

“TRAPS FOR THE UNWARY”

by Morris L. Hawk

When faced with the necessity of laying off or firing employees, employers often attempt to soften the blow by providing severance payments to their workers. In return, they usually ask their employees to sign severance agreements which preclude them from pursuing legal claims against the employer.

When preparing such release agreements, employers must recognize that every situation is different and, consequently, these documents must be formulated accordingly. Current law has indicated that there are both correct and incorrect ways to prepare such releases, so it is important for officials to craft them with care.

There are a number of common mistakes which are made when employers prepare their severance agreements, and these could ultimately render the releases invalid. For example, some agreements contain overly broad release language. It is imperative for the employer to understand that the receipt of severance payments may be conditioned upon the employee's waiver of his right to file a lawsuit or collect monetary relief in either a court or an administrative proceeding, but employees may not be asked to waive the right to file or participate in administrative charges before government agencies, such as the EEOC. In addition, because the courts have not yet established firm guidelines governing the release of claims made under the Family and Medical Leave Act, employers must tread carefully when requesting that their employees waive the right to file such actions.

Employers also run the risk of incorporating too much “legalese” into release agreements. If these agreements are deemed overly complex, courts may rule them invalid, so employers must ensure that the language in these documents is clear, concise and readily understandable. Another potential pitfall for employers is the failure to draft documents which comply with the specifications of the Older Workers Benefit Protection Act. Because this act requires employers to satisfy numerous requirements when preparing releases for employees over the age of forty, it is advisable to have an attorney review these agreements in order to make sure that they comply with all federal guidelines.

In conclusion, due to the changing nature of the law in this area, it is important for employers to consult with experienced attorneys whenever they prepare severance agreements. This will make it much more likely that the terms of these agreements will hold up if they are ever challenged in a court of law.

(In order to read the entire article, please see the April/May, 2007 issue of Contemporary Long-Term Care magazine, published by HCPPro Media Group, a division of HCPPro, Inc., 200 Hoods Lane, Marblehead, MA 01945)