



TO: ALL LABOR RELATIONS ADMINISTRATORS AND OFFICERS

FROM: STEVEN J. LOEFFLER, DEPUTY DIRECTOR

SUBJECT: Use of ADEA Waivers in Grievance Settlements

DATE: April 7, 2005

Attached is a waiver of rights and claims under the Age Discrimination in Employment Act (ADEA) for use in grievance settlements when appropriate. The use of this waiver should be determined on a case by case basis in light of the facts of each case and each individual agency's legal and operational needs. However, the following guidelines are provided for the use of an ADEA waiver in grievance settlements:

Disciplinary cases and, in particular, removal cases, where the grievant is age forty (40) or over, indicate consideration of the waiver. An agency engaged in grievance settlement negotiations concerning such a grievant who has: filed a claim under ADEA; has threatened or discussed filing a claim; or who has a history of litigation, should consider requiring the ADEA waiver before agreeing to any grievance settlement. Additionally, the waiver should be considered when resignation is accepted in lieu of termination. Should the Agency provide a monetary settlement and require the ADEA waiver, split consideration is recommended. That is, a portion of the monetary settlement should be designated for the grievance settlement, and another identifiable portion should be designated for the ADEA waiver. Finally, when the waiver is used, no payment should be made to the grievant until after the ADEA seven (7) day revocation period has tolled.

Questions concerning the determination of whether or not to utilize the ADEA waiver should be directed to your legal representative. Your assigned OCB Labor Relations Specialist has been trained on the inclusion of the waiver in grievance settlements.

NOTICE: GRIEVANT PLEASE READ CAREFULLY BEFORE SIGNING:

PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S. § 621 ET SEQ., YOU HAVE CERTAIN SPECIFIC RIGHTS. A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE AND I FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN AT LEAST TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE THE RIGHT TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL IMMEDIATELY BECOME A BINDING CONTRACT AS TO ITS TERMS. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SET FORTH HEREINBELOW.

Grievant

Date

Employer

Date

Witness

Date