

EEOC Attacks Severance Agreements

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Practices: Employment, Labor & Benefits

Every year, employers should audit their employment agreements, especially the separation, settlement and severance agreements they use. Too many employers are using agreements they received from their attorneys years earlier without realizing that laws change and that different language is required for different circumstances. Now the Equal Employment Opportunity Commission (EEOC) is providing a new reason to review these agreements.

On February 7, 2014, the EEOC filed *EEOC v. CVS Pharmacy, Inc., Civil Action No. 14 C 0863* in the United States District Court in the Northern District of Illinois. The EEOC stated that the purpose of the lawsuit was to protect CVS employees' rights to file charges with the EEOC and participate in EEOC's investigations and litigation, even after an employee has released all claims and received severance or settlement pay. Any language in an agreement that prevents or chills those rights is unlawful and the agreement will be unenforceable. Specifically, the EEOC is stating that the following language violates Title VII of the Civil Rights Act:

- Non-disparagement of the company;
- Non-disclosure of confidential information without the written permission of the Company;
- Cooperate with government investigations only after notifying the Company;
- Release of all claims of employment discrimination and charges; and
- Covenant not to sue

CVS had used a separation agreement for hundreds of employees in several reductions-in-force since 2011. The company now risks the court throwing out all of those agreements and the former employees bringing lawsuits challenging their terminations.

Therefore, it is time for human resource professionals to review the agreements they use to ensure their enforceability. The severance paid today may well be used by a former employee to pay a lawyer to file suit.