

Separation Agreement Improperly Admitted to Prove Employer's Liability

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Many employers use separation agreements when severing the employment relationship with employees. These releases and/or offers to compromise are often protected by evidentiary rules which prohibit the admission of such documents when they are used to prove liability.

Recently, however, an Arkansas court allowed an employee to admit into evidence, during trial, a proposed separation agreement which had been provided to her and which she refused to accept. The employee had filed suit against her employer alleging discrimination on the basis of gender and the failure to adequately investigate her complaints of discrimination. She sought to use the proposed separation agreement to demonstrate that immediately after she complained of discrimination, she was provided the separation agreement, and that the Company wasn't concerned with protecting workers from discrimination, but instead more interested in preventing lawsuits. The court allowed the admission of the agreement over the employer's objections.

The jury subsequently awarded the employee approximately \$700,000 in damages. The employer appealed, arguing that the separation agreement was improperly admitted as evidence and that it should have been inadmissible under the evidence rules. The Court of Appeal agreed that the district court should not have admitted the separation agreement because it was ultimately used by the employee in her efforts to prove that her employer was liable. The Court held that it was "very likely that the [improperly admitted evidence] affected the jury's deliberations and the jury verdicts," and that "admission of the separation agreement deprived [the employer of a fair trial. The verdict was reversed and the case was sent back to the trial court for a new trial.

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