

CLIENT ALERT

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Recent Court Decisions Affect The Validity Of Releases

Releases are essential components of separation agreements used in “one-off” terminations as well as in large scale restructurings. In exchange for a waiver of claims, the former employees typically receive payments and/or benefits to which they would not otherwise be entitled. In recent months, court decisions have been eroding the scope of the waiver of claims, and have even gone so far as to rule that certain fairly standard provisions in those agreements may be retaliatory and negate the waiver in general. As a result, a review of those decisions, and the form agreements typically used by employers, is warranted.

EEOC v. Lockheed Martin Corporation

Denise Isaac was laid off when her employer merged with a Lockheed Martin subsidiary. Lockheed notified Isaac that she would receive severance benefits only if she signed a Release of Claims, which provided that she was prohibited from pursuing “any Claims or charges against the Released Parties seeking monetary relief or other remedies for [her]self and/or as a representative on behalf of others.”

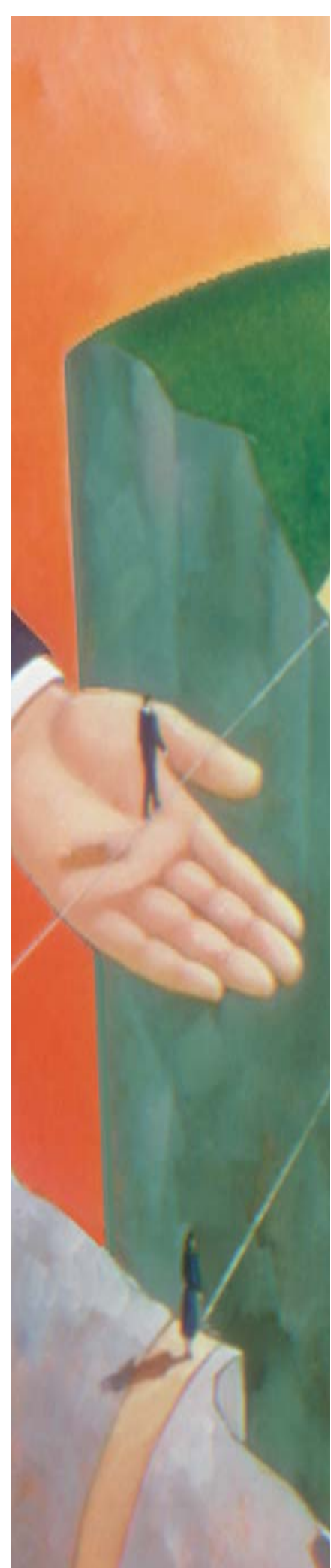
Isaac declined to sign the Release and instead filed a charge with the EEOC. She alleged that her discharge constituted race, gender and age discrimination. Her counsel notified Lockheed that Isaac was entitled to severance benefits and that the release was retaliatory. Lockheed refused to modify the Release and sent a memo to Isaac that she would only receive severance benefits if she dismissed her EEOC charge and signed the Release. Isaac refused and was not paid the severance benefits.

The EEOC sued on Isaac’s behalf in the U.S. District Court for the District of Maryland alleging retaliation under Title VII and ADEA claiming that Lockheed retaliated against Isaac by conditioning severance benefits on the withdrawal of her EEOC charge. Lockheed argued that presenting Isaac with the choice was permissible, because she was not otherwise entitled to severance benefits. The court rejected Lockheed’s argument, explaining that “Lockheed might well have been free to offer severance benefits to no one, but it cannot provide them only to employees who refrain from participating in protected activity.”

The EEOC also argued that the Release of Claims was facially retaliatory. Lockheed responded that the Release of Claims only waived an employee’s right to collect monetary damages. The court explained that “[i]f the scope of the release were only what Lockheed alleges it was, it would probably not be facially retaliatory.” The court further explained, however, that the Lockheed release was broader, barring all claims and charges against Lockheed.

Dougherty v. Teva Pharmaceuticals USA

Plaintiff Barbara Dougherty worked as a receptionist for Teva. “[F]riction” developed between Dougherty and her supervisor, and her supervisor became “involved ... in the efforts of [Dougherty’s] family members to convince [Dougherty] to resume medication she had been prescribed to treat her post-traumatic stress disorder.” Dougherty met with Teva’s Senior Director of Human Resources, who suggested that “it might be best if [Dougherty] left Teva.” Dougherty signed a release in exchange for two months’ severance pay and continued health insurance coverage. She then filed suit against Teva alleging, *inter alia*, violation of the Family and Medical Leave Act (“FMLA”).



The FMLA regulations provide that “employees cannot waive, nor may employers induce employees to waive, their rights under [the] FMLA.” The U.S. District Court for the Eastern District of Pennsylvania considered decisions of the Fifth and Fourth Circuits regarding whether FMLA claims could be released. The district court explained that in *Faris v. Williams*, the Fifth Circuit interpreted this provision as applying only to current employees and only to the prospective waiver of rights, but that in *Taylor v. Progress Energy, Inc.*, the Fourth Circuit disagreed with *Faris* and held that the provision’s plain language prohibits any waiver of FMLA rights unless approved by the Department of Labor or a court. The district court adopted the reasoning in *Taylor*, though noting that the Fourth Circuit has vacated the judgment of the *Taylor* court for rehearing.

The district court further rejected the employer’s argument that Dougherty ratified the agreement by retaining the consideration after learning that the release was voidable. The court also explained that the agreement did not contain a severability clause and, therefore, the entire agreement may be invalid because of the provision requiring release of FMLA claims.

Syverson v. IBM

Last year, in *Thomforde v. Int’l Business Machines Corp.*, the Eighth Circuit found that form releases used by IBM were unenforceable. Recently, the Ninth Circuit found similar problems with IBM’s releases, ruling that the “General Release and Covenant Not to Sue” that IBM employees signed in order to receive severance benefits in connection with their layoffs violated the Older Workers Benefit Protection Act (“OWBPA”), an amendment to ADEA. The court found that the IBM agreement was confusing, and that legal terms regarding its covenant not to sue and release provisions were

inconsistent and not clearly written. As a result, the court determined that the former employees’ waiver of claims could not be deemed “knowing and voluntary” as required by the OWBPA, and thus was unenforceable.

U-Haul Company of California

The U-Haul Company issued an arbitration policy requiring its non-union workforce to agree to arbitrate employment disputes. A union filed an unfair practice charge with the National Labor Relations Board (“NLRB”), contending that the policy, which prohibited employees from pursuing, outside of arbitration, any “legal or equitable claims and causes of action recognized by local, state, or federal law or regulations,” violated the National Labor Relations Act (“NLRA”). The NLRA permits employees to file an unfair practice charge with the NLRB if an employer interferes with their rights, among other things, to join unions and to act and bargain collectively. An administrative law judge agreed with the union’s contention, and the NLRB affirmed the ruling. According to the NLRB, the policy was too broad because it “reasonably includes the filing of unfair practice charges.”

Although the *U-Haul* decision involves an arbitration agreement, the same reasoning may be applied to separation agreements. If it is, provisions that may be interpreted as waiving an employee’s ability to file an unfair labor charge may be invalidated.

Conclusion

Separation agreements are intended to provide employees with a cushion to aid in the transition from employment, while providing employers with a guarantee that they will not have the exposure of litigation as a result of the termination of employment. These recent decisions illustrate, however, that the scope of the waiver actually obtained

by employers may be significantly narrowed, if not completely jeopardized. Releases should be reviewed to ensure first that they are clear and direct about what rights the employee is waiving in exchange for the payment of separation benefits. Releases may also waive the right to receive personal benefit as a result of an EEOC charge or action, but they cannot condition the payment of separation benefits on a commitment by the employee to refrain from filing, or withdraw, an EEOC charge. Other modifications to standard agreements should be closely reviewed with counsel. Requirements regarding, for instance, which claims are waivable may vary from court to court, and are being closely followed by employment counsel.

We send these Alerts to our clients and friends to provide information on recent developments in the law. The Alerts, however, should not be relied on for legal advice in any particular matter.

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