



Monday, October 1, 2012

9:00 AM - 10:30 AM

500 – Top 10 Issues to Consider before Resolving an Employment Dispute

Michael Booden

Counsel

YMCA of Metro Chicago

Peter Hughes

Shareholder

Ogletree Deakins

Elizabeth Rader

Associate Counsel

The Cleveland Clinic Foundation

David Stringer

Assistant General Counsel

The Progressive Group of Insurance Companies

Faculty Biographies

Michael Booden

Michael R. Booden is senior litigation counsel with the YMCA of Metropolitan Chicago where he is accountable for providing advice and counsel to all levels of management with regard to labor and employment matters, managing litigation, intellectual property matters and negotiating complex commercial transactions. Mr. Booden previously served as assistant general counsel to Blue Cross Blue Shield of Illinois where he was responsible for negotiating, reviewing and drafting a wide range of complex commercial agreements, providing advice and counsel with regard to labor and employment matters, conducting investigations and was responsible for managing a multi-million dollar portfolio of litigation matters.

Mr. Booden has served as either first or second chair in over thirty trials in state and federal courts and before administrative judges. He has also authored several appellate briefs and represented clients before state and federal appellate tribunals. Upon graduating from The John Marshall Law School, Mr. Booden served as judicial law clerk to John J. Stamos, who formerly served on the Illinois Appellate Court and Illinois Supreme Court.

Mr. Booden is a past president of the ACC's Chicago Chapter and a past chair of the ACC Litigation Committee.

Peter Hughes

Peter O. Hughes is a shareholder in Ogletree Deakins Nash Smoak & Stewart, P.C. (Ogletree Deakins), a national labor and employment firm with 41 offices around the country and more than 600 attorneys. Mr. Hughes is in the Morristown, NJ office.

Mr. Hughes concentrates his practice on the representation of management in labor, employment, and employee benefit matters. He has extensive litigation and trial experience in a wide variety of employment-related matters, including wage and hour, discrimination, whistleblower, and trade secret cases. He provides litigation avoidance strategies, including development and implementation of policies, workforce training, and crisis management. Mr. Hughes is listed in Best Lawyers in America in the area of labor and employment law, and has been recognized by Chambers and Partners as one of the top management-side labor and employment attorneys in the state of New Jersey.

Mr. Hughes received his BA from Franklin & Marshall College in Lancaster, PA, and his JD from the Seton Hall University School of Law. He has lectured widely on labor and employment law issues for such organizations as the Association of Corporate Counsel and the New Jersey Institute of Continuing Legal Education.

Elizabeth Rader

Elizabeth (Betsy) Rader is senior counsel and executive director, contracts and employment, at the Cleveland Clinic, which is a \$6 billion health care system with 42,000 employees. Her responsibilities include health care compliance issues, particularly HIPAA; employment law for both physicians and all other employees; enterprise-wide contracting; policies; record retention; and risk management.

Ms. Rader's prior experience includes: senior vice president and general counsel of LOCUM medical group, director of CASA for Kids (a social service agency for abused children), and litigation associate at Squire, Sanders & Dempsey.

She is currently the president of the ACC's Northeast Ohio Chapter, serves as a board member and the development chair of The Legal Aid Society of Cleveland, and participates in long distance charity bike rides.

Ms. Rader received her BA in classics, summa cum laude, from The Ohio State University, and her law degree from Yale Law School, where she was a Coker Fellow.

David Stringer






David M. Stringer is assistant general counsel in the corporate law department at Progressive, a property-casualty insurer with operations and employees in all 50 U.S. states and Australia. He focuses on employment and labor law matters, employee benefits law and corporate ethics for Progressive's approximately 25,000 employees. He directs litigation, handles agency proceedings and consults on all aspects of HR strategy, including workplace policy-making and benefits plan design. Mr. Stringer also authored and launched Progressive's code of business conduct and ethics and advises on internal employee investigations and corporate ethics questions. He is a member of the law department's Recruiting Committee, is co-chair of its Diversity Committee and is on Progressive's e-discovery working team.

Prior to joining Progressive, he practiced in the labor and employment and litigation departments at Ropes & Gray in Boston, MA.


An active ACC member, he currently serves as co-chair of Employment and Labor Law Committee's Programs Sub-Committee and the ACC's Northeast Ohio Chapter board of directors.

Mr. Stringer is a graduate of Rutgers University (BA, economics and political science) and Harvard Law School.


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12



AM.ACC.COM








Session 500 /

Top Ten Issues to Consider Before Resolving an Employment Dispute


Michael R. Booden, YMCA of Metro Chicago
Betsy Rader, Cleveland Clinic Foundation
David M. Stringer, Progressive
Peter O. Hughes, Ogletree Deakins

October 1, 2012


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



#ACCAM12




AM.ACC.COM




Did the organization actually do something wrong?

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




What are our chances of winning the case and what is the organization's exposure if we lose, including monetary and non-monetary aspects, such as adverse publicity?

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




What is it going to cost to litigate the case?

ACC'S ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




Is management willing to devote the time and resources required to litigate the case?

ACC'S ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




Will settlement have an impact outside the case at hand?

ACC'S ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




Is the plaintiff is still your
employee?

ACC'S ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT




What is it going to take to settle
the dispute, including monetary
and non-monetary
considerations?

ACC'S ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



When is the right time to discuss settlement, and who should raise the issue?

ACC'S ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT



Is ADR appropriate?
If so, what form of ADR?



ACC'S
ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE IN-HOUSE COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

ACC Association of Corporate Counsel

What do you want –
and need –
in your settlement agreement?

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release (“Agreement”), is made and entered into by and between ABC, Inc., its parents, subsidiaries, divisions, predecessors, successors, related and affiliated companies and their respective current and former owners, shareholders, officers, directors, managers, representatives, attorneys, agents and assigns (collectively, “ABC” or “Company”) on the one hand, and Joe Smith, his heirs, executors, administrators, successors and assigns (“Former Employee”) on the other hand. ABC and Former Employee are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

RECITALS

A. Former Employee was separated from his employment with ABC on May __, 20__ (the “Separation Date”).

B. As of the Separation Date, Former Employee ceased to be an active participant under ABC’s fringe benefits programs pursuant to the terms of the respective plans, and no benefits accrued to Former Employee after the Separation Date. Former Employee has received separate notification concerning continuation of his group medical insurance coverage rights under COBRA.

C. ABC and Former Employee are entering into this Agreement to set forth the terms of their understanding regarding Former Employee’s separation from ABC and the good faith compromise, resolution and settlement of Former Employee’s claim that his position was eliminated, and his employment was terminated, because of his age, in breach of the implied covenant of good faith and fair dealing, and any and all other claims, demands, disputes and causes of action that may exist by or on behalf of Former Employee with or against ABC.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, ABC and Former Employee agree as follows:

1. **Presentation of Agreement.** Former Employee acknowledges and agrees that he was presented with this Agreement through his attorney on September __, 20__ and that he has carefully read this Agreement and knows its contents, that it was fully explained to him, and that he is signing this Agreement knowingly and voluntarily, with a full understanding of its significance and intending to be legally bound by its terms.

2. **Consideration.** In consideration for signing this Agreement and complying in full with all of its terms and conditions, ABC agrees to provide Former Employee with: (i) a payment directly to him in the gross amount of \$_____, less withholdings for all applicable income, payroll and employment taxes, which shall be provided in the form of a check made payable to Former Employee; and (ii) a payment in the amount of \$_____ directly to the law firm of Huey, Dewey & Louie (“Huey”). ABC further agrees to forgive and waive any right it has to the \$_____ which ABC paid Former Employee in excess of his sales draw in 20__. ABC additionally agrees that the restrictions in Section 3 of Former Employee’s Employment Agreement shall expire one day after the expiration of the revocation period described in Paragraph 15 of this Agreement.

3. No Consideration Absent Execution of this Agreement. Former Employee understands and agrees that he is not entitled to and would not otherwise receive the settlement payment described in Paragraph 2 above, except for his timely execution of this Agreement and the fulfillment of all promises, covenants and obligations set forth herein, including the release and waiver of claims in Paragraph 5. The settlement check shall be sent to Former Employee's attorney, _____ of Huey, within three business days after the expiration of the revocation period described in Paragraph 15 of this Agreement.

4. Taxation Issues. Former Employee acknowledges that, apart from the mandatory withholdings that ABC is required to make, Former Employee is solely responsible for complying with any and all tax obligations, liabilities and consequences which are or may become due or payable in connection with the settlement payment described in Paragraph 2 above. Neither ABC nor any Released Party (as defined in Section 5 of this Agreement) make any representations or warranties whatsoever concerning the tax obligations, liabilities and/or consequences of the settlement payment being provided under this Agreement and, except as stated otherwise, shall not be responsible for or have any obligation with respect to same.

5. General Release of All Claims. Former Employee knowingly and voluntarily releases, waives and forever discharges ABC, its parents, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former owners, employees, attorneys, officers, directors, insurers, managers and agents, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries (collectively referred to throughout the remainder of this Agreement as the "Released Parties"), of and from any and all claims, demands, disputes and causes of action, known and unknown, asserted or unasserted, which Former Employee has or may have against the Released Parties as of the date of his execution of this Agreement, including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Employee Retirement Income Security Act of 1974 ("ERISA")(except for any vested benefits under any tax qualified benefit plan);
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967 ("ADEA");
- The Older Workers Benefit Protection Act ("OWBPA");
- The Workers Adjustment and Retraining Notification Act;
- The Fair Credit Reporting Act;
- The Fair Labor Standards Act;
- The Family and Medical Leave Act, as amended;
- The Uniformed Services Employment and Reemployment Rights Act of 1994;
- The National Labor Relations Act;
- Civil Rights Act of 1991;
- The Equal Pay Act;
- The Rehabilitation Act;
- The Occupational Safety and Health Act;

- Employee Polygraph Protection Act;
- The employee (whistleblower) civil protection provisions of the Corporate and Criminal Fraud Accountability Act (Sarbanes-Oxley Act);
- The New Jersey Law Against Discrimination;
- The New Jersey Civil Rights Act;
- The New Jersey Family Leave Act;
- The New Jersey State Wage and Hour Law;
- The Millville Dallas Airmotive Plant Job Loss Notification Act;
- The New Jersey Conscientious Employee Protection Act;
- The New Jersey Equal Pay Law;
- The New Jersey Occupational Safety and Health Law;
- The New Jersey Smokers' Rights Law;
- The New Jersey Genetic Privacy Act;
- The New Jersey Fair Credit Reporting Act;
- The New Jersey Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim;
- The New Jersey Public Employees' Occupational Safety and Health Act;
- New Jersey laws regarding Political Activities of Employees, Lie Detector Tests, Jury Duty, Employment Protection, and Discrimination;
- Ohio Civil Rights Act, Ohio Rev. Code § 4112.01 et seq.;
- Ohio Age Discrimination in Employment Act, Ohio Rev. Code § 4112.14;
- Ohio Whistleblower Protection Act, Ohio Rev. Code § 4113.51 et seq.;
- Ohio Statutory Provisions Regarding Retaliation/Discrimination for Pursuing a Workers Compensation Claim, Ohio Rev. Code § 4123.90;
- Ohio Minimum Fair Wages Act, Ohio Rev. Code § 4111.01 et seq.;
- Ohio Wage Payment Act, Ohio Rev. Code § 4113.15;
- Ohio Uniformed Services Employment and Reemployment Act, Ohio Rev. Code §§ 5903.01, 5903.02;
- Any other federal, state or local law, rule, regulation, ordinance and the common law;
- Any claim that ABC or any of the Released Parties or any of their respective current or former owners, managers, officers, employees, directors, attorneys or supervisors, jointly or severally, breached or interfered with any express or implied contract, agreement, duty, promise, term or condition towards Former Employee;
- Any claim for promissory estoppel, violation of public policy, monies owed, infliction of mental or emotional distress, loss of consortium, invasion of privacy, false light, fraud, negligence, intentional tort, breach of express or implied contract, or defamation; and/or
- Any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in reviewing and considering this Agreement.

6. Acknowledgments and Affirmations.
 - a. Former Employee affirms that he has not filed, caused to be filed, and presently is not a party to any claim against ABC that is being released pursuant to Paragraph 5 above.
 - b. Former Employee affirms that he has been granted any leave to which he was entitled at ABC under the Family and Medical Leave Act or related state or local leave or disability accommodation laws.
 - c. Former Employee affirms that he has no known workplace injuries or occupational diseases relating to his employment with ABC.
 - d. Former Employee affirms that he has not divulged and will not in the future divulge any proprietary, confidential or sensitive business information of ABC, and that he has and will continue to maintain the strict confidentiality of such information.
 - e. Former Employee further affirms that he has not been retaliated against for reporting any allegations of wrongdoing by ABC or any of their officers, including any allegations of corporate fraud.
 - f. Former Employee affirms that all of the Company's decisions regarding his pay and benefits through the date of his separation of employment were not discriminatory based on age, disability, race, color, sex, religion, national origin or any other classification protected by law.
 - g. Former Employee acknowledges that because of circumstances unique to him, including, but not limited to, irreconcilable differences with ABC, he has no right to reinstatement to employment with ABC and agrees that he shall not apply in the future for employment with ABC, or any of its divisions, subsidiaries, related or affiliated companies. Former Employee agrees that this Agreement shall constitute sufficient and legal cause for ABC to refuse to hire him in the future. In the event that Former Employee is employed by an entity that is acquired by or merged into ABC, however, Former Employee shall not be required to separate from such employment as a result of this Agreement. The Parties agree that this Section 6(g) is a negotiated, non-retaliatory term of this Agreement.

Both Parties acknowledge that this Agreement does not limit either Party's right, where applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency, such as the Equal Employment Opportunity Commission or an equivalent state agency. To the extent permitted by law, Former Employee agrees that if such an administrative claim is made, he shall not be entitled to recover any individual monetary relief or other individual remedies, it being understood that the consideration being provided under this Agreement is in full satisfaction of any and all claims, disputes and/or causes of action Former Employee may have relative to, his former employment with such Company and his separation therefrom.

7. Non-disparagement. Former Employee and ABC mutually agree not to publicly criticize, disparage or otherwise demean in any way one another and/or their respective affiliates, officers, directors, employees or the Company's products and/or services. In the event that ABC should receive inquiries from prospective new employers regarding Former Employee, ABC shall

adhere to its standard policy and limit the information provided to the dates of Former Employee's employment with ABC and his positions held, and shall provide no further information.

8. Non-admission of Liability/Wrongdoing. Former Employee acknowledges and agrees that the monetary consideration he is receiving from ABC pursuant to this Agreement is solely in exchange for the resolution of disputed claims and the promises and covenants set forth in this Agreement. Former Employee further acknowledges and agrees that the settlement payments described in Paragraph 2 shall not under any circumstances be represented or construed as an admission of legal liability, guilt, non-compliance with any federal, state or local law or wrongdoing of any kind by ABC and/or any of the Released Parties.

9. Confidentiality. The Parties agree that all provisions, terms and conditions of this Agreement, including the amount of the settlement payment described in Paragraph 2, are and shall remain strictly confidential, unless disclosure is necessary by law and/or pursuant to valid legal process (e.g., an action to enforce the terms of the Agreement). Former Employee agrees not to disclose any information regarding the underlying facts leading up to or the substance of this Agreement, except to his immediate family members, tax and financial advisors, and/or the attorney with whom he has consulted regarding his negotiation and consideration of this Agreement.

10. Return of Property. Former Employee affirms that he has returned all of ABC's property, documents, and/or any confidential information in his possession or control. Former Employee also affirms that he is in possession of all of his property that he had at ABC's premises and that ABC is not in possession of any of his property.

11. ABC Employment Agreement. The Parties acknowledge and agree that Sections 2, 4 and 7 of Former Employee's Employment Agreement with ABC dated ____, 19__ (Former Employee's post-employment covenants relating to confidential information and inventions, and the enforcement procedures relating to such covenants) shall remain in full force and effect, and such Sections of the Employment Agreement (attached hereto as Exhibit A) are expressly incorporated by reference into this Agreement as if fully rewritten herein. Any alleged violation by Former Employee of the covenants set forth in Sections 2 or 4 of the Employment Agreement shall be addressed by ABC pursuant to the terms of Section 7 of the Employment Agreement. Except for Sections 2, 4 and 7 of the Employment Agreement, which shall remain in force, the Employment Agreement is otherwise superseded by this Agreement and shall be of no further force and effect.

12. Consequences of Breach. Former Employee acknowledges and agrees that in the event he should breach or violate any provision of this Agreement, including the obligations of strict confidentiality and non-disparagement, Former Employee shall be subject to legal action for such breach or violation and may be held liable to ABC and/or one or more of the Released Parties for contractual and/or other legal or equitable remedies, including, but not limited to, the potential return of the settlement payment provided under this Agreement..

13. Governing Law and Interpretation. This Agreement shall be governed and conformed in accordance with the laws of the United States and New Jersey. In the event of a breach of this Agreement, either Party may institute an action specifically to enforce any term or terms of this Agreement and/or seek damages for breach in the Superior Court of New Jersey, Passaic County, and the Parties hereby consent to the exclusive jurisdiction of such court for the stated purposes. Should any provision of this Agreement be declared illegal or unenforceable by a court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language in Paragraph 5, such provision shall immediately become null and void, leaving the remainder of this

Agreement in full force and effect. Otherwise, this Agreement may not be modified, altered or changed except by means of a writing signed by both Parties wherein specific reference is made to this Agreement.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be taken to be one and the same document, with the same effect as if all Parties hereto had signed the same signature page. A facsimile or electronic copy of any Party's signature shall be deemed as legally binding as the original signatures.

15. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto and fully supersedes any and all prior agreements, arrangements or understandings between the Parties, whether written or oral, except as otherwise explicitly stated herein. Former Employee acknowledges and agrees that: (i) he has carefully read all parts of this Agreement and fully understands their meaning; (ii) he had the opportunity to take up to 21 days after receiving this Agreement to decide whether to sign it; (iii) that any modifications, material or otherwise, made to this Agreement, do not restart or affect in any manner the original twenty-one (21) calendar day consideration period; (iv) the Company advised him, by copy of this Agreement, that he should consult with an attorney of his choosing before signing it; (v) he is signing this Agreement knowingly, voluntarily, and without any coercion or duress; and (vi) the only consideration Former Employee is receiving for signing this Agreement is described in the Agreement itself, and no other promises or representations of any kind have been made to cause him to sign it.

Former Employee may revoke this Agreement for a period of seven (7) calendar days following the day he signs this Agreement. Any revocation within this period must be submitted, in writing to Michael R. Booden and state, "I hereby revoke my acceptance of our Agreement." The revocation must be personally delivered to Michael R. Booden or his/her designee via facsimile or electronically within seven (7) calendar days after employee signs this Agreement, or mailed to Michael R. Booden and postmarked within seven (7) calendar days after employee signs this Agreement.

The Parties knowingly and voluntarily sign this Agreement, thereby accepting the terms of this Agreement, as of the date(s) set forth below:

JOE SMITH

Date

ABC, INC.

By:
Its:

Date

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE (“Agreement” or “Release”) is entered into by and between _____ (hereinafter, “Plaintiff”), _____ (collectively hereinafter, “Defendants”).

RECITALS

WHEREAS, Plaintiff was formerly employed by Defendants;

WHEREAS, Plaintiff has filed a lawsuit against Defendants entitled _____ in the Cuyahoga County Court of Common Pleas, Case No. _____ (the “Lawsuit”);

WHEREAS, Defendants deny all claims and allegations set forth in the Lawsuit;

WHEREAS, Plaintiff and Defendants have reached an agreement in full and final settlement of all claims that were asserted or could have been asserted by Plaintiff against Defendants in the Lawsuit and all other matters arising out of or relating in any manner to Plaintiff’s employment with Defendants and the cessation thereof;

WHEREAS, Plaintiff agrees to dismiss the Lawsuit, with prejudice, upon the mutual execution of this Agreement and in consideration of the Settlement Payment, as defined herein; and

WHEREAS, Plaintiff and Defendants desire to reduce their agreement to writing;

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Plaintiff and Defendants agree as follows:

1. Definitions. As used in this Agreement, any reference to Defendants shall include their parents, subsidiaries, partners, affiliates, divisions, related entities, predecessors and successors and, in their capacities as such, all of their present, past and future trustees, officers, directors, employees, former employees, representatives, attorneys, insurers, reinsurers, agents and assigns, and any reference to Plaintiff shall include, in their capacities as such, her heirs, administrators, representatives, agents, successors, spouses, executors, attorneys and assigns.

2. Consideration. In consideration of the promises, waivers and releases set forth in this Agreement, Plaintiff and Defendants agree as follows:

(a) Defendants will pay Plaintiff the total aggregate sum of One-hundred and five thousand dollars (\$105,000.00) (hereinafter, “Settlement Payment”). Defendants will issue two checks: one check payable to “_____” in the gross amount of _____ (\$_____) as payment for non-economic damages; and a

second check payable to “_____” in the gross amount of _____ (\$_____) for attorneys’ fees and costs. The Settlement Payment will be delivered to Plaintiff’s Attorney, _____, within twenty-one (21) days after the expiration of the “Revocation Period” set forth in Paragraph 8 of this Agreement, so long as Plaintiff and her attorney provide Defendants with the necessary W-9 forms, as discussed in Paragraph 2(b), infra.

(b) Prior to the receipt of this Settlement Payment, Plaintiff shall provide Defendants with a W-9 form executed by her, and cause her Attorney to provide Defendants with a W-9 form executed by him. A 1099 tax form shall be issued to Plaintiff for the portion of the Settlement Payment representing non-economic damages. 1099 tax forms shall be issued to both Plaintiff and her Attorney for the portion of the Settlement Payment representing attorneys’ fees and costs. Plaintiff shall be solely and exclusively liable for the payment of all applicable taxes, if any, with respect to the Settlement Payment paid hereunder. Should the Internal Revenue Services or any state or local governmental taxing authority determine that portions of the Settlement Payment relating to economic damages and/or attorneys’ fees constitute taxable wage income, Plaintiff agrees to indemnify and hold Defendants harmless from any and all damages, taxes (including FICA payments), penalties, and interests incurred as a result of any and all claims, demands, or causes of action that may hereafter be asserted against Defendants for failure to withhold taxes.

(c) The foregoing Settlement Payment is accepted by Plaintiff in full accord, satisfaction, and final compromise settlement of any and all claims, demands, actions, lost wages, causes of action, suits, damages, losses, costs, attorneys’ fees and expenses, of any and every nature whatsoever, known or unknown, including, but not limited to, any and all claims which Plaintiff may have or claim to have relating to her employment with Defendants, including, but not limited to, those claims raised in the Lawsuit described above. Plaintiff understands that the foregoing is all she is entitled to receive from Defendants. Plaintiff will receive no further payments from Defendants. Tender of the Settlement Payment shall therefore satisfy any and all obligations of Defendants to Plaintiff, whether the same be legal, contractual, equitable, statutory or otherwise. Plaintiff agrees that she shall be solely and exclusively responsible for all penalties related to this Agreement.

3. General Release.

(a) In consideration of the consideration included above in Paragraph 2, Plaintiff, on behalf of herself, her heirs, administrators, representatives, agents, successors, spouses, attorneys, executors and assigns, release, waives, and forever discharges Defendants, their parents, subsidiaries, partners, affiliates, divisions, related entities, predecessors and successors and, in their capacities as such, all of their present, past and future trustees, officers, directors, employees, former employees, representatives, attorneys, insurers, reinsurers, agents and assigns, from any and all claims, actions, demands, obligations or agreements of any kind, whether known or unknown at this time that Plaintiff may have against Defendants, including but not

limited to those matters arising out of, or connected with, Plaintiff's employment and/or separation from employment with Defendants, including, but not limited to all matters in law, in equity, in contract, or in tort, or pursuant to statute, including damages, attorneys' fees, costs and expenses, including, but not limited to, all claims arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), the Older Worker Benefit Protection Act ("OWBPA"), the Americans with Disabilities Act ("ADA"), Title VII of the Civil Rights Act of 1964, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Civil Rights Act of 1991, the Ohio Civil Rights Act, Ohio Revised Code Chapter 4112, the Ohio Whistleblower Protection Act, Ohio Revised Code Sections 4113.51 to 4113.53, or any other federal, state, or local law, statute, or ordinance affecting Plaintiff's employment with or separation from Defendants. This Release covers both claims that Plaintiff knows about and those she may not know about. It is expressly agreed and understood that this Release is a GENERAL RELEASE.

(b) Plaintiff further acknowledges and agrees that she has been properly paid for all hours worked, that she has not suffered any on-the-job injury for which she has not already filed a claim, that she has been properly provided with any leave of absence pursuant to the Family and Medical Leave Act ("FMLA") because of her own or a family member's health condition, and that she has not been subjected to any improper treatment, conduct or actions due to any request for or taking of any leave of absence pursuant to the FMLA because of her own or a family member's health condition.

(c) This Release does not apply to any claims: (1) that may arise after the date that Plaintiff and Defendants signed this Release; (2) that concern vested rights under any applicable employee benefit plans; and (3) that under controlling law may not be released by private agreement.

(d) Plaintiff also understands that nothing in this Release prevents her from filing a charge or complaint with or from participating in an investigation or proceeding conducted by any federal, state or local agency charged with the enforcement of any employment laws, although by signing this Release she is waiving her right to monetary recovery based on claims asserted in such a charge or complaint.

4. Complete Release And Dismissal Of All Existing Claims And Dismissal Of Lawsuit, With Prejudice. Plaintiff agrees that she has no other pending complaints, charges or grievances against Defendants, regardless of whether they have been filed internally or externally, other than the Lawsuit, which shall be dismissed with prejudice by filing a stipulation of dismissal with prejudice within three (3) business days of the execution of this Agreement.

5. Waiver Of Reinstatement And Subsequent Employment With _____. Plaintiff agrees that she waives any right she may have to seek, obtain or hold employment in the future within _____ (hereinafter, "____"), including but not limited to any of Defendants' facilities. She agrees that she will never seek or request reinstatement or future employment within _____, including but not limited to any of Defendants' facilities. Should Plaintiff make any application to obtain such employment,

her application may be disregarded, and _____ including but not limited to Defendants, will incur no liability. Further, Plaintiff will not accept such employment if it is offered by _____, including but not limited to Defendants, and she consents to the termination of her employment at any time without liability should it be determined that she holds employment with _____, including but not limited to Defendants. The foregoing no re-hire provision does not require Plaintiff to resign from a position with a health care organization that is acquired by _____ in the future, provided that Plaintiff is employed by that health care organization at the time of acquisition by _____.

6. No Future Lawsuits; Damages For Breach. Plaintiff promises not to file a lawsuit, demand, action, or otherwise assert any claims that are released in this Agreement and Release. If Plaintiff breaks this promise, she agrees to pay all of Defendants' costs and expenses (including reasonable attorneys' fees) related to the defense of any claims, and if Plaintiff prevails in any such lawsuit, she agrees to pay to Defendants any and all damages she receives. Although Plaintiff is releasing claims that she may have under the OWBPA and the ADEA, Plaintiff understands that she may challenge the knowing and voluntary nature of this release under the OWBPA and the ADEA before a court or the Equal Employment Opportunity Commission (EEOC), or any other federal, state or local agency charged with the enforcement of any employment laws. Plaintiff, understands, however, that if she pursues a claim against Defendants under the OWBPA and/or the ADEA, a court has the discretion to determine whether Defendants are entitled to restitution, recoupment, or set off (hereinafter, "reduction") against a monetary award obtained by Plaintiff in the court proceeding. A reduction never can exceed the amount Plaintiff recovers, or the consideration Plaintiff received for signing this Release, whichever is less. Plaintiff also recognizes that Defendants may be entitled to recover costs and attorneys' fees incurred by Defendants as specifically authorized under applicable law.

7. Voluntary Agreement; Advice of Counsel; 21-Day Period.

Plaintiff acknowledges and agrees that:

(a) She has read this document, and understands its legal and binding effect. She is acting voluntarily and of her own free will in executing this Release.

(b) The consideration for this Release is in addition to anything of value to which she is already entitled.

(c) She has read this General Release and is hereby advised in writing to seek legal counsel prior to signing this Release.

(d) She has been given at least twenty-one (21) days to consider the terms of this Release before signing it, and if she signs and returns it before the twenty-one (21) days have passed, she does so of her own free will. She has not been asked by Defendants to shorten the time period for considering whether to sign this Release.

Defendants have not threatened to withdraw or alter the benefits due her prior to the expiration of the 21-day period. Nor have Defendants provided different terms to her because she has decided to sign this Release prior to the expiration of the 21-day consideration period.

(e) She agrees that changes to this General Release, whether material or immaterial, do not restart the running of the 21-day consideration period.

8. Revocation. Plaintiff understands that if she signs this Release, she can change her mind and revoke it within seven (7) days after signing it. To be effective, the revocation must be in writing and received by _____, counsel for Defendants, at _____ on or before 5 p.m. of the seventh day after Plaintiff signs the Agreement and Release. Plaintiff understands that the Release will not be effective until after this seven (7) day period has expired, and she will receive no benefits until twenty-one (21) days after the end of the revocation period.

9. Confidentiality, Non-Disclosure and Non-Disparagement. Plaintiff and her Attorney shall keep strictly confidential this Agreement and Release and all of its terms, conditions, and amounts, as well as the circumstances relating to the events and allegations leading up to or asserted in the Lawsuit. Plaintiff and her Attorney shall not expressly or implicitly, by oral, verbal, or any physical means, conduct, commission, or omission, reveal or disclose the facts of this Agreement or the terms, conditions, and amounts of this Agreement, or the circumstances relating to the events and allegations leading up to or asserted in the Lawsuit, to any person or entity, and they shall not take any action or inaction calculated to lead to such a revelation or disclosure by another, other than to immediate family members, legal representatives, tax preparers, financial advisors, or to effect the distribution of this Settlement proceeds and to carry out the terms of this Agreement. Plaintiff also may disclose the terms of this Agreement if necessary to comply with a lawful subpoena so long as Plaintiff first notifies Defendants of the subpoena and allows Defendants the opportunity to object to the same.

Plaintiff agrees to respond to any inquiries regarding this Lawsuit by stating, "The matter is resolved."

Plaintiff and her Attorney agree that this confidentiality and non-disclosure provision is a material term of Defendants' agreement to settle the within Lawsuit, and this provision will provide Defendants with a right of action against Plaintiff and/or her Attorney (whichever breaches) in the amount of One Thousand Dollars (\$1,000.00) as liquidated damages without the need for Defendants to establish actual damages or harm, and any other legal or equitable relief under Ohio law. This Agreement shall otherwise remain in full force and effect, including the release of all claims, in the event of a breach of this confidentiality, non-disclosure and non-disparagement provision.

10. Binding Agreement. Plaintiff understands that following the seven (7) day Revocation Period, this Release will be final and binding.

11. Acknowledgment. By entering into this Agreement, and in connection with the release of claims and the waiver of reinstatement to employment as set forth in Paragraphs 3, 4 and 5, Plaintiff acknowledges, agrees and represents that:

(a) Defendants are not admitting any liability or violation of any law, contract or other agreement, and that this Agreement is the result of a compromise of a dispute and is not to be construed as an admission of any liability by Defendants.

(b) No promise or inducement has been offered to Plaintiff, except as herein set forth;

(c) This Agreement is being executed by Plaintiff and Defendants without reliance upon any statements by each other or their representatives concerning the nature or extent of any claims or damages or legal liability therefore;

(d) This Agreement has been written in understandable language, and all provisions hereof are understood by Plaintiff;

(e) Plaintiff has had the opportunity to consult with an attorney of her own choosing, and has consulted with attorneys of her own choosing;

(f) Plaintiff has executed this Agreement of her own free will; and

(g) Plaintiff will receive, pursuant to this Agreement, consideration in addition to anything of value to which she is already entitled.

12. General Provisions. The validity of this Release shall be construed under Ohio law and the OWBPA. This Release constitutes the complete and total agreement between Plaintiff and Defendants with respect to issues addressed in this Release. Plaintiff represents that she is not relying on any other agreements or oral representations not fully expressed in this document. Plaintiff agrees that this Release shall not be modified, altered, or discharged except by written instrument signed by an authorized representative of Defendants and her. The headings in this document are for reference only, and shall not in any way affect the meaning or interpretation of this Release. Plaintiff further agrees that this document may be used as evidence in a subsequent proceeding in which she or Defendants alleges a breach of this Release or as a complete defense to any lawsuit. Other than this exception, Plaintiff agrees that this Release will not be introduced as evidence in any administrative proceeding or in any lawsuit. Plaintiff agrees that should any part of this Release be found to be void or unenforceable by a court of competent jurisdiction, that determination will not affect the remainder of this Release. Plaintiff agrees that the provisions of this Agreement and Release have been negotiated jointly, and there shall be no presumption of construction against either party. This

Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one Agreement.

I, _____, ACKNOWLEDGE THAT I HAVE READ THIS AGREEMENT AND RELEASE, UNDERSTAND IT AND AM VOLUNTARILY ENTERING INTO IT BECAUSE I AM SATISFIED WITH ITS TERMS AND CONDITIONS. I UNDERSTAND I AM GIVING UP ALL RIGHTS I MAY HAVE TO RECOVER DAMAGES _____ OR FOR REINSTATEMENT BASED ON ANYTHING THAT HAPPENED BEFORE I SIGNED THIS RELEASE.

AGREED:

_____ Date: _____

[NAME]

By: _____

Name: _____

Title: _____

Date: _____

[NAME]

By: _____

Name: _____

Title: _____

Date: _____

- a. Irrevocably and unconditionally releases and discharges XYZ, all related and affiliated entities of XYZ, and the insurers, assignees, owners, and past and present partners, directors, trustees, officers, employees, and agents of each of them (including but not limited to Emily Smith and Michael Jones), and any person who acted on behalf of them or on their instruction, as well as their assignees, successors and estates of each of them (referred to hereinafter collectively as the “XYZ Releasees”) from any and all debts, obligations, claims, demands, judgments, or causes of action of any kind whatsoever, whether known or unknown, in tort, contract, by statute, or on any other basis for compensatory, punitive, or other damages, expenses, attorneys’ fees, reimbursements or costs of any kind, including but not limited to all rights and claims, whether in law or in equity, which Plaintiff, or anyone acting through Plaintiff, Plaintiff’s estate or on behalf of Plaintiff or her estate might otherwise have had or asserted for anything that has happened up to the date of Plaintiff’s execution of this Confidential Settlement Agreement and Release (“Settlement Agreement and Release”), including but not limited to, claims under Title VII of the Civil Rights Act of 1991, 42 U.S.C. 1981 and 1983, the Americans With Disabilities Act, the Rehabilitation Act of 1973, the Occupational Health and Safety Act, the Family & Medical Leave Act, the Equal Pay Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Labor Management Relations Act, the Sarbanes-Oxley Act, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act,

-2-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

the New Jersey Family Leave Act, and all federal, state and local law claims, whether statutory or common law including, but not limited to laws prohibiting retaliation based on exercise of rights under any law providing whistleblowers protection, providing workers' compensation benefits, regarding payment of wages or other compensation, protecting union activity, mandating leaves of absence, restricting an employer's right to terminate employees or otherwise regulating employment, enforcing express or implied employment contracts, requiring an employer to deal with employees fairly or in good faith, providing recourse for alleged wrongful discharge, tort, physical or personal injury, emotional distress, fraud, negligent misrepresentation, defamation, and similar or related claims, or relating to salary, commission, compensation, benefits, and other matters, interference with contract, interference with business, or employment discrimination on the basis of race, color, sex, religion, national origin, age, disability, marital status, sexual orientation, or veterans' status or any other basis, and including all claims for statutory attorneys fees. However, neither this paragraph nor anything in this Agreement shall prohibit or limit in any way Plaintiff's ability to enforce the terms of this Agreement; and

- b. Agrees to the extent permitted by law, not to file any other charge, action, complaint, or grievance against the XYZ Releasees for anything that has happened up to the date of Plaintiff's execution of this Settlement Agreement and Release, except as may be necessary to enforce the terms of this Settlement Agreement and Release. Plaintiff promises never to seek or accept any damages,

-3-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

remedies, or other relief for herself personally (any right to which Plaintiff hereby waives) by prosecuting a charge with any administrative agency, or otherwise, with respect to any claim purportedly released by this Settlement Agreement and Release. Plaintiff further agrees to the fullest extent permitted by law that if any agency or court assumes jurisdiction over any charge or complaint on her behalf against any of the Releasees, she will not participate in any such proceeding and will request such agency or court to withdraw the matter with prejudice; and

- c. Agrees that she shall not, at any time in the future, apply for or accept employment or reemployment with XYZ, or any member firm or affiliate of XYZ whether as an employee, independent contractor or any other status, and that any application made by Plaintiff may be rejected without liability to the XYZ Releasees; and
- d. Plaintiff agrees that she shall not at any time enter the premises of any office or property of XYZ or any XYZ affiliated firm; and
- e. Plaintiff and her attorneys agree to keep confidential and make no voluntary disclosure of or reference to the settlement of this matter and/or the terms of this Settlement Agreement and Release, or any discussions, communications and correspondence leading to this Settlement Agreement and Release, to any person or entity of any kind or identity whatsoever. If Plaintiff and/or Plaintiff's attorneys are legally required to disclose any such information pursuant to subpoena or other legal process, Plaintiff will notify the XYZ Releasees prior to doing so, by sending a copy of any such subpoena, order, or other legal process

-4-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

to: [NAME AND ADDRESS OF DEFENDANTS' ATTORNEY], via certified mail and facsimile: [DEFENDANTS' ATTORNEY'S FAX #]. In response to any inquiry regarding the status of the Legal Action, Plaintiff shall respond only that, "the matter has been amicably resolved." Plaintiff represents that she has kept the terms of this Settlement Agreement and Release confidential and has not disclosed or divulged any of the terms of the same to anyone, except her spouse, to date; and

- f. Ms. Doe shall not contribute to any public discussion, notice or other publicity concerning or in any way relating to her employment with XYZ, the business and affairs of XYZ, the management of XYZ or the individual Defendants in this matter. Ms. Doe further agrees that any confidential or proprietary information revealed to her in her capacity as an employee of XYZ, including information revealed in any XYZ or client documents or electronic communications (and including but not limited to the identity of wholesalers and investors), shall be kept strictly confidential and not disclosed to third parties, unless compelled by law.
- g. Plaintiff acknowledges and agrees that the foregoing provisions listed in Paragraph 1(a) through 1(e) are express and absolute conditions of this Settlement Agreement and Release, are bargained for consideration for this Settlement Agreement and Release, and are not a mere recitals, and that any violation of the terms and conditions of these provisions shall constitute a material breach of this Settlement Agreement and Release.

-5-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

2. For and in consideration of the promises and agreements of Plaintiff and her attorneys set forth in Paragraph 1, Defendant XYZ on behalf of itself, its successors, and assigns, agrees as follows:

- a. To pay Plaintiff the gross sum of \$_____. No deductions shall be made from this amount and XYZ shall issue an appropriate IRS 1099 form for calendar year 2012 (with Box 3 marked) to Plaintiff designating this payment as “other income”; and
- b. To pay [PLAINTIFF’S ATTORNEY], whose employer ID number is _____, in the amount of \$_____ representing payment of Plaintiff’s attorneys’ fees. XYZ shall issue an IRS Form 1099 MISC for the \$_____ payment for calendar year 2012 to Plaintiff and to [PLAINTIFF’S ATTORNEY] for this payment.
- c. Plaintiff specifically acknowledges and agrees that (a) no attorney, agent or representative of Plaintiff has any claim of any type against XYZ in connection with the Action or this Settlement Agreement and Release, (b) no attorney or law firm has filed a lien for attorneys’ fees in connection with the Action, and (c) each party shall bear their own costs, expert’s fees, and attorneys’ fees in connection with the Action, the claims released herein, and any matters occurring prior to the date of this Settlement Agreement and Release. Except as specifically provided in this Settlement Agreement and Release, no wage, payment, insurance or other benefits, allowances, bonuses, or other compensation or expenses of any sort will be paid to Plaintiff.

-6-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

- d. Payment of the amounts described in Paragraphs 2(a) and 2(b) shall be made within ten (10) business days following delivery to XYZ's counsel of: (1) a copy of this Confidential Settlement Agreement and Release executed by Plaintiff and Plaintiff's counsel; (2) a Stipulation of Dismissal With Prejudice of the Lawsuit executed by Plaintiff's counsel.
 - e. In response to any request from any third party for job reference or other information about Plaintiff's employment, XYZ will respond by providing only dates of employment and positions held.
3. It is understood and agreed that this Settlement Agreement and Release does not constitute an admission by any party of any fact or conclusion of law. Specifically, and without limiting the foregoing, the parties have agreed that this Settlement Agreement and Release does not constitute an admission of any kind by the XYZ Releasees (including their employees or agents) that they have violated, or have not been in compliance with, any applicable laws, including common law, statutes, orders, or regulations. It is expressly understood and agreed that no party shall be deemed to be a "prevailing party" for the purposes of any fee-shifting statute, rule, or agreement. It is further understood and agreed that
4. The parties represent that they have no other complaints, charges, or grievances against the other pending with any court or with any local, state, or federal agency.
 5. Plaintiff represents and agrees that she has not transferred or otherwise impaired, by bankruptcy or otherwise, her ability to sign a complete and binding release of any of the claims released by her in this Settlement Agreement and Release.
 6. Plaintiff declares and expressly warrants that she is not Medicare eligible, that she

-7-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

is not a Medicare beneficiary, and that she is not within thirty (30) months of becoming Medicare eligible; that she is not 65 years of age or older; that she is not suffering from end stage renal failure or amyotrophic lateral sclerosis; that she has not received Social Security benefits for twenty-four (24) months or longer; and/or that she has not applied for Social Security benefits, and/or has not been denied Social Security disability benefits and is appealing the denial.

7. Plaintiff acknowledges and agrees that neither XYZ nor its attorneys have made any representation to her regarding the tax consequences of the payments made to her pursuant to this Confidential Settlement Agreement and Release. Plaintiff agrees that she and she alone is liable for any taxes to be paid by her with respect to the settlement. Plaintiff further agrees to indemnify and hold XYZ harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against XYZ for any amounts due on account of the payments made pursuant to the Confidential Settlement Agreement and Release under any federal or state tax laws, including any amounts XYZ may be required to pay as taxes, deficiencies, levies, assessments, fines, penalties, or interest, except for any employer's share of FICA.

8. This Settlement Agreement and Release shall in all respects be interpreted, enforced, and governed by the laws of the State of New Jersey. The language of all parts of this Settlement Agreement and Release shall in all cases be construed as a whole, according to its meaning and not strictly for or against any of the parties.

9. Plaintiff further represents and acknowledges that she is entering this Settlement Agreement and Release knowingly and voluntarily and with advice of counsel, and that she has

-8-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

had a reasonable amount of time to consider the terms of this settlement. The parties acknowledge and agree that, in entering into this Settlement Agreement and Release, they are not relying upon any representation made by any other party or other party’s agents or attorneys with regard to the subject matter, basis, or effect of this Confidential Settlement Agreement and Release other than what is specifically stated herein. The parties further declare that in executing this Settlement Agreement and Release, they rely entirely upon their own judgment, beliefs, and interests and the advice of their own counsel.

10. This Settlement Agreement and Release constitutes the entire agreement between the parties with respect to the subject matter hereof and fully supersedes all prior agreements, written or oral, with respect thereto. Neither this Settlement Agreement and Release nor any terms hereof may be changed, waived, discharged or terminated, except by a written instrument signed by Plaintiff and by an authorized representative of XYZ.

ATTORNEY FOR JANE DOE

By: _____
Jane Doe

By: _____
[ATTORNEY’S NAME]

Date:

Date:

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

XYZ Corporation

By: _____

Date:

-10-

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (“Agreement”) is entered into by and between _____ (who together with his spouse, heirs, executors, administrators, trustees, attorneys, agents, and/or permitted assigns is referred to herein as “_____”) and _____ (which together with its related, affiliated, and associated companies, direct or indirect parent or subsidiary companies, predecessors, successors, and assigns, and their owners, officers, directors, agents, attorneys, and employees is referred to herein as the “Company”). This Agreement is entered into for the purpose of fully and totally releasing and settling all claims or disputes _____ has or may have against the Company arising at any time from the beginning of time to the present, and including, but not limited to, _____ employment with the Company. This Agreement serves as a supplement to the “Mediation Settlement Agreement” between the parties, a copy of which is attached hereto. To the extent the terms of this Agreement and the “Mediation Settlement Agreement” differ, the terms of this Agreement shall apply.

RECITALS

WHEREAS, a dispute exists between _____ and the Company regarding his employment with the Company and separation therefrom;

WHEREAS, _____ filed a Charge of Discrimination against the Company with the Equal Employment Opportunity Commission (“EEOC”), Charge No. _____, which is presently pending before the EEOC (“Charge of Discrimination.

WHEREAS, _____ and the Company have reached an agreement in full and final settlement of all claims that were asserted by _____ or could have been asserted by _____, as well as all claims that he may have had against the Company;

WHEREAS, the Company has offered and _____ has accepted consideration that _____ deems to be of value to him and in addition to that which the Company is required to provide _____ under the circumstances;

WHEREAS, _____ agrees to withdraw and not re-file his Charge of Discrimination; and

WHEREAS, _____ and the Company desire to reduce their agreement to writing;

NOW THEREFORE, in consideration of the mutual agreements hereinafter contained, being good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____ and the Company agree as follows:

1. **Consideration:** The Company hereby agrees to remit the following as consideration for the release in Paragraph 3 hereof, the promises and agreements made by _____ in this Agreement, and in full accord, satisfaction, and final compromise settlement of any and all claims, charges, demands, actions, causes of action, suits, damages, losses, court costs, attorneys' fees, and expenses, of any and every nature whatsoever, known or unknown – including, but not limited to, any and all claims that _____ may have or claim to have relating to his employment with the Company and his separation therefrom, which shall satisfy all obligations of the Company to _____, whether legal, contractual, equitable, statutory, or otherwise:

a. A check made payable to “_____,” _____ attorneys, in the amount of _____ and No Cents (\$_____) for attorneys' fees, costs, and expenses. _____ understands that some or all of the amount specified in this paragraph may be taxable, and that the Company is obligated to report the above amount to the proper taxing authorities and to provide the proper Form 1099 documentation.

b. A check made payable to “_____.” in the gross amount of _____ and No Cents (\$_____), minus all applicable taxes and payroll deductions as required by law.

2. **Income Taxes:** Should the Internal Revenue Service or any state or local governmental taxing authority determine that any portion of the payments described in Paragraph 1 constitute taxable income, _____ agrees to indemnify and hold the Company harmless from any and all injuries, damages, attorneys’ fees, penalties, costs (including FICA payments), expenses, or liability incurred as a result of any and all claims, demands, or causes of action that may hereafter be asserted against the Company for failure to make any withholding of taxes.

3. **Release and Hold Harmless:** _____ hereby promises not to sue and forever releases and discharges the Company from any and all charges, claims, demands, actions, causes of action, or suits, at law or in equity, of whatsoever kind or nature, losses, costs, attorneys’ fees, and expenses and damages of any kind, known or unknown, which he may now have or may now or hereafter assert against the Company, including but not limited to (1) all claims that _____ may have or claim to have arising out of or resulting from his employment with the Company, or the separation of his employment from the Company; (2) all claims for personal injury and/or emotional damages; (3) all claims for lost wages; (4) all contractual or quasi-contractual rights or claims arising from _____ employment or the separation of that employment from the Company; (5) all claims, including administrative charges, court claims, or otherwise, for violation of any rights under any state law, including the common law; and (6) all claims, including administrative charges, court claims, or otherwise, for violation of any rights under any federal, state, or local statute, regulation or ordinance,

including, all claims of discrimination based upon National Origin and also including, but not limited to Ohio Revised Code Chapter 4112, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Rehabilitation Act of 1973, the Reconstruction Act of 1866, the National Labor Relations Act, and the Sarbanes Oxley Act, all as amended to the date hereof, and all other federal, state, and local statutes, rules, regulations, ordinances, orders or common law principles, except those claims excluded in Paragraph 4 of this Agreement. _____ also expressly agrees that he waives any and all claims for interest on the settlement amount hereunder, pursuant to O.R.C. § 1343.03 or at common law.. However, this Agreement does not waive or release any rights or claims _____ may have to vested benefits, if any, under the _____

4. **Claims Excluded from the Agreement:** Notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any right that is not subject to waiver by private agreement. Likewise, nothing in this Agreement shall be construed to prohibit _____ from filing a charge or complaint challenging the validity of this Agreement, from filing a charge with the EEOC or other federal, state, or local agency, or participating in any investigation or proceeding conducted by such administrative agencies, although he waives any right to monetary damages or other relief arising from said charge. However, _____ shall not accept any relief as a result of any action, claim, or settlement or any EEOC, agency, or class action that might otherwise have inured to his benefit, and he shall return any such monetary relief that he may receive to the Company.

5. **Withdrawal of Charge:** _____ authorizes and directs his attorneys to withdraw the Charge of Discrimination, with each party to bear his/its own costs.

6. **Acknowledgment:** _____ acknowledges and agrees that he has been properly paid for all hours worked, that he has not suffered any on-the job injury for which he has not already filed a claim, that he has been properly provided any leave of absence because of his or a family member's health condition, and that he has not been subjected to any improper treatment, conduct or actions due to or related to his request for, or him taking of, any leave of absence because of his own or a family member's health condition.

7. **No Future Charges, Claims, or Lawsuits:** _____ promises never to file a claim, lawsuit, demand, action, or otherwise assert any claims that are released in Paragraph 3 of this Agreement. _____ agrees not to initiate contact with any party other than the Company in any litigation, charge, claim, or investigation against the Company or its affiliates, officers, directors, employees, former employees, or agents, except as required by law.

8. **Re-employment:** _____ agrees that he waives any right he may have to seek, obtain, or hold employment in the future with the Company. Should he make any application to obtain such employment, his applications may be disregarded and the Company will incur no liability. Further, _____ will not accept such employment if it is offered by the Company, and _____ consents to the termination of his employment at any time without counsel or liability, should it be determined that he holds employment with the Company.

9. **Confidentiality:** _____ warrants that, to date, he has kept this document and all of its terms and conditions STRICTLY CONFIDENTIAL. _____ represents and warrants that he has not discussed, disclosed, or revealed the Agreement or its terms, directly or

indirectly, to the media or to any other person, corporation, or other entity. In addition, _____ warrants that he has not discussed, disclosed, or revealed the Agreement or its terms, directly or indirectly, to any employee or former employee of the Company. Likewise, _____ agrees to continue to maintain the confidentiality of this Agreement, which means that he shall not, presently or in the future, discuss, disclose, or reveal its existence or its terms or conditions to the media or to any other person, corporation, or entity except to _____ financial advisors, attorneys, immediate family members, or as required by law. Additionally, _____ shall not, presently or in the future, discuss, disclose, or reveal the Agreement's existence or its terms or conditions to any employee or former employee of the Company. _____ agrees that the only comment he will make about this matter is that "the Charge has been settled to the mutual satisfaction of the parties." _____ also agrees not to make any qualitative or quantitative comments about this Agreement.

10. **Non-Disparagement:** _____ agrees not to make or utter any disparaging remarks about the Company, including disparaging remarks about individuals associated with the Company, public or private comments, statements, and/or communications which in any way disparage or reflect negatively on the Company or any individuals associated with the Company. This provision applies to all acts or statements that disparage, discredit, or call into disrepute any of the foregoing, without regard for the truth or falsehood of the statement and regardless of whether the statement(s) would constitute a claim for defamation.

11. **Period for Review and Consideration:** _____ understands he has been given a period of twenty-one days to review and consider this Agreement before signing it. _____ further understands he may use as much of this twenty-one day period as he wishes prior to signing the Agreement. _____ agrees that if he signs and returns this

Agreement before the twenty-one days have passed, he does so of his own free will. _____ further agrees that he has not been asked by the Company to shorten the time period for considering whether to sign the Agreement. _____ agrees that the Company has not threatened to withdraw or alter the benefits due to him under this Agreement prior to the expiration of the twenty-one day period, nor has the Company provided different terms to _____ if he decides to sign the Agreement prior to the expiration of the twenty-one day period. _____ agrees that changes to the Agreement, whether material or immaterial, do not restart the running of the twenty-one day consideration period.

12. **Right to Revoke the Agreement:** _____ may revoke this Agreement within seven days of the date he signed it. Revocation must be made by delivering a written notice of revocation to counsel for the Company, _____. For any such revocation to be effective, written notice must be received by _____ no later than the close of business on the seventh day after _____ signs this Agreement. If _____ revokes this Agreement, it shall not be effective or enforceable and _____ shall not receive any of the compensation or other benefits described in the First Paragraph of the Agreement or in the Mediation Settlement Agreement. In addition, if _____ revokes this Agreement, he will also be considered to have revoked the Mediation Settlement Agreement.

13. **Entirety of Agreement and Severability:** _____ and the Company acknowledge that no promise or agreement not herein expressed has been made to them and that this Agreement contains the entire agreement between the parties hereto. It supersedes all prior discussions, negotiations, and agreements with respect to _____ employment relationship with the Company. Further, _____ and the Company agree that if any

provision herein is declared invalid by a court of competent jurisdiction, such invalidation shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. This Agreement may not be amended except by a writing signed by all the parties.

14. **Joint Construction:** This Agreement has been drafted jointly and there shall be no presumption of construction against any party. The parties agree that the language of all parts of this Agreement shall in all cases be construed as a whole, according to the fair meaning, and not strictly for or against any party.

15. **Applicable Law:** This Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the State of Ohio.

16. **Consequences of Violation:** If _____ breaks the promises he made in Paragraphs 3, 7, 9, or 10 of this Agreement, _____ will pay for all costs incurred by the Company in defending against _____ claim(s), including but not limited to attorneys' fees. In addition, _____ will have to repay to the Company the gross sum of money and other compensation and/or benefits provided by the Company described in Paragraph 1 of this Agreement. _____ further recognizes that if he violates any of the terms of this Agreement, this Agreement shall remain in full force and effect, including _____ release of all claims.

17. **Counterparts:** This Agreement may be executed in multiple counterparts, via facsimile, e-mail, PDF and/or photocopy signature, each of which shall be deemed an original.

18. **Representations:** By entering into this Agreement, and in connection with the release of any and all claims as set forth in Paragraph 3, the parties acknowledge, agree, and represent that:

- (a) They have entered into this Agreement in order to avoid the substantial costs, inconvenience, and uncertainties of litigation. The execution of this Agreement

shall not constitute any admission by the Company that it has violated any federal, state or local statute, ordinance, rule, regulation, or common law, or that any of _____ claims had any merit whatsoever. On the contrary, the Company expressly denies that it has violated any of _____ rights or that it has harmed _____ in any way. No part of this Agreement, nor any actions of the Company in settling this matter shall be considered, constitute, or be cited as an admission by the Company of any wrongful conduct or violation of law or of any act alleged by _____. Nothing herein shall preclude the Company from introducing this Agreement to establish that _____ claims were settled, compromised, and released according to the terms of this Agreement;

- (b) No promise or inducement has been offered to _____ except as herein set forth;
- (c) This Agreement is being executed by _____ and the Company without reliance upon any statements by the other or their representatives concerning the nature or extent of any claims or damages or legal liability therefor;
- (d) This Agreement has been written in understandable language, and all provisions hereof are understood by _____ and the Company;
- (e) _____ and the Company have consulted with attorneys of their own choosing prior to executing this Agreement;
- (f) _____ has executed this Agreement of his own free will;
- (g) _____ will receive, pursuant to this Agreement, consideration in addition to anything of value to which he is already entitled; and
- (h) All claims which were (or could have been) raised by _____ are voluntarily settled and dismissed with prejudice.

19. _____ ACKNOWLEDGES THAT THIS IS A RELEASE AND THAT HE IS RELINQUISHING ALL OF HIS RIGHTS TO SUE. _____ ALSO ACKNOWLEDGES THAT HE HAS CONSULTED WITH, AND BEEN ADVISED BY, AN ATTORNEY OF HIS CHOICE BEFORE EXECUTING THIS AGREEMENT AND RELEASE. _____ FURTHER ACKNOWLEDGES THAT HE HAS BEEN AFFORDED THE OPPORTUNITY TO CONSIDER THIS AGREEMENT AND RELEASE FOR A REASONABLE PERIOD OF TIME, THAT HE HAS CAREFULLY READ IT, THAT HE COMPLETELY UNDERSTANDS ITS CONTENTS, THAT HIS ATTORNEYS HAVE EXPLAINED ALL OF ITS CONTENTS AND RAMIFICATIONS, AND THAT HE HAS EXECUTED IT OF HIS OWN FREE WILL, ACT, AND DEED WITHOUT COERCION AND WITH FULL KNOWLEDGE OF THE NATURE AND CONSEQUENCES THEREOF.

IN WITNESS WHEREOF, _____ and _____, have freely, voluntarily, and knowingly executed this Agreement.

AGREED:

Witness

Dated: _____

Witness

Dated: _____

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

This Agreement (“Agreement”) is entered into by and between **JANE DOE** (“Charging Party”) and **ABC COMPANY**. (“Respondent”) (collectively, for purposes hereof, the “Parties”), in final resolution of EEOC Charge No. 000-0000-00000 (the “Charge”), as well as of any other dispute between the Parties, on the following terms and conditions:

1. **Resolution of All Claims.** This Agreement operates as a complete and final resolution of all of Charging Party=s charges, claims, or complaints arising out of or in any way related to the Charge.
2. **General Waiver and Release.** In exchange for satisfactory fulfillment by Respondent of the promises set forth in Paragraph 3 hereof, Charging Party agrees as follows:
 - a. Charging Party, for herself, her heirs, beneficiaries, representatives and all others connected with her, hereby forever releases, waives and discharges, and agrees not to bring or pursue any and all charges, complaints or causes of action of any nature whatsoever against Respondent, its parent, affiliates, officers, directors, employees, agents, representatives, attorneys, insurers, successors, and assigns (hereinafter “Releasees”) with respect to any issue arising out of or in any way related to the Charge or Charging Party’s employment with Respondent[, including specifically (insert any specific statutory claims to be released, if desired)].
 - b. [Insert any state-mandated release language here.]
 - c. It is understood and agreed that this Agreement is a full and final release by Charging Party of all claims, injuries, or damages that relate to the Charge and/or to Charging Party’s employment with Respondent, including the period and events up to the signing of this Agreement, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated.
3. **Payment and Other Consideration to Charging Party.** In exchange for the promises of Charging Party contained in Paragraph 2 hereof, Respondent agrees to pay to Charging Party, and Charging Party agrees to accept on the terms set forth herein, the total gross amount of _____ Dollars (\$____), representing ____ (__) weeks of pay at Charging Party’s last rate of pay, less applicable legal deductions. Respondent shall issue Charging Party a Form W-2 reflecting this payment.
4. **Non-Admission.** Respondent does not admit that it violated Charging Party’s rights in any way under any local, state, or federal law or ordinance, or that Respondent otherwise breached any legal duty or obligation owing to Charging Party. The signing of this Agreement does not constitute an admission that Charging Party’s rights were violated in any way, and the Parties agree that neither party will assert that their agreement to settle Charging Party’s claims constitutes an implied admission of wrongdoing.
5. **Confidentiality.** The Parties agree that the terms of this Agreement are confidential and

may not be disclosed in whole or in part to any individual or any other entity, except to Charging Party's spouse, tax advisor, and legal counsel; to employees of Respondent who have a *bona fide* business reason to know the same; to the Anycity Field Office of the EEOC; and as may be required by law. Any comments by either party or their counsel in response to inquiries by any other persons respecting this Agreement or the resolution of the Charge shall be limited to a statement that the matter has been settled by mutual agreement and that the party may not speak further about it.

6. **Enforceability.** The Parties agree that this Agreement may be specifically enforced in any court of competent jurisdiction and may be used as evidence in a subsequent proceeding in which either of the Parties allege a breach of this Agreement.
7. **No rehire.** Charging Party agrees that she shall neither seek nor be eligible for future employment with Respondent.
8. **Nondisparagement.** Charging Party agrees not to disparage or make negative statements, whether orally or in writing, about Respondent or any of its officers or employees.
9. **[FLSA and/or FMLA acknowledgments, if desired.]** [Remember that FLSA and FMLA claims cannot be released in a general release. If desired, you can include language to the effect that the employee acknowledges that she has been paid for all hours of work and/or has not been denied leave under the Family and Medical Leave Act.]
10. **Entire agreement.** The Parties agree that this Agreement is a fully integrated document as of the date of its making and constitutes the entire agreement between them. The Parties expressly disclaim reliance on any representations, written or oral, other than those contained in this document. This Agreement constitutes the entire agreement between the Parties and supersedes any prior communications, written or oral, with respect to Charging Party's employment with Respondent, the termination thereof, and all matters relating thereto.
11. **Further representations.** Charging Party further represents and acknowledges that (a) the only consideration for signing this Agreement is that stated expressly herein; that no other promises or agreements of any kind have been made to or with her by any person or entity whatsoever to cause her to sign this Agreement; and that she fully understands the meaning and intent of this Agreement; (b) she has read this Agreement carefully, knows its contents, understands its terms, their meaning and their effect upon her rights and duties, and hereby undertakes this Agreement knowingly and voluntarily, assents to all terms and conditions hereof, understands their final and binding effect, and signs the Agreement as her own free act with the full intent of releasing the Releasees from all claims; (c) the consideration paid to her hereunder is in addition to anything of value to which she already is entitled; (d) she understands that she is encouraged by Respondent to consult with an attorney prior to executing this Agreement and acknowledges that she has done so; and (e) understands that she is entitled to 21 days from receipt of this

Agreement to execute it; that she may revoke it within seven days after executing it by delivering written notice of such revocation to Amy Attorney, General Counsel, ABC Company, 123 Anywhere Street, Anycity, ST 0ZIP0; and that the Agreement shall become a binding contract with Respondent if it is not so revoked.

Signed and entered into this __ day of _____, 20__.

ABC COMPANY

By: _____

Title: _____

Date: _____

CHARGING PARTY

Date: _____

AGREEMENT FOR [NAME]

The parties to this Agreement are [], and all affiliates (hereinafter collectively referred to as [] and [] (hereinafter referred to as “[”]). This Agreement is entered into for the purpose of setting forth the terms and conditions agreed to by the parties with respect to the existing employment relationship.

1. Effective as of July 31, 2012, [] acknowledges that her active employment with [] shall cease. In consideration for the releases and covenants contained in this Agreement, and timely execution of this Agreement, [] agrees to pay [] severance pay in an amount equal to 100% of her salary rate as in effect as of July 31, 2012, for the period commencing as of August 1, 2012 through October 8, 2012.
2. Full benefit coverage excluding ongoing PTO accrual, short term disability and long term disability insurance benefits, will continue through the end of the month in which the severance period ends, under the contribution formula and terms as applicable during regular employment. Upon expiration of the severance period, [] will be notified as to her rights to continue benefit coverage under COBRA guidelines. [] will pay [] for any available PTO at the end of her severance period. Unemployment compensation will not be contested.
3. [] will be eligible to multiple-bid on position vacancies throughout the severance period. Severance pay will be discontinued if re-employed within [] at anytime during the severance period. Furthermore, in the event [] is reemployed within [] at anytime prior to August 1, 2012, no severance benefits will be due and owing under this Agreement.
4. [] acknowledges and agrees that in the course of her employment with [] she has been privy to confidential information, knowledge, data and other information relating to operations, policies, procedures, and billing. [] agrees, on behalf of herself, her heirs, executors, administrators, successors, legal representatives and assigns to promptly surrender and deliver to [] any and all records and data of any nature containing or pertaining to any confidential information, knowledge or data and agrees not to discuss, divulge or communicate to any third party any such knowledge, data, or other information without a court order or the specific direction or consent of a duly authorized representative of []. In the event that [] receives a request, under the terms of a valid subpoena or order of court to disclose any such knowledge, data or information, [] agrees, before complying with such request, to notify the Office of General Counsel of [] immediately and to cooperate with [] in the assertion of any legal objections or defenses to such

- request that [] may elect to pursue.
5. [] further agrees to cooperate fully (unless prohibited by law) with [] in connection with any present and future actual or threatened litigation, audit, investigation or administrative proceeding involving [], that relates to events, occurrences or conduct occurring (or claimed to have occurred) during the period of []'s employment by [].
 6. The parties hereto understand and agree that all of the provisions of this Agreement and the conditions, circumstances, negotiations and other matters giving rise thereto are and shall remain completely confidential between the parties and with the exception of [] or her attorneys, accountant and immediate family, shall not be disclosed by any party hereto unless such information is required to be disclosed by law. [] acknowledges and agrees that in exchange for the compensation and benefits provided hereunder, she will not engage in any conduct or communication that may impugn the reputation or integrity of [], its Directors, officers, executives, employees or agents. Any breach of these confidentiality and nondisparagement provisions shall be considered a material breach of this Agreement and will result in termination of any remaining severance payments.
 7. In consideration of the benefits provided under this Agreement, [] releases [] (including any successor(s), agents, legal representatives, trustees, directors, officers, assigns, heirs and executors) from any and all claims (except claims relating to coverage under or services provided under [] Health Plan for [] and/or any of her covered dependents) demands, lawsuits, grievances, and/or causes of action, of any kind whatsoever, arising from, during or in connection with her employment and/or her resignation from employment and/or the circumstances relating thereto arising from the beginning of time up to and including the date of her signature to this Agreement. [] further agrees to withdraw (or request to be withdrawn) any claims, demands, lawsuits, grievances and/or causes of action that she may have filed against []. This release and agreement not to sue includes, but is not limited to, claims arising under federal, state or local laws, including, without limitations, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, retrospective claims under FMLA and other employment discrimination statutes, as well as claims for wrongful discharge, whether arising out of express or implied contract, unkept promises or public policy, and any common law claims recognized now or later, except as necessary to enforce this Agreement. In consideration of the benefits provided to them under this Agreement, [] releases [], and as applicable her successors, agents, legal representations, assigns, heirs and executors, from any and all claims, demands, lawsuits, charges, grievances and/or causes of action, of any kind whatsoever, arising from or in connection with her employment and/or her resignation from employment and/or the circumstances relates thereto, arising from the beginning of time up to and including the date []'s representative signed this Agreement. Nothing in this Agreement shall be construed to prohibit [] from filing a charge or

- complaint challenging the validity of this Agreement, from filing a charge with the EEOC or other federal, state, or local agency, or participating in any investigation or proceeding conducted by such administrative agencies, although she waives any right to monetary damages or other relief arising from said charge. However, [] shall not accept any relief as a result of any action, claim, or settlement or any EEOC, agency, or class action that might otherwise have inured to her benefit, and she shall return any such monetary relief that she may receive to [].
8. In the event of any controversy, dispute, disagreement or claim arising out of, relating to, in connection with or concerning this Agreement, and upon written notice by the party asserting any such controversy, dispute, disagreement or claim, the parties agree to confer in good faith and attempt to resolve the controversy, dispute, disagreement or claim informally. If such controversy, dispute, disagreement or claim is not resolved within thirty (30) days, the controversy, dispute, disagreement or claim shall be submitted to binding arbitration in Cleveland, Ohio under the rules of the American Arbitration Association then in effect. The parties shall appoint a single arbitrator selected mutually or selected according to the procedures of the Cleveland Office of the American Arbitration Association then in effect. The arbitrator's decision is final and binding upon both parties. Each party shall pay one-half (1/2) of the fees and expenses of the arbitrator. Any ambiguity regarding the arbitrability of any dispute shall be resolved in favor of arbitrability. Notwithstanding any provision herein relating to arbitration, the parties hereto shall have the right to petition any court of competent jurisdiction for a restraining order or other injunctive relief (without prior notice) for any breach or threatened breach of this Agreement.
 9. The terms of this Agreement are separate and independent and should any of them be declared invalid or unenforceable by any court, the remaining provisions and terms of this Agreement shall remain in full force and effect.
 10. This Agreement will be governed by the laws of the State of Ohio and the City of Cleveland, and any arbitration pertaining to this Agreement will take place in Cleveland, Ohio.
 11. [] acknowledges that she has carefully read and understands the provisions of this Agreement including the sections discussing release of claims and has not relied on any other representations, written or oral, in entering into this Agreement. She also acknowledges being advised and encouraged to consult with an attorney prior to executing this Agreement. [] acknowledges that she may take up to twenty-one (21) days to consider this Agreement before signing it, which she agrees is a reasonable period of time, and thereafter, may revoke this Agreement by providing written notice to [] within seven (7) days from the date of her signing. This Agreement shall not become effective or enforceable until the revocation period has expired. In entering into this Agreement, she is acting voluntarily,

knowingly, without duress and coercion, and with the advice of counsel.

- 12. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

Intending to be legally bound hereby, the parties hereto have executed this Agreement on the dates written below.

_____ Date _____

□

By: _____
Title:

_____ Date:

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

[Date]

[Name]

[Address]

[Town], [State] [Zip Code]

Dear [Name]:

The purpose of this letter agreement (“Agreement”) is to advise you that your employment as [position] with [specific XYZ company] (“XYZ” or the “Company”) will terminate on [date] and to set forth the terms of your separation from employment with under the Company’s Standard Separation provisions and the Special Separation provisions being offered to you.

1. STANDARD SEPARATION PROVISIONS

- a. Your last day of employment will be [date] (the “Termination Date”).
- b. You will receive your salary, less applicable withholdings and deductions, through the Termination Date. As a result of your termination of employment and in the event that you do not execute this Agreement, you will receive a lump sum payment equal to [number of weeks in words] [(number of weeks in numerals)] weeks of base salary, for a total of [dollar amount in words] [dollar amount in numerals] less applicable withholdings and deductions.
- c. You agree that you have no entitlement to any bonus that may be payable with respect to the current fiscal year. If, however, the Company decides in its sole discretion to make any bonus payment to you, it shall be subject to applicable payroll taxes and shall be paid at the Company’s payout rate and on a pro rata basis through the Termination Date.
- d. You will receive a lump-sum payment, less applicable withholdings and deductions, which represents the value of the unused Paid Time Off (“PTO”) to which you are entitled under the Company’s PTO policy.
- e. You will be given the opportunity to purchase the Medical and Dental Plan coverage for which you are eligible through the Consolidated Omnibus Reconciliation Act (COBRA) for a period of up to 18 months at your own

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

expense. You will receive the appropriate COBRA application form and information regarding rates and period of coverage in the near future. Please note that at the end of the month within which your last day of employment occurs, your current coverage will be terminated. However, upon the completion and processing of your COBRA application, coverage will be retroactively reinstated.

- f. You will be provided with information describing your options under the XYZ 401K Savings Plan, your option for continuing life insurance coverage, and the termination of your short term and long term disability benefits.
- g. Other than as set forth in Paragraphs a-f above, the Company shall have no other financial obligations to you under any compensation or benefit plan, program or policy and your participation in the Company compensation and benefit plans, programs and policies shall cease as of the date of your termination.
- h. If the Company receives requests for references from prospective employers, it will provide only dates of employment and positions held.
- i. Upon your termination, you must return to the Company all Company property, including all notes, reports, plans, keys, security cards and/or identification cards, customer lists, product information and other documents and property including computer equipment, and cellular phones that were created, developed, generated or received by you during your employment or that are the property of the Company, whether or not such items are confidential to the Company.
- j. You are reminded of your continuing legal and contractual obligations, including without limitation those set forth in the Employee Confidentiality and Non-Use Agreement entered into upon the commencement of employment (copy attached) **[attach copy of agreement]**, not to use or disclose any secret, confidential, or proprietary information or documents of the Company for any purpose following the termination of your employment with the Company. Specifically, you are not to disclose, nor use for your benefit or the benefit of any other person or entity, any information received from XYZ or its parent, subsidiaries or affiliated companies (individually or collectively an “XYZ Company”), which is confidential or proprietary and: (i) which has not been disclosed publicly by an XYZ Company; (ii) which is otherwise not a matter of public knowledge; or (iii) which is a matter of public knowledge but Employee knows or has reason to know that such information became a matter of public knowledge through an unauthorized disclosure. Proprietary or confidential information includes information the unauthorized disclosure or use of which would reduce the value of such information to an XYZ Company. Such information includes, without limitation, an XYZ Company’s customer and supplier lists, trade secrets, intellectual property, confidential information about (or provided by) any customer or prospective or former customer or business partner of an XYZ

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Company, information concerning an XYZ Company's business or financial affairs (including its books and records, commitments, procedures, plans, strategies, inventions, and prospects), products developed or in development by an XYZ Company, securities positions, or current or prospective transactions or business of an XYZ Company.

2. SPECIAL SEPARATION PROVISIONS

If you agree to the terms set forth in Paragraph 3 below, and in consideration of the obligations you assume in Paragraph 3 and the other agreements made by you under this Agreement, the Company agrees that in addition to the above:

- a. You will receive \$[**dollar amount**] representing [**number**] weeks of salary, as severance pay. Such amount, which shall be paid out of payroll and is subject to applicable payroll deductions, will be paid in the form of a lump sum on or about the next regularly scheduled payroll date after the expiration of the revocation period following the Company's receipt of an executed Release, as provided in Paragraph 5(e).
- b. [The Company will provide outplacement assistance through Outplacement Services Consultants ("Outplacement Services") for [**number**] month[s] commencing on or about [**date**]. This career transition support will include resume writing assistance, interviewing skills and related training, and workshops. Outplacement Services is the country's leading provider of career transition services and is expertly qualified to help you begin this process. An Outplacement Services representative will contact you upon XYZ's receipt of your General Release document.]
- c. You may continue to utilize the current Employee Assistance Program ("EAP") program for as long as you are covered by XYZ's health benefits under COBRA. There are no changes in the services which the EAP currently provides or in the confidentiality of the assistance you may receive through EAP. This service is available 24 hours a day, 7 days a week. To find out more, call an EAP representative at [**insert telephone number**].

3. WAIVER OF RIGHTS

In exchange for the consideration described in Paragraph 2 above, including all subparts, you agree as follows:

- a. to release and forever discharge the Company, its subsidiaries and affiliates and their parent organizations, predecessors, successors, officers, directors, employees, agents, attorneys, associates and employee benefit plans from all

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

claims, demands or causes of action arising out of facts or occurrences prior to the date of this Agreement, whether known or unknown to you. You agree that this release of claims is intended to be broadly construed so as to resolve any pending and potential disputes between you and the Company that you have up to the date of this Release, whether such disputes are known or unknown to you, including, but not limited to, claims based on express or implied contract; any action arising in tort, including, but not limited to libel, slander, defamation, intentional infliction of emotional distress, or negligence; any or all claims for wrongful discharge; and any and all claims based on the Age Discrimination in Employment Act (29 U.S.C. §621 *et seq.*), Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000e *et seq.*), the Civil Rights Acts of 1866 and 1871 (42 U.S.C. §1981), the Employee Retirement Income Security Act (29 U.S.C. §1001 *et seq.*), the Family and Medical Leave Act (20 U.S.C. §2601 *et seq.*), the Americans With Disabilities Act (42 U.S.C. §12,101 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §651 *et seq.*), the Immigration Reform and Control Act (8 U.S.C. § 1324a *et seq.*), the Fair Labor Standards Act (29 U.S.C. §201 *et seq.*), California Family Rights Act – Cal. Govt. Code § 12945.2 *et seq.*; California Fair Employment and Housing Act – Cal. Govt Code § 12900 *et seq.*; Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Cal. Lab. Code §132a (1) to (4); California Unruh Civil Rights Act – Civ. Code § 51 *et seq.*; California Sexual Orientation Bias Law – Cal. Lab. Code §1101 *et seq.*; California AIDS Testing and Confidentiality Law – Cal. Health & Safety Code §199.20 *et seq.*; California Confidentiality of Medical Information – Cal. Civ. Code §56 *et seq.*; California Smokers' Rights Law – Cal. Lab. Code §96; California Parental Leave Law – Cal. Lab. Code §230.7 *et seq.*; California Apprenticeship Program Bias Law – Cal. Lab. Code §3070 *et seq.*; California Wage Payment Act, as amended; California Equal Pay Law – Cal. Lab. Code §1197.5 *et seq.*; California Whistleblower Protection Law – Cal. Lab. Code § 1102-5(a) to (c); California Military Personnel Bias Law – Cal. Mil. & Vet. Code §394 *et seq.*; California Family and Medical Leave – Cal. Lab. Code §233; California Parental Leave for School Visits Law – Cal. Lab. Code §230.7 *et seq.*; California Electronic Monitoring of Employees – Cal. Lab. Code §435 *et seq.*; Cal/OSHA law, as amended; California Consumer Reports Discrimination Law – Cal. Civ. Code §1786.10 *et seq.*; California Political Activities of Employees Act – Cal. Lab. Code §1101 *et seq.*; California Domestic Violence Victim Employment Leave Act – Cal. Lab. Code §230.1; California Voting Leave Law – Cal. Elec. Code §14350 *et seq.*; California Court Leave Law – Cal. Lab. Code §230; California Wage Theft Prevention Act, and other applicable federal, state or local law, regulation, ordinance or order, and including all claims for, or entitlement to, attorneys fees. However, the foregoing release is not intended to cover any claim for benefits to which you are entitled, if any, under the Company's Pension and Investment Savings Plan.

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

- b. I understand that this release shall operate as a covenant not to sue and includes a release of all known and unknown claims to the date of this Agreement except as expressly excluded above. I agree to waive and relinquish any and all rights I have or may have under California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her, must have materially affected his or her settlement with the debtor.

In connection with such waiver and relinquishment, I hereby acknowledge that I or my attorneys may hereafter discover claims or facts in addition to, or different from, those which I now know or believe to exist, but I expressly agree to fully, finally, and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on my behalf against the Released Parties. I further acknowledge, understand, and agree that this representation and commitment is essential to the Company and that this Agreement would not have been entered into were it not for this representation and commitment.

- c. In further consideration for the compensation and benefits described in Paragraph 2 above, you agree strictly to maintain the confidentiality of this Agreement and not to disclose its existence or its terms to anyone other than your spouse, your attorney and any tax advisors.
- d. You expressly agree that you shall be responsible for remitting to federal, state and/or local tax authorities your share of any applicable taxes due from the payments set forth in this Agreement, to the extent that such taxes have not been withheld from said payments and remitted on your behalf, and shall hold XYZ harmless and indemnify it for any liability, costs and expenses (including attorney's fees arising from your failure to remit your share of any applicable taxes), caused by any tax authority relating in any way to the tax treatment of the payment made pursuant to this Agreement.
- e. In further consideration of this Agreement, you agree to refrain from any publication or any type of communication, oral or written, of a defamatory or disparaging statement pertaining to the Company, its corporate parent(s) and affiliates, or their respective past, present and future officers, agents, directors, supervisors, employees or representatives, except as otherwise required by law. In the event you breach or threaten to breach any provision contained in this paragraph of the Agreement, the Company shall have the right to seek injunctive relief in any court of competent jurisdiction to have these provisions specifically enforced. This right shall be in addition to, and not in lieu of, any other rights and remedies available to the Company in law or in equity.

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

- f. If you breach or challenge the enforceability of this Agreement in a court of law or before any administrative agency, except as provided in Paragraph 7, you acknowledge that you will reimburse the Company for any monetary consideration previously received by you under this Agreement, and you agree to pay reasonable attorneys' fees and costs incurred by the Company in the collection and in enforcement of this Agreement. Note, however, that this provision shall not apply to any charge, complaint, or claim you may make under the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.*
4. This letter and Agreement shall not be construed as an admission by the Company of any wrongdoing or any violation of federal, state or local law, and the Company specifically disclaims any wrongdoing against, or liability to you.
5. You affirm that you have not filed or caused to be filed, and currently are not a party to any claim, complaint, or action against XYZ in any forum or form. You further affirm that you have been paid and/or have received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which you may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to you, except as provided in this Agreement. You furthermore affirm that you have no known workplace injuries or occupational diseases and have been provided and/or have not been denied any leave requested under any applicable family and medical leave laws.
6. You acknowledge and agree as follows:
 - a. the payments and other benefits provided to you under Paragraph 2 of this Agreement exceed the nature and scope of that to which you would otherwise have been entitled to receive from the Company and constitute adequate consideration for your promises herein;
 - b. you acknowledge that, before signing this Agreement, you were given a period of at least 45 calendar days to consider this Agreement;
 - c. you waive any right you might have to additional time beyond this 45 day consideration period within which to consider this Agreement;
 - d. you have been provided with information, attached hereto, as to the ages and job titles of individuals selected for the program in the decisional unit and the ages of individuals in the same job classification not selected for participation under the program;
 - e. you have read and understand this Agreement in its entirety, including the waiver of rights under the Age Discrimination in Employment Act;

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

- f. you have been advised by the Company to consult with an attorney before signing this Agreement and this paragraph constitutes such advice in writing;
 - g. for a period of seven (7) days following your execution of this Agreement, you may revoke this Agreement by providing written notification to **[name and title of XYZ employee to whom notice should be sent]** **[address of person to whom notice should be sent]** and the Agreement shall not become effective or enforceable until the seven-day revocation period has expired;
 - h. you enter into this Agreement knowingly and voluntarily, without duress or reservation of any kind, and after having given the matter full and careful consideration.
7. Nothing in this Agreement shall be construed to prohibit you from filing any charge or complaint with, or participating in any investigation or proceeding conducted by, the EEOC or any analogous state agency, nor shall any provision of this Agreement adversely affect your right to engage in such conduct. Notwithstanding the foregoing, pursuant to Paragraph 3 above, you waive the right to obtain any relief or recover any monies or compensation as a result of filing any such charge or complaint. Additionally, the parties intend that the Company shall have the right, to the full extent permitted by law, to enforce this Agreement and to pursue any and all legal or equitable remedies against you in the event you violate this Agreement.
 8. This Agreement contains the entire agreement between you and the Company concerning your separation from employment.
 9. This Agreement shall be construed and enforced in accordance with California law, to the extent not governed by federal law.
 10. In the event any portion of this Agreement is deemed to be invalid or unenforceable, that portion will be deemed omitted and the remainder of this Agreement will remain in full force and effect.

If you agree to the terms set forth above, please sign the next page and return the original of the entire document in the envelope provided.

[XYZ company]

By: _____

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Dated: **[date]**

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

PLEASE READ THE FOREGOING AGREEMENT CAREFULLY BEFORE SIGNING. THIS AGREEMENT INCLUDES A RELEASE OF ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, YOU MAY HAVE IN CONNECTION WITH YOUR EMPLOYMENT WITH THE COMPANY INCLUDING, BUT NOT LIMITED TO, THE TERMINATION THEREOF.

Dated:

[NAME]

[Employee's attorney, if any]

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

EXHIBIT A**OLDER WORKERS BENEFIT PROTECTION ACT DISCLOSURE**

This disclosure is being provided to you pursuant to the requirements of the Older Workers Benefit Protection Act of 1990.

Decisional Unit Affected: **[description of Decisional Unit, e.g., “All employees in the Business Development organization] of [XYZ company] (the “Company”)**

Eligibility Factors: All employees in the Decisional Unit were eligible for the reduction-in-force. This reduction-in-force involved selection for the reduction-in-force and the receipt of a separation benefits package in exchange for acceptance of a confidential severance and release agreement. To be selected for the offer of the severance benefits provided under this reduction-in-force, individuals must have been selected for involuntary termination solely as a result of the reduction-in-force. Selections for involuntary termination occurred by considering:

- **[selection factor]**
- **[selection factor]**
- **[selection factor]**

All other employees, specifically including any employee who voluntarily quits, resigns, or is involuntarily terminated for any reason other than the reduction-in-force (even if previously selected), are not eligible for the offer of severance benefits. Additionally, employees who are selected for involuntary termination but are successfully redeployed elsewhere within the Company are not eligible.

Time Limits: Employees selected for the reduction-in-force must execute the confidential severance and release agreement within forty-five (45) days after receipt of the documentation. After execution of the confidential severance and release agreement, employees who are age 40 or older have seven (7) days to revoke it.

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Decisional Unit Data: Attached to this cover page is a listing of the job titles and ages of all individuals in the Decisional Unit, as defined above, who were and were not selected for separation from employment at this time and the offer of severance benefits in exchange for signing the Confidential Severance and Release Agreement.

Decisional Unit Data

[INSTRUCTIONS: Create a chart in Excel that shows the information below, and insert into this document as a picture or chart:

Job Title	Age	Selected for Program	Not Selected for Program
-----------	-----	----------------------	--------------------------

NOTE - The sample forms provided as part of this presentation are intended merely for informational purposes. No representation is made as to the enforceability of these forms in any jurisdiction, and the materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

STATE LAWS FOR RELEASES AND SETTLEMENT AGREEMENTS

Peter O. Hughes
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

What follows is a list of state statutes and laws that are typically listed in releases and separation agreements, in order to obtain an effective waiver of claims under those provisions of the individual states' laws. In addition, where the state has peculiar requirements for waivers and releases (e.g., a requirement that employees be given some period of time to revoke the agreement) this is noted below.

Please note that in all, or almost all, states employees cannot waive rights to workers' compensation benefits (unless approved by the applicable tribunal) or unemployment benefits.

Alabama

Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Ala. Code §25-5-11.1 et seq.; Alabama Age Discrimination Law – Ala. Code §25-1-20 et seq.; Alabama Affirmative Action Program for Minorities – Ala. Code §25-1-10 et seq.; Alabama Wage Payment and Work Hour Laws.

Additional information for releases: None

Alaska

Alaska Human Rights Law – Alaska Stat. Title 18, Chapter 80; Alaska Wage and Hour Act; Any other provision of Title 23 of the Alaska Statutes; Alaska OSHA, including any provision of Alaska Administrative Code Title 8, Chapter 60; Anchorage Equal Rights Law – Anchorage Municipal Code, Title 5; any claim for vacation, sick or personal leave pay; any claim for violation of an implied covenant of good faith and fair dealing; any claim for attorney's fees or costs, including a claim based on a contract, statute, or Alaska Civil Rule 82; [for public employers only: Alaska Pregnancy, Childbirth and Family Leave Act, AS 23.10.500 et seq.]

Additional information for releases: None

Arizona

Arizona Civil Rights Act – Ariz. Rev. Stat. §41-1401 et seq.; Arizona Employment Protections Act – Title 23, Ch. 9, Art. 1, Ariz. Rev. Stat. §23-1501.

Additional information for releases: None

NOTE – The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Arkansas

Arkansas Civil Rights Act – Ark. Code Ann. §16-123-101 et seq.; the Arkansas Labor and Industrial Code; Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Ark. Code Ann. §11-9-107 (a) et seq.; Arkansas Equal Pay Law – Ark. Code Ann. §11-4-601 et seq.; Arkansas Genetic Information and Testing Law – Ark. Code Ann. §11-5-401 et seq.; Arkansas Wage Payment and Work Hour Laws.

Additional information for releases: None

California

Aside from Section 1542 below (which is required in all releases), CA does not require that specific language be used in a waiver, and generally, the California attorneys do not include all state-specific statutes in a release. (Additional caveat: California can be so unusual that a “one-size-fits-all” release language approach may be problematic in certain circumstances. Please feel free to reach out to The California Advice Group for further guidance and advice.) That being said, the following statutes could be included in a release of California claims:

California Family Rights Act – Cal. Govt. Code § 12945.2 et seq.; California Fair Employment and Housing Act – Cal. Govt Code § 12900 et seq.; Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Cal. Lab. Code §132a (1) to (4); California Unruh Civil Rights Act – Civ. Code § 51 et seq.; California Sexual Orientation Bias Law – Cal. Lab. Code §1101 et seq.; California AIDS Testing and Confidentiality Law – Cal. Health & Safety Code §199.20 et seq.; California Confidentiality of Medical Information – Cal. Civ. Code §56 et seq.; California Smokers’ Rights Law – Cal. Lab. Code §96; California Parental Leave Law – Cal. Lab. Code §230.7 et seq.; California Apprenticeship Program Bias Law – Cal. Lab. Code §3070 et seq.; California Wage Payment Act, as amended; California Equal Pay Law – Cal. Lab. Code §1197.5 et seq.; California Whistleblower Protection Law – Cal. Lab. Code § 1102-5(a) to (c); California Military Personnel Bias Law – Cal. Mil. & Vet. Code §394 et seq.; California Family and Medical Leave – Cal. Lab. Code §233; California Parental Leave for School Visits Law – Cal. Lab. Code §230.7 et seq.; California Electronic Monitoring of Employees – Cal. Lab. Code §435 et seq.; Cal/OSHA law, as amended; California Consumer Reports: Discrimination Law – Cal. Civ. Code §1786.10 et seq.; California Political Activities of Employees Act – Cal. Lab. Code §1101 et seq.; California Domestic Violence Victim Employment Leave Act – Cal. Lab. Code §230.1; California Voting Leave Law – Cal. Elec. Code §14350 et seq.; California Court Leave Law – Cal. Lab. Code §230; California Wage Theft Prevention Act; [if applicable, Los Angeles AIDS-Based Discrimination Ordinance, Los Angeles Municipal Ordinance §45.80 et

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 2

seq.]; [if applicable, San Francisco AIDS-Based Discrimination Ordinance, §3801 et seq.]

Must be included: Waiver of Section 1542. Employee hereby states that it is his intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees and costs hereinabove released. Employee hereby expressly waives and relinquishes all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of California, which provides:

Section 1542 [Certain Claims Not Affected By General Release.] A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Additional information for releases: The list of statutes above includes a waiver of the Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Cal. Lab. Code §132a (1) to (4). You cannot waive such a claim if there is a pending 132a claim in existence/filed at the time the parties are executing the agreement, in which case you would need approval of the Workers' Compensation Appeals Board.

Colorado

The Colorado Anti-Discrimination Act, Colorado Civil Rights Commissions' Regulations – 3 CCR 708-1; the Colorado Equal Pay Law, The Colorado Military Leave/Re-Employment Rights Law, The Colorado Job References/Blacklisting Law, the Colorado Labor Peace Act, Colorado's Minimum Wage Orders, Colorado's Personal Leave Law for Victims of Domestic Abuse or Violent Crimes, C.R.S. § 24-34-402.7, Colorado's Parental Leave for Child's School Activity Act, C.R.S. § 8-13-101, et seq., The Colorado Lawful Off-Duty Activities Law, Colorado Adoptive Parents Leave Act – Colo. Rev. Stat. §19-5-211; Colorado Testimony Protection – Colo. Rev. Stat. §8-2.5-101; Colorado Testimony Protection – Colo. Rev. Stat. §8-2.5-101

Additional information for releases: None

Connecticut

Connecticut Human Rights and Opportunities Act – Conn. Gen. Stat. §46a-51 et seq.; Connecticut General Statutes §31-51 (and all subsections thereto), the Connecticut Fair Employment Practices Act, the Connecticut Whistleblower Protection Statute, the Connecticut wage and hour laws, the Connecticut Constitution, Connecticut workplace safety laws, Connecticut Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Conn. Gen. Stat. § 31-290a; Connecticut Equal

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 3

Pay Law (Conn. Gen. Stat. §31-58(e) et seq.; §§31-75 and 31-76); Connecticut Family and Medical Leave Law (Conn. Gen. Stat. §31-51kk et seq.); Connecticut Drug testing

Law (Conn. Gen. Stat. §31-51t et seq.); Connecticut Whistleblower Laws (Conn. Gen. Stat. §31-51m(a) et seq. and §33-1336; Connecticut AIDS Testing and Confidentiality Law (Conn. Gen. Stat. §19a-581 et seq.); Connecticut Age Discrimination and Employee Benefits Law (Conn. Gen. Stat. §38a-543); Connecticut Reproductive Hazards (Conn. Gen. Stat. §31-40g et seq.); Connecticut Smoking Outside the Workplace Law (Conn. Gen. Stat. §31-40s); Connecticut Electronic Monitoring of Employees (Conn. Gen. Stat. §31-48b, d); Connecticut Wage Hour and Wage Payment Laws, as amended; Connecticut OSHA, as amended; the public policy of Connecticut; Unfair Trade Practices pursuant to Conn. Gen. Stat. §42-110a et seq.

Additional information for releases: None

Delaware

Delaware Fair Employment Practices Act – Del. Code Ann. tit. 19, §710 et seq.; Delaware Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Del. Code Ann. tit. 19, §2365; Delaware AIDS Testing Confidentiality Act – Del. Code Ann. tit. 16, §1201 et seq.; Delaware Equal Pay Law – Del. Code Ann. tit. 19, §1107A; Delaware Handicap Discrimination Law – Del. Code Ann. tit. 19, §720 et seq.; Delaware Whistleblower – Del. Code Ann. tit. 29, §5115; Delaware Wage Payment and Work Hour Laws

Additional information for releases: None

District of Columbia

District of Columbia Human Rights Act – D.C. Code Ann. §1-2501 et seq.; District of Columbia Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – D.C. Code Ann. §36-342; District of Columbia Family and Medical Leave Act – D.C. Code Ann. §32-501 et seq. and 36-1301 et seq.; District of Columbia Smokers' Rights Law – D.C. Code Ann. §7-1703.03; District of Columbia Parental Leave Act – D.C. Code Ann. §32-1201 et seq.; District of Columbia Rights of the Blind and Physically Disabled (“White Cane Act”) – D.C. Code Ann. §7-1001 et seq.; Payment, Collection of Wages and Work Hour Laws – D.C. Code Ann. §32-1301 et seq.; D.C. Pregnancy Anti-Discrimination Act – D.C. Code Ann. §1-2505

Additional information for releases: None

Florida

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

4

Florida Civil Rights Act – Fla. Stat. §760.01 et seq.; Florida Whistle Blower – Fla. Stat. §448.101 et seq.; Florida Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Fla. Stat. §440.205; Florida Wage Discrimination Law – Fla. Stat. §448.07; Florida Equal Pay Law – Fla. Stat. §725.07 and Fla. Stat. Ann. §448.07; Florida AIDS Act – Fla. Stat. §110.1125, §381.00 and §760.50;

Florida Discrimination on the Basis of Sickle Cell Trait Law – Fla. Stat. §448.075 et seq.; Florida OSHA – Fla. Stat. Ann. §442.018(2); Florida Wage Payment Laws

Additional information for releases: none

Georgia

Georgia Fair Employment Practices Act – O.C.G.A. §45-19-20 et seq. (applies to public entities); Georgia AIDS Confidentiality Act – O.C.G.A. §24-9-47 (effective until January 1, 2013) ; Georgia Equal Pay Act (Sex Discrimination in Employment) – O.C.G.A. §34-5-1 et seq.; Georgia Age Discrimination in Employment Act – O.C.G.A. §34-1-2 (criminal sanctions only, no civil remedy - not sure this is appropriate for releases); Georgia Equal Employment for Persons with Disabilities Code – O.C.G.A. §34-6A-1 et seq.; Georgia Minimum Wage Law, O.C.G.A. § 34-4-1 et seq.; [if applicable, City of Atlanta Anti-Discrimination Ordinance, Part II, Chapter 94, Article II, Section 94-10 et seq.]; and the Rights of Sales Representative Law, O.C.G.A. 10-1-702.

Additional information for releases: It is the general practice **not** to specifically list any Georgia state statutes in a release, because a general release of claims is sufficient under Georgia. The Georgia Court of Appeals has upheld a release containing the following language: "all claims, demands, actions, causes of action, known or unknown, of every kind and nature, statutory or otherwise, in contract or in tort, at law or in equity." Bradley v. British Fitting Group, PLC, 221 Ga. App. 621, 624, 472 S.E.2d 146, 150 (1996).

Hawaii

Hawaii Fair Employment Practices Law – Haw. Rev. Stat. 21 §378-1 et seq.; Hawaii Whistleblower Protection – Haw. Rev. Stat. §378-61 et seq.; Hawaii Statutory Provision Regarding Retaliation/Discrimination For Filing a Workers Compensation Claim – Haw. Rev. Stat. 21 §378-32 et seq.; Hawaii Family Leave Act – Haw. Rev. Stat. §398-1 et seq.; Hawaii AIDS Law – Haw. Rev. Stat. §325-101; Hawaii Equal Pay Law – Haw. Rev. Stat. 21 §378-4; Hawaii Wage Payment and Work Hour Laws; Hawaii Occupational Safety & Health Law, Haw. Rev. Stat. Ch. 396

Additional information for releases: None

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 5

Idaho

Idaho Fair Employment Practices Act - Idaho Code §67-5901 et seq.; Idaho Equal Pay Law - Idaho Code §44-1701 et seq.; Idaho Civil Rights Law – Idaho Code §18-7301 et seq.; Idaho AIDS Testing Law – Idaho Code §39-609; Idaho Wage Payment and Work Hour Laws

Additional information for releases: Idaho Statutes Title 29-110 provides that a contract which purports to restrict an individual from enforcing his or her rights under the contract by the usual proceedings in ordinary tribunals, or which limits the time within which he or she may enforce his or her rights is void.

Illinois

IL does not require that specific language be used in a waiver, but the following State statutes could be included in a release of Illinois claims:

Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; Illinois Wage Payment & Collection Act, 820 ILCS 115/1 et seq.; Illinois Minimum Wage Law, 820 ILCS 105/1 et seq.; One Day Rest in Seven Act, 820 ILCS 140/1 et seq.; Illinois School Visitation Rights Act; 820 ILCS 147/1 et seq.; Illinois Worker Adjustment and Restraining Notification Act, 820 ILCS 65/1 et seq.; Illinois Whistleblower - Environmental Protection Act, 415 ILCS 5/52; Illinois Personnel Records Review Act, 820 ILCS 40/0.01 et seq.; Right to Privacy in the Workplace Act, 820 ILCS 55/1 et seq.; Illinois Equal Wage Act, 820 ILCS 110/1 et seq.; Illinois Equal Pay Act of 2003, 820 ILCS 112/1 et seq.; Illinois Victims' Economic Security and Safety Act, 820 ILCS 180/1 et seq.; Illinois Health Insurance Claim Filing Act, 820 ILCS 45/1 et seq.; Illinois Employee Credit Privacy Act, 820 ILCS 70/1 et seq.; Employee Blood Donational Leave Act, 820 ILCS 149/1 et seq.; Illinois Family Military Leave Act, 820 ILCS 151/1 et seq.; [if applicable, the Cook County Human Rights Ordinance;]; [if applicable, the Chicago Human Rights Ordinance, as amended]

Additional information for releases: None

Indiana

Indiana Civil Rights Law, I.C. §22-9-1-1-- I.C. §22-9-8-3; Indiana State Wage Payment and Wage Claims Laws, I.C. 22-2-5 et seq., I.C. 22-2-9 et seq.

Additional information for releases: There are several additional statutes that provide various types of employment rights, e.g. jury duty protection, smokers' rights, IOSHA, etc., but attorneys do not typically include any statutes beyond the ones specifically listed above (unless there is a dispute that involves one of those additional statutes), relying instead upon the general “any other claims related to my employment...” language contained in the release to cover those additional statutes.

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 6

Iowa

Iowa Civil Rights Act of 1965, Iowa Code 216.1 et seq.; the Iowa Wage Payment Collection law, Iowa Code 91A.1 et seq.; the Iowa Minimum Wage law, Iowa Code 91D.1.

Additional information for releases: None

Kansas

Kansas Minimum Wage and Maximum Hour Law – K.S.A. 44.1201 et. seq.; Kansas Equal Pay Law – K.S.A. § 44.1205; Kansas Act Against Discrimination – K.S.A. § 44-1001 et seq.; Kansas Age Discrimination in Employment Act – K.S.A. § 44-1111 et seq.; Kansas Statutory Provisions Regarding Discrimination against Military Personnel - §§ 44-1125 – 44-1128; Kansas Statutory Provisions Regarding Discrimination/Retaliation against Victim's of Domestic Violence - §§ 44-1131 – 44-1133; Kansas Commission on Civil Rights Rules and Regulations – Kan. Admin. Regs Vol. 1, Agency 21; Kansas Infectious Disease Act (AIDS Law) – K.S.A. § 65-6001 et seq.; Kansas Payment of Compensation Act – K.S.A § 44-312 et. seq.; Kansas State Wage Payment and Work Hour Laws

Additional information for releases: None

Kentucky

Kentucky Civil Rights Act – Ky. Rev. Stat. Ann. §344.010 et seq. and Kentucky Statutory Provisions Regarding Wages and Hours – Ky. Rev. Stat. Ann. §337.010 et seq.; Kentucky Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim – Ky. Rev. Stat. Ann. §342.197(1); Kentucky Parental Leave (Adoptions) – Ky. Rev. Stat. Ann. §337.015; Kentucky Discrimination against Physically Handicapped – Ky. Rev. Stat. Ann. §207.130 et seq.; Kentucky Equal Pay Law – Ky. Rev. Stat. Ann. §337.420 et seq.; Kentucky Tobacco Users Rights Law – Ky. Rev. Stat. Ann. §344.040; Kentucky AIDS Law – Ky. Rev. Stat. Ann. §207.135, 207.150 et seq.; Kentucky Whistleblower Protection – Ky. Rev. Stat. Ann. §61.102, et seq.; Kentucky Human Rights Commission Regulations – Title 104 Ky. Admin. Regs. Ch. 1; Kentucky Occupational Safety & Health Program – Ky. Rev. Stat. Ch. 338; Kentucky Voting Leave Laws – Ky. Rev. Stat. Ann. §118.035.

Louisiana

The Louisiana Employment Discrimination Law, La. R.S. §§23:301, *et seq.*; the Louisiana Commission on Human Rights Act, La. R.S. §§51:2231, *et seq.*; the Louisiana Workers' Compensation Nondiscrimination Law, La. R.S. §23:1361; the Louisiana General Whistleblower Law, La. R.S. §23:967; the Louisiana Environmental

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

7

Whistleblower Law, La. R.S. §30:2027; the Louisiana Smokers Nondiscrimination Law, La. R.S. §23:966; the Louisiana Bone Marrow Donor Leave Law, La. R.S. §23:1299.124; the Louisiana Drug Testing Act, La. R.S. §§49:1001, *et seq.*; the Louisiana Jury Duty Law, La. R.S. §42:1169; the Louisiana law restricting fingerprinting and other costs assessed against employees, La. R.S. §23:897; the Louisiana Assignment of Earnings or Single Garnishment Nondiscrimination Law, La. R.S.

§23:731; the Louisiana Political Rights and Freedom Law, La. R.S. §23:961; the Louisiana Right of Access to Records of Toxic Exposures Law, La. R.S. §23:1016; the Louisiana Military Service Relief Act, La. R.S. §§29:401, *et seq.*; the Louisiana Military Reemployment and Nondiscrimination Laws, La. R.S. 29:38, *et seq.*; the Louisiana Wage Payment Laws, La. R.S. §§23:631-690; and the Louisiana General Tort Law, Civil Code Art. 2315.

Additional information for releases:

- The last law cited in the list is Louisiana's general fault law, which we sometimes include. (It states, *inter alia*, "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.")
- Some particular statutes have been excluded from the list because they are employer-specific, such as the following: the "Louisiana Conscience Objection Nondiscrimination law" (health services and research), La. R.S. 40:1299.35.9; the Louisiana Public Employee Whistleblower Law, La. R.S. 42:1169 (Louisiana Constitutional provisions should also be considered for public employees); the Louisiana Agricultural Laborers' Right to Work Law, La. R.S. §§23:881, *et seq.*

Maine

Maine Human Rights Act – Me. Rev. Stat. Ann. tit. 5 §4551 *et seq.*; Maine Whistleblower Protection Act – Me. Rev. Stat. Ann. tit. 26, §832 *et seq.*; Maine Smokers' Rights Law – Me. Rev. Stat. Ann. tit. 26 §597; Maine Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – Me. Rev. Stat. Ann. tit. 39-A, §353; Maine Family Medical Leave Act – Me. Rev. Stat. Ann. tit. 26, Ch. 7, Sub. Ch. VI-A; Maine AIDS Testing Law – Me. Rev. Stat. Ann. tit. 5, §19201 *et seq.*; Maine Reasons For Termination – Me. Rev. Stat. Ann. tit. 26, §630; Maine Review of Employee Records – Me. Rev. Stat. Ann. tit. 26, §631; Maine Equal Pay Law – Me. Rev. Stat. Ann. §26-7-628 and Title 1, §140; Maine Genetic Information Privacy Act – Me. Rev. Stat. Ann. 5 §19301 *et seq.* and Title 24-A §2159-6; Maine Sexual Harassment Policies Law – Me. Rev. Stat. Ann. tit. 26, §806; Maine Commission Employment Regulations – Ch. 2 §301 *et seq.* Code of Me. Rules; Maine Wage Payment and Work Hour Laws; Maine Occupational Safety & Health Act – Me. Rev. Stat. Ann. tit. 26, Ch. 6

Additional information for releases: None

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Maryland

Maryland Fair Employment Practices Statute (formerly referred to as Article 49 B) - MD. CODE ANN., STATE GOV'T § 20-601 et seq.; Maryland Lily Ledbetter Civil Rights Restoration Act - MD. CODE ANN., STATE GOV'T § 20-607 (b); Maryland Equal Pay Law - MD. CODE ANN., LAB. & EMP. § 3-301 et seq.; Maryland Wage Payment and

Collection Law - MD. CODE ANN., LAB. & EMP. § 3-501 et seq.; Maryland Wage Hour Law - MD. CODE ANN., LAB. & EMP. § 3-401 et seq.; Maryland Worker's Compensation Act - MD. CODE ANN., LAB. & EMP. § 9-101 et seq.; Maryland Occupational Safety and Health Law - MD. CODE ANN., LAB. & EMP. § 5-101 et seq.

Additional information for releases: None

Massachusetts

Mass. General Laws, Chapter 151B; the Massachusetts Civil Rights Act, Mass. General Laws, Chapter 12 §11*He t seq.*, the Massachusetts Equal Rights Act, Mass. General Laws, Chapter 83 §102, Massachusetts Privacy Statute – M.G.L. c. 214 §1B; Massachusetts Sexual Harassment Statute – M.G.L. c. 214 §1C; any claims that may be release under Massachusetts labor statutes, Mass. General Laws Chapter 149 *et seq.*

Additional information for releases: None

Michigan

Michigan Elliott Larsen Civil Rights Act – MCL §37.2101 et seq.; Michigan Persons With Disabilities Civil Rights Act – MCL §37.1101 et seq.; Michigan Whistleblower Protection Act – MCL §15.361 et seq.; Michigan Statutory Provision Regarding Retaliation/Discrimination for Filing a Worker's Compensation Claim – MCL §418.301(11) et seq.; Michigan AIDS Testing and Confidentiality Act – MCL §333.5131; Michigan Minimum Wage Law – MCL §408.381 et seq.; Michigan Payment of Wages and Fringe Benefits Act – MCL §408.471 et seq.; Michigan Occupational Safety and Health Act – MCL §408.1001 et seq.

Additional information for releases: None

Minnesota

Minnesota Human Rights Act – Minn. Stat. §363A.01 et seq.; Minnesota Whistleblower Protection – Minn. Stat. §181.931 et seq.; Retaliation for Filing a Worker's Compensation Claim – Minn. Stat. §176.82; Minnesota Parental Leave Act – Minn. Stat. §181.940 et seq.; Minnesota Dismissal for Age Act – Minn. Stat. §181.81 et seq.; Minnesota Equal Pay For Equal Work Law – Minn. Stat. §181.66 et seq.; Minnesota Fair

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 9

Labor Standards Act – Minn. Stat. §177.21 et seq.; Minnesota's Lawful Use Statute – Minn. Stat. §181.938; Minnesota Wage Payment and Work Hour Laws; Minnesota Occupational Safety and Health Act – Minn. Stat. Ch. 182; Minnesota's Personnel Record Review Statute – Minn. Stat. §181.960 et seq.

Additional information for releases: For a release to effectively waive claims under the Minnesota Human Right Act, the individual must be given at least 15 calendar days to

revoke the agreement after he or she has signed it. This is a requirement for any type of discrimination or retaliation claim covered by the MHRA, not just age discrimination. **Note**, however, that this agreement does not apply where the release is signed in settlement of a claim filed with the Minnesota Department of Human Rights, any other administrative agency, or any court. In such cases, the release is effective upon execution.

Mississippi

Mississippi Smokers Rights Law, Miss. Code Ann. 71-7-33; Mississippi Employment Protection Act, Miss. Code Ann, 71-11-3; Breastfeeding Rights Law, Miss Code Ann. 71-1-55; Mississippi Wage Payment Law, Miss Code Ann. 71-1-35; right of an employee to have a weapon in a locked personal vehicle on company premises - Section 45-9-55; actions for “bad faith;” McArn claims.

Additional information for releases: Some attorneys also include a waiver of any “McArn claims.” A McArn claim is an exception to Mississippi's employment at-will doctrine which provides an employee a cause of action if terminated for their refusal to participate in illegal activity or if terminated for reporting illegal activity.

Missouri

Missouri Human Rights Act – Mo. Rev. Stat. § 213.010 et seq.; Missouri Statutory Provisions Regarding Retaliation/Discrimination for Filing Worker's Compensation Claim – Mo. Rev. Stat. § 287.780; Missouri Service Letter Statute – Mo. Rev. Stat. § 290.140; Missouri Minimum Wage Law – Mo. Rev. Stat. § 290.500 et. seq.; Missouri Equal Pay Law – Mo. Rev. Stat. § 290.400 et seq.; Missouri Handicap Discrimination Law – Mo. Rev. Stat. § 209.150 et seq.; Missouri Smokers' Rights Law – Mo. Rev. Stat. § 290.145; Missouri AIDS Law – Mo. Rev. Stat. § 191.665; Missouri Jury Leave Law - Mo. Rev. Stat. § 494.460; Missouri Voting Leave Law – Mo. Rev. Stat. § 115.639; Missouri Political Activities of Employee Law – Mo. Rev. Stat § 115.637; Missouri Military Leave and Reemployment Law – Mo. Rev. Stat. § 41.370; Employee Leave for Adoptive Parents and Stepparents (State employees only) – Mo. Rev. Stat § 105.271; Missouri Bone Marrow and Organ Donation Leave Laws (State employees only) – Mo. Rev. Stat. §105.266; Missouri Witness Leave Laws; Missouri State Wage Payment and Work Hour Laws

Additional information for releases: None

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Montana

Montana Human Rights Act – Mont. Code Ann. §49-1-101 et seq.; Montana Equal Pay Law – Mont. Code Ann. §39-3-104; Montana Use of Lawful Product During Nonworking Hours Law – Mont. Code Ann. §§39-2-313 et seq.; Montana Wrongful Discharge From Employment Act – Mont. Code Ann. §39-

2-901 et seq.; Montana Maternity Leave Law - Mont. Code Ann. §§49-2-310 and 49-2-311.

Additional information for releases:

A release and/or waiver agreement cannot exempt an individual from liability for fraud, willful injury or for violation of law, whether willful or negligent. Mont. Code Ann. § 28-2-702.

Although an individual may waive the advantage of a law intended solely for his benefit, a law established for public reason cannot be contravened by a private agreement. Mont. Code. Ann. § 1-3-204 (“Public Reason” law). Montana courts, in applying this statute, have found that claims for wages and/or indemnification for expenses are matters of “public reason” that cannot be waived. Rothwell v. Allstate Ins. Co., 976 P.2d 512 (1999) (employee indemnification statute); Hoehne v. Sherrodd, Inc., 668 P.2d 232 (1983) (wages); Lewis v. B & B Pawnbrokers, Inc., 968 P.2d 1145 (1998) (employee cannot waive his/her right to overtime compensation). Conversely, matters interpreted solely for an individual's benefits, and thus waivable have been interpreted as including a widow's personal right to benefits under worker's compensations laws (Matter of Gaither, 797 P.2d 208 (1990)) and the right of a payee on a dishonored check to pursue statutory damages (Collection Bureau Services, Inc. v. Morrow, 87 P.3d 1024 (2004)). Consequently, under Montana law, statutory benefits provided on the basis of *public policy* cannot be waived. See Campbell v. Mahoney, 29 P.3d 1034 (2001). Montana is not an employee at-will state. Accordingly, Montana Courts, are not likely to uphold a waiver/release of an individual's right to assert a claim pursuant to any of the above-referenced employment statutes (which are public policy statutes- Campbell v. Mahoney, 29 P.3d 1034 (2001)).

Nebraska

Nebraska Fair Employment Practices Act – Neb. Rev. Stat. §48.1101 et seq.; Nebraska Equal Pay Act – Neb. Rev. Stat. §48- 1219 et seq.; Nebraska AIDS Bias Law – Neb. Rev. Stat. §20-167 et seq.; Nebraska Parental Leave Law (for Adoption) – Neb. Rev. Stat. §48-234; Nebraska Age Discrimination Law – Neb. Rev. Stat. §48- 1001 et seq.; Nebraska Non-English Speaking Employee Protections Act – Neb. Rev. Stat. §48-220 8

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

11

et seq.; Nebraska Genetic Information and Testing law, Neb. Rev. Stat. § 48-236 *et seq.*; Nebraska Wage Payment and Work Hour Laws; Nebraska Workplace Safety Law

Additional information for releases: None

Nevada

Nevada Fair Employment Practices Act – Nev. Rev. Stat. §613.310 et seq.; Nevada Equal Pay Law – Nev. Rev. Stat. §608.017; Nevada School Visitation Law – Nev. Rev. Stat.

§392.920; Nevada Wage Payment and Work Hour Law – Nev. Rev. Stat. § 608.016 et seq.; Nevada Occupational Safety & Health Act – Nev. Rev. Stat. Ch. 618; Nevada Family and Medical Leave (for public employees only) – Nev. Rev. Stat. §§ 284.558, 284.5811; Nevada's Unemployment Compensation Law – Nev. Rev. Stat. § 612.010 et seq.

Additional information for releases: None

New Hampshire

New Hampshire Law Against Discrimination – N.H. Rev. Stat. Ann. §354-A:1 et seq.; New Hampshire Whistleblower Protection – N.H. Rev. Stat. Ann. §275-E:1 et seq.; New Hampshire Equal Pay Law – N.H. Rev. Stat. Ann. §275.36 et seq.; New Hampshire AIDS Education Act – N.H. Rev. Stat. Ann. §141-F:5 et seq.; New Hampshire Genetic Testing Law – N.H. Rev. Stat. Ann. §141-H:1; New Hampshire Smokers' Rights Law – N.H. Rev. Stat. Ann. §275:37a; New Hampshire Right To Know Act – N.H. Rev. Stat. Ann. §277-A:2 et seq.; New Hampshire Wage Payment and Work Hour Laws

Additional information for releases: None

New Jersey

New Jersey Law Against Discrimination – N.J. Rev. Stat. §10:5-1 et seq.; New Jersey Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – N.J. Rev. Stat. §34:15-39.1 et seq.; New Jersey Family Leave Act – N.J. Rev. Stat. §34:11B-1 et seq.; New Jersey Smokers' Rights Law – N.J. Rev. Stat. §34:6B-1 et seq.; New Jersey Equal Pay Act – N.J. Rev. Stat. §34:11-56.1 et seq.; New Jersey Genetic Privacy Act – N.J. Rev. Stat. Title 10, Ch. 5, §10:5-43 et seq.; New Jersey Conscientious Employee Protection Act (Whistleblower Protection) – N.J. Stat. Ann. §34:19-3 et seq.; New Jersey Wage Payment and Work Hour Laws; New Jersey Public Employees' Occupational Safety and Health Act – N.J. Stat. Ann. §34:6A-25 et seq.; New Jersey Fair Credit Reporting Act; the Millville Dallas Airmotive Plant Job Loss Notification (mini-WARN) Act; New Jersey Fair Credit Reporting Act; New Jersey False Claims Act; New Jersey Civil Rights Act; New Jersey mini-COBRA; New Jersey laws

~~**NOTE** - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).~~

12

regarding Political Activities of Employees, Lie Detector Tests, Jury Duty, Employment Protection, and Discrimination

Additional information for releases:

- When net proceeds of any settlement payment to Plaintiff is over \$2,000, a child support judgment search must be run before paying the settlement. Usually Plaintiff's counsel handles search automatically, but it is the employer's obligation if the plaintiff is *Pro Se*. Consider using the below language in the release:

The Parties herein acknowledge and agree that New Jersey Statute 2A:17-56.23b requires a search of child support judgments to be completed prior to any distribution of the proceeds of this settlement. Accordingly, the proceeds of this settlement shall not be distributed until after the private judgment search company Charles Jones, Inc., a Lexis Nexis Company, has completed, at the request and (\$10.00) expense of [Employee], such a search and certified that [Employee] is not a child support debtor in the state of New Jersey. In the event this search reveals that [Employee] is a child support debtor in the state of New Jersey, the Probation Division of the Superior Court will be contacted in accordance with N.J.S.A. 2A:17-56.23b to arrange for satisfaction of the child support judgment.

- There is some authority for the proposition that, while an employer is under no obligation to list all statutory claims, if it undertakes to list statutes, but omits one or two, the release may not be effective to waive the employee's rights under the omitted statutes. Keelan v. Bell Communications Research, 289 N.J.Super. 531 (App. Div. 1996).

New Mexico

New Mexico Human Rights Act – N.M. Stat. Ann. §28-1-7 et seq.; New Mexico Statutory provision Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – N.M. Stat. Ann. §52-1-28.2; New Mexico AIDS Testing – N.M. Stat. Ann. Ch. 28, §28-10A-1 and Ch. 24, §24-2B-1 et seq.; New Mexico Employee Privacy Act – N.M. Stat. Ann. Ch. 50, §50-11-1 et seq.; New Mexico Genetic Information Privacy Act – N.M. Stat. Ann. Ch. 28, Art. 21, §24-21-1 et seq.; New Mexico Wage Payment and Work Hour Laws; New Mexico Occupational Safety and Health Act

Additional information for releases: None

~~NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).~~

13

New York

The New York Human Rights Law, the New York Executive Law, the New York Labor Law, all New York State Wage and Hour Laws, the New York Worker Adjustment and Retraining Notification Act, all New York leave laws, the New York Constitution, the New York City Administrative Code, and all other federal, state and local law claims, including all claims for wrongful discharge, employment discrimination or harassment on any basis, retaliation, whistleblowing, wages and compensation, leave of absence, failure to accommodate, defamation, breach of express or implied contract, fraud, malicious prosecution, invasion of privacy, false imprisonment, and emotional distress.

Additional information for releases: None

North Carolina

It is the general practice of our North Carolina attorneys not to include any specific NC State statutes in a release unless a former employee has filed a claim under a particular NC statute. This is because none of the NC statutes need to be mentioned in a release in order to have an enforceable waiver of claims if the release language is broad enough to cover all claims associated with employment and /or any transaction between the parties up to and including the date the release is signed.

Additional information for releases: None

North Dakota

North Dakota Human Rights Act – N.D. Cent. Code §14-02.4-1 et seq.; North Dakota Whistleblower – N.D. Cent. Code §34-01-20; North Dakota Equal Pay Act – N.D. Cent. Code §34-06.1; North Dakota AIDS Testing Law – N.D. Cent. Code Ch. 23-07.5; North Dakota Age Discrimination Act – N.D. Cent. Code §34-01-17; North Dakota State Policy Against Participation in Lawful Activity – N.D. Cent. Code §14-02.4; North Dakota Wage Payment and Work Hour Laws – N.D. Cent. Code Ch §34-14.

Additional information for releases: None

Ohio

Ohio Fair Employment Practices Act – Ohio Rev. Code Ann. § 4112.01, *et seq.*; Ohio Whistleblower Protection Law – Ohio Rev. Code Ann. § 4113.51, *et seq.*; Ohio Statutory Provisions Regarding Retaliation/Discrimination for Filing Worker's Compensation Claim – Ohio Rev. Code Ann. § 4123.90; Ohio Equal Pay Law – Ohio Rev. Code Ann. § 4111.13 *et seq.*; Ohio State Wage Payment and Work Hour Laws - Ohio Rev. Code Ann. § 4111.01, *et seq.*; Ohio Political Action of Employees Laws; Ohio Witness and Juror Leave Laws - Ohio Rev. Code Ann. § 2313.18, *et seq.*; Ohio Voting Leave Laws - Ohio

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 14

Rev. Code Ann. § 3599.06, *et seq.*; Ohio Military Family Medical Leave Act - Ohio Rev. Code Ann. § 5906.01, *et seq.*; and Ohio Whistleblower Protection Law - Ohio Rev. Code Ann. § 4113.52.

Additional information for releases: None

Oklahoma

Anti-Discrimination Statute- Okla. Stat. Ann. Tit. 25, Ch. 21, Sect. 1101 *et seq.*; Age Discrimination- Okla. Stat. Ann. Tit. 25, Ch. 21, Sect. 37-2500 *et seq.*; Violence in the Workplace (state employees)- Okla. Stat. Ann. Tit. 21, Sect. 1173(F); Voting Leave- Okla. Stat. Ann. Tit. 26, Ch. A1, Art. VII; Wage Payment- Okla. Stat. Tit. 40, Ch. 5, Sect. 1 *et seq.*; Whistleblower Law (state employees)- Okla. Stat. Ann. Tit. 74, Ch. 355, Sect.

840-2.5 *et seq.*; Overtime Pay (state employees)- Okla. Stat. Ann. Tit. 61, Ch. 55, Sect. 3 *et seq.*; Workers Compensation- Okla. Stat. Ann. Tit. 85, Ch. 1 *et seq.*; Smoking in the Workplace- Okla. Stat. Ann. Tit. 21, Pt. V, Ch. 50; Tit. 40, Ch. 14, Sec. 500-503; and Tit. 63, Ch. 1, Art. 15; Drug Testing- Okla. Stat. Ann. Tit. 40, Ch. 15, Sect. 551 *et seq.*; COBRA Law- Okla. Stat. Tit. 36, sect. 4502.1 & 4509; Garnishment- Okla. Stat. Ann. Tit. 12, Ch. 21; Tit. 14A; and Title 31; Genetic Testing- Okla. Stat. Ann. Tit. 36, Sect. 3614.2; Jury Duty- Okla. Stat. Ann. Tit. 38, Sect. 34

Additional information for releases: None

Oregon

Oregon Equality Act – ORS 659A.001 *et seq.*; Oregon Workplace Religious Freedom Act – ORS 659A.033; Unlawful Discrimination Against Injured Workers – ORS 659A.040 *et seq.*; Unlawful Discrimination for Service in Uniformed Service – ORS 659A.082 *et seq.*; Oregon Military Family Leave Act – ORS 659A.090 *et seq.*; Unlawful Discrimination Against Persons with Disabilities – 659A.103 *et seq.*; Oregon Family Leave Act – ORS 659A.150 *et seq.*; Crime Victim Leave – ORS 659A.190 *et seq.*; Whistleblower Law – ORS 659A.200 *et seq.*; Unlawful Discrimination Relating to Employee Housing – ORS 659A.250 *et seq.*; Leave for Victims of Domestic Violence, Harassment, Sexual Assault, or Stalking – ORS 659A.270 *et seq.*; Oregon Medical Testing Law – ORS 659A.300; Oregon Genetic Information Law – ORS 659A.303; Unlawful Discrimination Based on Employment of Family Member – ORS 659A.309; Oregon Bone Marrow Leave – ORS 659A.312; Unlawful Restriction of Tobacco Use – ORS 659A.315; Unlawful Discrimination relating to Academic Degree in Theology or Religious Occupations – ORS 659A.318; Unlawful Discrimination Based on Credit History – ORS 659A.320; Unlawful Discriminatory Wage Rate Based on Sex – ORS 652.220; Unlawful Retaliation Based on Complaint of Unequal Pay – ORS 652.220; Unlawful Discrimination Based on Pursuit of, or Participation in, Wage Claim – ORS 652.355.

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 15

Additional information for releases:

Wage Claims under ORS Chapter 652: Without approval of the Commission of the Bureau of Labor and Industries, a release is effective only as to “known and identified” wage claims. ORS 652.360. A release of “additional or future claims” is void. *Id.* The statute does not address what makes a claim “known and identified,” so the release should specify the dispute. A general release of “all claims for unpaid wages” would likely not be effective. *Vento v. Versatile Logic Systems Corp.*, 167 Or. App. 272 (2000) (payment of \$1,000 to terminated employee in exchange for general release of all claims was not effective as waiver of employee’s state law claims for unpaid overtime, liquidated damages, and statutory penalty).

Claims for Personal Injuries. An employer whose interest is or may become adverse to that of an injured employee cannot obtain or attempt to obtain a release, settlement, or statement within 15 days of the injury. ORS 17.075. (The exception to this rule is the reporting requirement of the Workers’ Compensation Law).

Pennsylvania

Pennsylvania Human Relations Act – 43 P.S. § 951 et seq.; Pennsylvania Minimum Wage Act – 43 P.S. § 333.101 et seq.; Pennsylvania Whistleblower Law – 43 P.S. § 1421 et seq.; Pennsylvania Equal Pay Law, as amended – 43 P.S. § 336.1 et seq.; Pennsylvania Wage Payment and Collection Law, as amended – 43 P.S. § 260.1 et seq.; Pennsylvania Workers Compensation Act - 77 PS. § 1, et seq.

Additional information for releases:

- If a settlement agreement is reached *after* litigation has commenced in a Pennsylvania state court, Pennsylvania Rule of Civil Procedure 229.1 requires that the amounts contemplated by the settlement agreement be paid over to the plaintiff's attorney (or plaintiff if proceeding *pro se*) within twenty (20) days of the receipt of the executed release. *See* Pa. R.C.P. 229.1. Failure to do so may result in sanctions, including, attorneys fees incurred in securing the enforcement, as well as interest on the withheld funds. *Id.*

Rhode Island

Rhode Island Fair Employment Practices Act – R.I. Gen. Laws §28-5-1 et seq.; Rhode Island Whistleblowers’ Protection Act – R.I. Gen. Laws §28-49-1 et seq.; Rhode Island Parental and Family Medical Leave Act – R.I. Gen. Laws Vol. 5, §28-48-1 et seq.; Rhode Island Equal Pay Law – R.I. Gen. Laws Vol. 5, §28-6-17 et seq.; Rhode Island AIDS Law – R.I. Gen. Laws §23-6-10; Rhode Island Civil Rights Act – R.I. Gen. Laws §42-112-1 et seq.; Rhode Island Discrimination Based on Genetic Testing Law – R.I. Gen. Laws Vol. 5, §28-6.7-1 et seq.; Rhode Island Victims’ Rights Law (Domestic Violence) –

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

R.I. Gen. Laws §12-28-10; Rhode Island Civil Rights of People With Disabilities Act – R.I. Gen. Laws Vol. 6C, §42-87-1 et seq.; Rhode Island Smokers' Rights Law – R.I. Gen. Laws Vo. 4B, §23-20.7.1-1; Rhode Island Sexual Harassment Education and Training Law – R.I. Gen. Laws §28-51-1 et seq.; Rhode Island Wage Payment and Hour Laws

Additional information for releases: Any contract or agreement which purports to waive the provisions of the Genetic Testing as a Condition of Employment Act is void. (R.I. Gen. Laws § 28-6.7-5).

South Carolina

South Carolina Human Affairs Law – S.C. Code Ann. §1-13-10 et seq.; South Carolina Genetic Information Privacy Act – S.C. Code Ann. §38-93-10 et seq.; South Carolina

Smokers' Right Law – S.C. Code Ann. §41-1-85; South Carolina Workers' Compensation Retaliation Act – S.C. Code Ann. §41-1-80; South Carolina Bone Marrow Donor Program Leave Act – S.C. Code Ann. §44-43-80; South Carolina Wage Payment Act, as amended – S.C. Code Ann. §41-10-10 et seq.; South Carolina Occupational Safety and Health Act, as amended – S.C. Code Ann. §41-15-10 et seq.; South Carolina Subpoena and Jury Duty Retaliation Act, as amended – S.C. Code Ann. §41-1-70; South Carolina Illegal Aliens and Private Employment Act, as amended – S.C. Code Ann. §41-8-10 et seq.

Additional information for releases: None

South Dakota

South Dakota Human Relations Act – S.D. Codified Laws Ch. 20-13-1 et seq.; South Dakota Equal Pay Law – S.D. Codified Laws §60-12-15 et seq.; South Dakota Smokers' Rights Law – S.D. Codified Laws §60-4-11; South Dakota Use of Genetic Information – S.D. Codified Laws §60-2-20 et seq.; South Dakota Wage Payment and Work Hour Laws

Additional information for releases: None

Tennessee

Tennessee Anti-Discrimination Act (a.k.a. Tennessee Human Rights Act) – Tenn. Code Ann. §4-21-101 et seq.; Tennessee Whistleblower Protection and Smokers' Rights Act – Tenn. Code Ann. §50-1-304; The Tennessee Statutory Provisions Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – Tenn. Code Ann. §50-1-801; Tennessee Equal Pay Act – Tenn. Code Ann. §50-2-201 et seq.; Tennessee Maternity and Adoption Care Leave Act – Tenn. Code Ann. §4-21-408; Tennessee Breast Feeding Rights – Tenn. Code Ann. §50-1-305; Tennessee Disability Act – Tenn. Code Ann. §8-50-103; Tennessee Occupational Safety and Health Act –

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Tenn. Code Ann. §50-3-101 et seq.; Tennessee Lawful Employment Act - Tenn. Code Ann. §50-1-701 et seq.; Tennessee Polygraph Protection Act – Tenn. Code Ann. §62-27-123 et seq.

Additional information for releases: None

Texas

Any claims under Chapter 21 of the Texas Labor Code (also known as the “Texas Commission on Human Rights Act”), including Tex. Lab. Code § 21.051 and § 21.055, and the Texas Genetic Testing Law (Texas Lab. Code §§ 21.401- 21.405); the Texas Workers’ Compensation Act (including retaliation and other claims under Chapter 451 of the Texas Labor Code, formerly Article 8307c of the Texas Workers’ Compensation Act); the Texas Payday Law (Chapter 61 of the Texas Labor Code); any other claims under the Texas Labor Code; Texas disability discrimination law (Tex. Hum. Res. Code §§ 121.001 et seq.); the Texas Communicable Diseases Law (Tex. Health & Safety Code §§ 81.101 et seq.); any other claims under the Texas Health and Safety Code; the Texas Civil Practice and Remedies Code (including any claim for attorneys’ fees under Chapter 38 of the Texas Civil Practice and Remedies Code); the Texas Occupations Code; and any and all common law claims, including wrongful and/or retaliatory termination and/or discharge of employment claims; contract or promissory estoppel claims; intentional infliction of emotional distress claims; assault and battery claims; negligence claims; tort claims; personal injury claims; third-party claims; slander, libel and/or defamation claims; and/or qui tam claims.

The following statutes or ordinances may also apply in some situations:

- Austin AIDS-Based Discrimination Ordinance - § 7-4-120;
- the Texas Nursing Practices Act;
- the Texas Whistleblower Act (Tex. Gov’t Code §§ 554.001 et seq.);
- any other claims under the Texas Government Code.

Additional information for releases: It is not necessary that the parties to a release “anticipate and identify each potential cause of action relating to the release’s subject matter.” *Keck, Mahin & Cate v. National Union Fire Ins. Co. of Pittsburgh*, 20 S.W.3d 692, 698 (Tex. 2000). A valid release may encompass unknown claims and future damages. However, under the express negligence rule in Texas, a release only covers negligence claims if it expressly references “negligence.”

Utah

Utah Antidiscrimination Act – Utah Code Ann. Title 34A, Ch. 5, § 101 et seq.; Utah State Wage Payment and Work Hour Law; Utah Occupational Safety and Health Act – Utah Code Ann. Title 34, Ch. 6

Additional information for releases: None

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

18

Vermont

Vermont Fair Employment Practices Act – Vt. Stat. Ann. tit.21, Ch. 5, subch. 6 §495 et seq.; Vermont Genetic Testing in Employment Act – Vt. Stat. Ann. Ch. 217. §9331 et seq.; Vermont Statutory Provisions Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – Vt. Stat. Ann. tit. 21, §710; Vermont Parental and Family Leave Law – Vt. Stat. Ann. tit.21, Ch. 5, Subch. 4A, §470 et seq.; Vermont State Wage Payment and Work Hour Laws; Vermont Occupational Safety and Health Code – Vt. Stat. Ann. tit. 21, Ch.3, Subchs. 5 and 5; Title 18 VSA, Ch. 28

Additional information for releases: None

Virginia

Virginia Human Rights Act – Va. Code Ann. tit. 21, Ch. 43, §2.1-714 et seq.; Virginia Statutory Provisions Regarding Retaliation/Discrimination for Filing a Workers' Compensation Claim – Va. Code Ann. §65.2-308(A) and (B); Virginia Equal Pay Act – Va. Code Ann. §40.1-28.6; Virginians With Disabilities Act – Va. Code Ann. tit. 51.5, §51.5-1 et seq.; AIDS Testing Law – Va. Code Ann. §32.1 – 36.1 et seq.; Virginia Wage Payment and Hour Laws, as amended; Virginia Occupational Safety and Health (VOSH) Law – Va. Lab. Laws tit 40.1

Additional information for releases: None

Washington

- The Washington Fair Credit Reporting Act; RCW 19.182;
- The Washington Consumer Protection Act, RCW 19.86;
- The Washington Law Against Discrimination, as amended, RCW 49.60;
- The Washington Minimum Wage Act, as amended, RCW 49.46;
- The Washington Family Leave Act, as amended, RCW 49.78;
- The Washington Family Care Act, as amended, RCW 49.12.265 - 49.12.295;
- Washington's Domestic Violence Leave Law, RCW 49.76;
- Washington's Military Family Leave Law, RCW 49.77;
- Washington's Veteran's and Veteran's Affairs statute, RCW 73;
- Washington Equal Pay Act, RCW 49.12.175;
- Any provision of Title 49 of the Revised Code of Washington;
- Any provision of Title 296 of the Washington Administrative Code;
- The Industrial Insurance Act of Washington, as amended, RCW 49.12, to the extent permitted by law;
- Any claim alleging the exception to the Industrial Insurance Act of Washington, established by RCW 51.24.020, for injury inflicted with "deliberate intention";
- Any claim for violation of any provision of Chapter 14.04 of the Seattle Municipal Code; [Use for employees working in City of Seattle only]

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s).

Additional information for releases: None

West Virginia

West Virginia Human Rights Act – W. Va. Code §5-11-1 et seq.

Note – the following additional laws are not typically contained in the release, but they should be included if the claims are brought under such statutes: West Virginia Statutory Provisions Against Retaliation/Discrimination for Filing a Workers' Compensation Claim – W. Va. Code §23-5A-1 et seq.; West Virginia Equal Pay Law – W. Va. Code §21-5B-1 et seq.; West Virginia AIDS-Related Testing and Records Confidentiality Act – W. Va. Code §16-3C-1 et seq.; West Virginia Smokers' Rights Law – W. Va. Code §21-3-19;

West Virginia Electronic Monitoring – W. Va. Code §21-3-20; West Virginia State Wage Payment and Work Hour Laws

Additional information for releases:

- Employers also must supply the toll free telephone number of the West Virginia State Bar Association: (1-800-642-3617).
- In addition, for *age* claims under WV state law, employer must provide 21 days to consider (45 for a group termination) as well as a 7-day revocation period.
- Must assure a "knowing and voluntary" waiver of claims (by using language meant to be understood by individuals with the same level of education and experience as the plaintiff).

Wisconsin

Wisconsin Fair Employment Act, the Wisconsin Family and Medical Leave Act, Wisconsin Wage Payment and Deduction Statutes, Wisconsin Right-to-Know Law, Wisconsin Safe-Place Statute, Wisconsin Plant Closing Law, Wisconsin Administrative Code (Department of Workforce Development).

Additional information for releases: None.

Wyoming

Wyoming Fair Employment Practices Act – Wyo. Stat. §27-9-101 et seq.; Wyoming Equal Pay Law – Wyo. Stat. §27-4-301 et seq.; Wyoming State Wage Payment and Work Hour Laws

Additional information for releases: None

NOTE - The statements contained herein are intended merely for informational purposes. The materials should not be relied upon or construed as legal advice, or as a substitute for obtaining legal advice from an attorney licensed in the applicable jurisdiction(s). 20

C

Effective:[See Text Amendments]Code of Federal Regulations [Currentness](#)

Title 29. Labor

Subtitle B. Regulations Relating to Labor

Chapter XIV. Equal Employment Opportunity Commission

[Part 1625](#). Age Discrimination in Employment Act ([Refs & Annos](#))[Subpart B](#). Substantive Regulations**→ § 1625.22 Waivers of rights and claims under the ADEA.**

(a) Introduction.

(1) Congress amended the ADEA in 1990 to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f).

(2) Section 7(f)(1) of the ADEA expressly provides that waivers may be valid and enforceable under the ADEA only if the waiver is “knowing and voluntary”. Sections 7(f)(1) and 7(f)(2) of the ADEA set out the minimum requirements for determining whether a waiver is knowing and voluntary.

(3) Other facts and circumstances may bear on the question of whether the waiver is knowing and voluntary, as, for example, if there is a material mistake, omission, or misstatement in the information furnished by the employer to an employee in connection with the waiver.

(4) The rules in this section apply to all waivers of ADEA rights and claims, regardless of whether the employee is employed in the private or public sector, including employment by the United States Government.

(b) Wording of Waiver Agreements.

(1) Section 7(f)(1)(A) of the ADEA provides, as part of the minimum requirements for a knowing and vol-

untary waiver, that:

The waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate.

(2) The entire waiver agreement must be in writing.

(3) Waiver agreements must be drafted in plain language geared to the level of understanding of the individual party to the agreement or individuals eligible to participate. Employers should take into account such factors as the level of comprehension and education of typical participants. Consideration of these factors usually will require the limitation or elimination of technical jargon and of long, complex sentences.

(4) The waiver agreement must not have the effect of misleading, misinforming, or failing to inform participants and affected individuals. Any advantages or disadvantages described shall be presented without either exaggerating the benefits or minimizing the limitations.

(5) Section 7(f)(1)(H) of the ADEA, relating to exit incentive or other employment termination programs offered to a group or class of employees, also contains a requirement that information be conveyed “in writing in a manner calculated to be understood by the average participant.” The same standards applicable to the similar language in section 7(f)(1)(A) of the ADEA apply here as well.

(6) Section 7(f)(1)(B) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that “the waiver specifically refers to rights or claims under this Act.” Pursuant to this subsection, the waiver agreement must refer to the Age Discrimination in Employment Act (ADEA) by name in connection with the waiver.

(7) Section 7(f)(1)(E) of the ADEA requires that an individual must be “advised in writing to consult with an attorney prior to executing the agreement.”

(c) Waiver of future rights.

(1) Section 7(f)(1)(C) of the ADEA provides that:

A waiver may not be considered knowing and voluntary unless at a minimum ... the individual does not waive rights or claims that may arise after the date the waiver is executed.

(2) The waiver of rights or claims that arise following the execution of a waiver is prohibited. However, section 7(f)(1)(C) of the ADEA does not bar, in a waiver that otherwise is consistent with statutory requirements, the enforcement of agreements to perform future employment-related actions such as the employee's agreement to retire or otherwise terminate employment at a future date.

(d) Consideration.

(1) Section 7(f)(1)(D) of the ADEA states that:

A waiver may not be considered knowing and voluntary unless at a minimum * * * the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled.

(2) "Consideration in addition" means anything of value in addition to that to which the individual is already entitled in the absence of a waiver.

(3) If a benefit or other thing of value was eliminated in contravention of law or contract, express or implied, the subsequent offer of such benefit or thing of value in connection with a waiver will not constitute "consideration" for purposes of section 7(f)(1) of the ADEA. Whether such elimination as to one employee or group of employees is in contravention of law or contract as to other employees, or to that individual employee at some later time, may vary depending on the facts and circumstances of each case.

(4) An employer is not required to give a person age 40 or older a greater amount of consideration than is given to a person under the age of 40, solely because of that person's membership in the protected class under the ADEA.

(e) Time periods.

(1) Section 7(f)(1)(F) of the ADEA states that:

A waiver may not be considered knowing and voluntary unless at a minimum * * *

(i) The individual is given a period of at least 21 days within which to consider the agreement; or

(ii) If a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement.

(2) Section 7(f)(1)(G) of the ADEA states:

A waiver may not be considered knowing and voluntary unless at a minimum ... the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired.

(3) The term "exit incentive or other employment termination program" includes both voluntary and involuntary programs.

(4) The 21 or 45 day period runs from the date of the employer's final offer. Material changes to the final offer restart the running of the 21 or 45 day period; changes made to the final offer that are not material do not restart the running of the 21 or 45 day period. The parties may agree that changes, whether material or immaterial, do not restart the running of the 21 or 45 day period.

(5) The 7 day revocation period cannot be shortened by the parties, by agreement or otherwise.

(6) An employee may sign a release prior to the end of the 21 or 45 day time period, thereby commencing the mandatory 7 day revocation period. This is permissible as long as the employee's decision to accept such shortening of time is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, a threat to withdraw or alter the offer prior to the expiration of the 21 or 45 day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period. However, if an employee signs a release before the expiration of the 21 or 45 day time period,

the employer may expedite the processing of the consideration provided in exchange for the waiver.

(f) Informational requirements.

(1) Introduction.

(i) Section 7(f)(1)(H) of the ADEA provides that:

A waiver may not be considered knowing and voluntary unless at a minimum ... if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) [which provides time periods for employees to consider the waiver] informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to--

(i) Any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) The job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(ii) Section 7(f)(1)(H) of the ADEA addresses two principal issues: to whom information must be provided, and what information must be disclosed to such individuals.

(iii)(A) Section 7(f)(1)(H) of the ADEA references two types of "programs" under which employers seeking waivers must make written disclosures: "exit incentive programs" and "other employment termination programs." Usually an "exit incentive program" is a voluntary program offered to a group or class of employees where such employees are offered consideration in addition to anything of value to which the individuals are already entitled (hereinafter in this section, "additional consideration") in exchange for their decision to resign voluntarily and sign a waiver. Usually "other employment termination program" refers to a group or class of employees who were involuntarily terminated and who are offered additional

consideration in return for their decision to sign a waiver.

(B) The question of the existence of a "program" will be decided based upon the facts and circumstances of each case. A "program" exists when an employer offers additional consideration for the signing of a waiver pursuant to an exit incentive or other employment termination (e.g., a reduction in force) to two or more employees. Typically, an involuntary termination program is a standardized formula or package of benefits that is available to two or more employees, while an exit incentive program typically is a standardized formula or package of benefits designed to induce employees to sever their employment voluntarily. In both cases, the terms of the programs generally are not subject to negotiation between the parties.

(C) Regardless of the type of program, the scope of the terms "class," "unit," "group," "job classification," and "organizational unit" is determined by examining the "decisional unit" at issue. (See paragraph (f)(3) of this section, "The Decisional Unit.")

(D) A "program" for purposes of the ADEA need not constitute an "employee benefit plan" for purposes of the Employee Retirement Income Security Act of 1974 (ERISA). An employer may or may not have an ERISA severance plan in connection with its OWBPA program.

(iv) The purpose of the informational requirements is to provide an employee with enough information regarding the program to allow the employee to make an informed choice whether or not to sign a waiver agreement.

(2) To whom must the information be given. The required information must be given to each person in the decisional unit who is asked to sign a waiver agreement.

(3) The decisional unit.

(i)(A) The terms "class," "unit," or "group" in section 7(f)(1)(H)(i) of the ADEA and "job classification or organizational unit" in section 7(f)(1)(H)(ii) of the

ADEA refer to examples of categories or groupings of employees affected by a program within an employer's particular organizational structure. The terms are not meant to be an exclusive list of characterizations of an employer's organization.

(B) When identifying the scope of the "class, unit, or group," and "job classification or organizational unit," an employer should consider its organizational structure and decision-making process. A "decisional unit" is that portion of the employer's organizational structure from which the employer chose the persons who would be offered consideration for the signing of a waiver and those who would not be offered consideration for the signing of a waiver. The term "decisional unit" has been developed to reflect the process by which an employer chose certain employees for a program and ruled out others from that program.

(ii)(A) The variety of terms used in section 7(f)(1)(H) of the ADEA demonstrates that employers often use differing terminology to describe their organizational structures. When identifying the population of the decisional unit, the employer acts on a case-by-case basis, and thus the determination of the appropriate class, unit, or group, and job classification or organizational unit for purposes of section 7(f)(1)(H) of the ADEA also must be made on a case-by-case basis.

(B) The examples in paragraph (f)(3)(iii), of this section demonstrate that in appropriate cases some subgroup of a facility's work force may be the decisional unit. In other situations, it may be appropriate for the decisional unit to comprise several facilities. However, as the decisional unit is typically no broader than the facility, in general the disclosure need be no broader than the facility. "Facility" as it is used throughout this section generally refers to place or location. However, in some circumstances terms such as "school," "plant," or "complex" may be more appropriate.

(C) Often, when utilizing a program an employer is attempting to reduce its workforce at a particular facility in an effort to eliminate what it deems to be excessive overhead, expenses, or costs from its organization at that facility. If the employer's goal is the reduction of its workforce at

a particular facility and that employer undertakes a decision-making process by which certain employees of the facility are selected for a program, and others are not selected for a program, then that facility generally will be the decisional unit for purposes of section 7(f)(1)(H) of the ADEA.

(D) However, if an employer seeks to terminate employees by exclusively considering a particular portion or subgroup of its operations at a specific facility, then that subgroup or portion of the workforce at that facility will be considered the decisional unit.

(E) Likewise, if the employer analyzes its operations at several facilities, specifically considers and compares ages, seniority rosters, or similar factors at differing facilities, and determines to focus its workforce reduction at a particular facility, then by the nature of that employer's decision-making process the decisional unit would include all considered facilities and not just the facility selected for the reductions.

(iii) The following examples are not all-inclusive and are meant only to assist employers and employees in determining the appropriate decisional unit. Involuntary reductions in force typically are structured along one or more of the following lines:

(A) Facility-wide: Ten percent of the employees in the Springfield facility will be terminated within the next ten days;

(B) Division-wide: Fifteen of the employees in the Computer Division will be terminated in December;

(C) Department-wide: One-half of the workers in the Keyboard Department of the Computer Division will be terminated in December;

(D) Reporting: Ten percent of the employees who report to the Vice President for Sales, wherever the employees are located, will be terminated immediately;

(E) Job Category: Ten percent of all accountants, wherever the employees are located, will be terminated next week.

(iv) In the examples in paragraph (f)(3)(iii) of this section, the decisional units are, respectively:

- (A) The Springfield facility;
- (B) The Computer Division;
- (C) The Keyboard Department;
- (D) All employees reporting to the Vice President for Sales; and
- (E) All accountants.

(v) While the particular circumstances of each termination program will determine the decisional unit, the following examples also may assist in determining when the decisional unit is other than the entire facility:

- (A) A number of small facilities with interrelated functions and employees in a specific geographic area may comprise a single decisional unit;
- (B) If a company utilizes personnel for a common function at more than one facility, the decisional unit for that function (i.e., accounting) may be broader than the one facility;
- (C) A large facility with several distinct functions may comprise a number of decisional units; for example, if a single facility has distinct internal functions with no employee overlap (i.e., manufacturing, accounting, human resources), and the program is confined to a distinct function, a smaller decisional unit may be appropriate.

(vi)(A) For purposes of this section, higher level review of termination decisions generally will not change the size of the decisional unit unless the reviewing process alters its scope. For example, review by the Human Resources Department to monitor compliance with discrimination laws does not affect the decisional unit. Similarly, when a regional manager in charge of more than one facility reviews the termination decisions regarding one of those facilities, the review does not alter the decisional unit, which remains the one facility under consideration.

(B) However, if the regional manager in the course of review determines that persons in other facilities should also be considered for termination, the decisional unit becomes the population of all facilities considered. Further, if, for example, the regional manager and his three immediate subordinates jointly review the termination decisions, taking into account more than one facility, the decisional unit becomes the populations of all facilities considered.

(vii) This regulatory section is limited to the requirements of [section 7\(f\)\(1\)\(H\)](#) and is not intended to affect the scope of discovery or of substantive proceedings in the processing of charges of violation of the ADEA or in litigation involving such charges.

(4) Presentation of information.

(i) The information provided must be in writing and must be written in a manner calculated to be understood by the average individual eligible to participate.

(ii) Information regarding ages should be broken down according to the age of each person eligible or selected for the program and each person not eligible or selected for the program. The use of age bands broader than one year (such as "age 20–30") does not satisfy this requirement.

(iii) In a termination of persons in several established grade levels and/or other established subcategories within a job category or job title, the information shall be broken down by grade level or other subcategory.

(iv) If an employer in its disclosure combines information concerning both voluntary and involuntary terminations, the employer shall present the information in a manner that distinguishes between voluntary and involuntary terminations.

(v) If the terminatees are selected from a subset of a decisional unit, the employer must still disclose information for the entire population of the decisional unit. For example, if the employer decides that a 10% RIF in the Accounting Department will come from the accountants whose performance is in the bottom one-third of the Division, the employer still must dis-

close information for all employees in the Accounting Department, even those who are the highest rated.

(vi) An involuntary termination program in a decisional unit may take place in successive increments over a period of time. Special rules apply to this situation. Specifically, information supplied with regard to the involuntary termination program should be cumulative, so that later terminatees are provided ages and job titles or job categories, as appropriate, for all persons in the decisional unit at the beginning of the program and all persons terminated to date. There is no duty to supplement the information given to earlier terminatees so long as the disclosure, at the time it is given, conforms to the requirements of this section.

(vii) The following example demonstrates one way in which the required information could be presented to the employees. (This example is not presented as a prototype notification agreement that automatically will comply with the ADEA. Each information disclosure must be structured based upon the individual case, taking into account the corporate structure, the population of the decisional unit, and the requirements of section 7(f)(1)(H) of the ADEA): Example: Y Corporation lost a major construction contract and determined that it must terminate 10% of the employees in the Construction Division. Y decided to

offer all terminatees \$20,000 in severance pay in exchange for a waiver of all rights. The waiver provides the section 7(f)(1)(H) of the ADEA information as follows:

(A) The decisional unit is the Construction Division.

(B) All persons in the Construction Division are eligible for the program. All persons who are being terminated in our November RIF are selected for the program.

(C) All persons who are being offered consideration under a waiver agreement must sign the agreement and return it to the Personnel Office within 45 days after receiving the waiver. Once the signed waiver is returned to the Personnel Office, the employee has 7 days to revoke the waiver agreement.

(D) The following is a listing of the ages and job titles of persons in the Construction Division who were and were not selected for termination and the offer of consideration for signing a waiver:

Job Title	Age	No. Selected	No. not selected
(1) Mechanical Engineers, I	25	21	48
	26	11	73
	63	4	18
	64	3	11
(2) Mechanical Engineers, II	28	3	10
	29	11	17
Etc., for all ages			
(3) Structural Engineers, I	21	5	8
	Etc., for all ages		
(4) Structural Engineers, II	23	2	4
	Etc., for all ages		
(5) Purchasing Agents	26	10	11
	Etc., for all ages		

(g) Waivers settling charges and lawsuits.

A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a

(1) Section 7(f)(2) of the ADEA provides that:

kind prohibited under [section 4](#) or [15](#) may not be considered knowing and voluntary unless at a minimum--

(A) Subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) The individual is given a reasonable period of time within which to consider the settlement agreement.

(2) The language in section 7(f)(2) of the ADEA, “discrimination of a kind prohibited under [section 4](#) or [15](#)” refers to allegations of age discrimination of the type prohibited by the ADEA.

(3) The standards set out in paragraph (f) of this section for complying with the provisions of section 7(f)(1) (A)–(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

(4) The term “reasonable time within which to consider the settlement agreement” means reasonable under all the circumstances, including whether the individual is represented by counsel or has the assistance of counsel.

(5) However, while the time periods under section 7(f)(1) of the ADEA do not apply to subsection 7(f)(2) of the ADEA, a waiver agreement under this subsection that provides an employee the time periods specified in section 7(f)(1) of the ADEA will be considered “reasonable” for purposes of section 7(f)(2)(B) of the ADEA.

(6) A waiver agreement in compliance with this section that is in settlement of an EEOC charge does not require the participation or supervision of EEOC.

(h) Burden of proof. In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in section 7(f) of the ADEA, subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2) of section 7(f) of the ADEA.

(i) EEOC's enforcement powers.

(1) Section 7(f)(4) of the ADEA states:

No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(2) No waiver agreement may include any provision prohibiting any individual from:

(i) Filing a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participating in any investigation or proceeding conducted by EEOC.

(3) No waiver agreement may include any provision imposing any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to:

(i) File a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participate in any investigation or proceeding conducted by EEOC.

(j) Effective date of this section.

(1) This section is effective July 6, 1998.

(2) This section applies to waivers offered by employers on or after the effective date specified in paragraph (j)(1) of this section.

(3) No inference is to be drawn from this section regarding the validity of waivers offered prior to the effective date.

(k) Statutory authority. The regulations in this section are legislative regulations issued pursuant to section 9 of the ADEA and Title II of OWBPA.

[[63 FR 30628](#), June 5, 1998]

SOURCE: [46 FR 47726](#), Sept. 29, 1981; [53 FR 5972](#), Feb. 29, 1988; [72 FR 36875](#), July 6, 2007; [72 FR 72944](#), Dec. 26, 2007, unless otherwise noted.

AUTHORITY: 81 Stat. 602; [29 U.S.C. 621](#); [5 U.S.C. 301](#); Secretary's Order No. 10-68; Secretary's Order No. 11-68; Sec. 9, 81 Stat. 605; [29 U.S.C. 628](#); sec. 12, [29 U.S.C. 631](#), [Pub.L. 99-592](#), [100 Stat. 3342](#); sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

29 C. F. R. § 1625.22, 29 CFR § 1625.22

Current through July 26, 2012; 77 FR 44067.

© 2012 Thomson Reuters.
END OF DOCUMENT