

Waiver Language Sufficiently Clear to Satisfy Requirements of the OWBPA

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Upon his termination, a 62-year-old photo editor was provided with a severance package including 20 weeks' salary and other benefits. In exchange for it, he signed a separation agreement, which contained a provision stating that he waived and released any and all claims against the employer including claims under the Age Discrimination in Employment Act (ADEA). The separation agreement further provided that nothing in it restricted the employee's right under the ADEA to challenge the agreement's validity. It also stated that the waiver and release do not apply to any ADEA claims that might arise after the date that the employee signed the separation agreement. Two years later, the employee sued the employer, alleging that his termination was a pretext for age discrimination in violation of the ADEA because his position remained extant and was filled by a younger employee. The employer argued that the employee's claim was precluded by the separation agreement's waiver provision. The employee countered that the waiver provision was not enforceable because it was unduly lengthy and confusing in violation of the requirements of the Older Workers Benefit Protection Act (OWBPA). The U.S. Court of Appeals for the Second Circuit held that the employer had satisfied the OWBPA's requirements because the waiver provision was written in a manner calculated to be understood by its relevant employees. To ensure that waiver provisions are enforceable under the OWBPA, they must be drafted so that employees can understand what the waiver's effect will be.

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ADEA, Severance