

BERTELSON LAW OFFICE, P.A.

Employment Law • Minneapolis, MN

Workplace News

Employment Law Litigation and Proactive Conflict Resolution Services for the Workplace

Fall 2012

Mandatory Requirements for Valid Releases

In this age of layoffs, employees are often presented with severance agreements when terminated. These agreements typically require individuals to release all potential employment law claims, including age discrimination claims under the Age Discrimination in Employment Act (ADEA), in exchange for severance.

The Older Worker's Benefit Protection Act (OWBPA), part of the ADEA, is designed to protect the rights and benefits of older workers and imposes mandatory requirements for waivers of ADEA rights. *Oubre v. Entergy Operations, Inc.* 522 U.S. 422, 427 (1998). Among these requirements, is the requirement to provide employees who are terminated in a group termination (more than one employee) with OWBPA disclosure information at the same time they are given the severance agreement. The purpose of the OWBPA's informational requirements is to provide an employee with enough information regarding the termination program to allow the employee to make an informed choice about whether or not to sign a waiver agreement. 29 C.F.R. §1625.22(f)(1)(iv).

Attorneys reviewing severance agreements should carefully scrutinize the OWBPA disclosure information provided to the terminated employee. In order for an employee to validly release ADEA claims, the waiver releasing such claims must meet all of the strict, mandatory OWBPA requirements outlined in the statute and regulations. 29 U.S.C. §626(f) and 29 C.F.R. §1625.22. These requirements include, among other things, information about the "decisional unit" or group of employees

from which the employer selected employees for termination; the job titles and ages of those terminated and those kept by the employer; and eligibility factors or selection criteria the employer used to make the termination decisions.

In our experience, terminated employees often do not receive the required OWBPA disclosure information or the information they receive is inadequate.

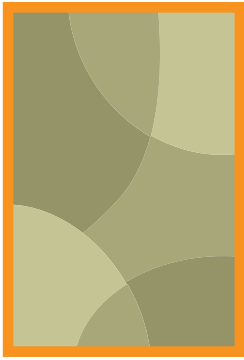
For example, and among other requirements, the decisional unit disclosed may not be the actual group of employees the employer looked at when making its termination decision; or the job titles disclosed are not the job titles the company actually used; or the disclosure information may not include everyone who was terminated, including your client. **Our firm and Sarnoski Law Office were successful in challenging and invalidating the waiver/release agreements signed by employees nationwide** in *Peterson v. Seagate US, LLC*, 2008 U.S. Dist. LEXIS

42179, No. 07-2502 (D. Minn. May 28, 2008). The court found that the release agreements were invalid as a matter of law because they failed to meet all of the OWBPA mandatory requirements when the disclosure information did not include the job titles and ages of all employees who were terminated, including one of our clients. The court found that, "[i]t may be that the inadvertent omission of a particular employee would be enough to affect one other employee's decision to sign the release." *Id.* at 6.

We are happy to review severance agreements of your friends or referrals to confirm whether they comply with the requirements outlined in statutes and regulations. ■

Beth Bertelson will present on issues surrounding release agreements and the Older Workers Benefit Protection Act at the Age Discrimination In Employment seminar held by Minnesota CLE on October 31, 2012

Workplace News is only a general summary of the topics discussed here and is not a substitute for legal advice.



**BERTELSON
LAW OFFICE, P.A.**
Employment Law • Minneapolis, MN

Election Day Rights for Employees

November 6th—Election Day—is fast approaching. As a reminder, employees’ voting rights are outlined in Minnesota Statute §204C.04. Employers must allow employees time off from work “to appear at the employee’s polling place, cast a ballot, and return to work on the day of that election, without penalty or deduction from salary or wages because of the absence.” Employers may not “directly or indirectly refuse, abridge, or

interfere” with an employee’s rights under this statute. Employers who violate this statute are guilty of a misdemeanor.

The statute does not specify the specific amount of time an employee may be absent, only that the employer must allow the employee the right to be absent from work “for the time necessary” to get to their polling place, to vote, and to return to work.■

Bertelson Law Office Offers Mediation Services

For many, early intervention in a legal conflict protects both a client’s dignity and pocket-book. As a mediator, Beth Bertelson can help parties resolve disputes, providing control and closure on a difficult situation by avoiding the time and expense of a trial. As a legal advocate practicing exclusively in employment law, Beth understands that employment conflicts can impact people physically, emotionally and financially. She also understands that for companies, unresolved disputes generally fester into costly litigation, affecting employee morale and profits.

In addition to representing individual clients in employment law matters and providing mediation services, Beth has trained businesses on employment law issues and investigated internal reports.

For over 20 years, Beth Bertelson has practiced in the area of employment law. She is a certified Labor and Employment Law Specialist by the Minnesota State Bar Association. She has been

recognized in *Law & Politics* and *Minneapolis St. Paul Magazine* as a “Super Lawyer.” She is a qualified neutral under Minnesota Rule 114. She has served as a section council member of the Labor and Employment Law Section of the Minnesota State Bar Association and a board member for the Minnesota Chapter of the National Employment Lawyers Association and several other non-profit organizations.■



Bertelson Law Office, P.A.

402 Union Plaza
333 Washington Ave. N.
Minneapolis, MN 55401

(612) 278-9832

Check out our website:
<http://www.bertelsonlaw.com>

email: beth@bertelsonlaw.com
andrea@bertelsonlaw.com

Minnesota State Bar Association

Certified ▲ Specialist



Workplace News is only a general summary of the topics discussed here and is not a substitute for legal advice.