

CLIENT ALERT: EEOC Files Lawsuit Challenging Common Severance Agreement Provisions

On February 7, 2014, the Equal Employment Opportunity Commission (“EEOC”) filed a lawsuit in the Northern District of Illinois challenging language found in a severance agreement. The lawsuit takes an aggressive stance against language that is commonly included in severance and separation agreements.

In *EEOC v. CVS Pharmacy, Inc.*, (docket no. 1:14-cv-863), the EEOC alleges that the language found in a CVS severance agreement “interferes with its employees’ right to file charges” with the EEOC to “communicate voluntarily with and participate in the proceedings conducted by the EEOC....” The EEOC takes issue with CVS’s “five-page single spaced” severance agreement. Specifically, the EEOC challenges many terms commonly found in severance/separation agreements, including cooperation, non-disparagement, non-disclosure of confidential information, the general release of claims, and covenant not to sue. The EEOC brings its lawsuit despite language in the severance agreement, as alleged in the Complaint, stating that CVS does not intend to “...interfere with Employee’s right to participate in a proceeding with any appropriate federal, state or local government agency enforcing discrimination laws, nor shall this Agreement prohibit Employee from cooperating with any such agency in its investigation.”

Whether the EEOC will be successful in its challenge is unknown. Employers should contact their M&J attorney with questions about the language in their standard severance/separation agreements and the potential impact of the EEOC’s enforcement position.

Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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