure that they comply with the EEOC's recent guidance on the requirements for an employee's valid waiver of discrimination claims.

#### For Further Information

If you have any questions regarding this Alert or would like more information regarding the issues presented above, please contact any member of the [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.