

CLIENT ALERT: EEOC Issues Guidance for Employees Regarding Waivers of Discrimination Claims in Severance Agreements

On July 15, 2009, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued new guidance regarding waivers of discrimination claims in employee severance agreements. This guidance is directed towards employees, rather than employers.

In sum and substance, the EEOC guidance generally restates the statutory requirements for individual and group waivers under the Age Discrimination in Employment Act (“ADEA”), as amended by the Older Workers Benefit Protection Act (“OWBPA”). Despite its intended audience of employees, the guidance is a useful source for employers as well.

Specifically, the guidance serves as a reminder for employers of several important points:

- Severance agreements cannot prohibit an employee from filing a charge with the EEOC or limit the right to testify, assist, or participate in an investigation, hearing, or proceeding conducted by the EEOC.
- A waiver of ADEA claims is not valid unless the employee is advised to consult with an attorney. An acknowledgement that the employee has sufficient time to consult with an attorney is insufficient.
- An employer cannot cure a defective waiver of ADEA claims by later providing the OWBPA information that was omitted from the original agreement.

The guidance also contains a sample waiver for exit incentive or other termination programs. Employers should use great caution because the sample waiver language provided by the EEOC may not fit their specific needs. Accordingly, while it is important for employers to be aware of this guidance from the EEOC, employers should continue to consult with counsel regarding severance agreements in order to ensure any waiver provisions are sound and effective.

The EEOC’s guidance can be accessed through the EEOC’s website by clicking [here](#).

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