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## **THE OLDER WORKERS BENEFITS PROTECTION ACT**

The Older Workers Benefits Protection Act (“OWBPA”) was enacted as an amendment to the Age Discrimination in Employment Act (“ADEA”) in 1990. It is designed to protect workers over age 40 from being taken advantage of in signing settlement agreements, severance agreements, and otherwise waiving claims. The OWBPA imposes certain specific requirements that must be met in order for a release of ADEA claims to be valid.

### **OWBPA Requirements**

In order for a waiver of claims under the ADEA, the OWBPA requires the waiver to be knowing and voluntary. As such, it must meet the following minimum requirements:

- be in writing and be understandable;
- specifically refer to ADEA rights or claims;
- not waive rights or claims that may arise in the future;
- be in exchange for valuable consideration;
- advise the individual in writing to consult an attorney before signing the waiver; and
- provide the individual at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing it.<sup>1</sup>

### **Causes of Action are Limited Under the OWBPA**

The OWBPA does not provide an independent cause of action pursuant to the statute or for age discrimination claims. This means a plaintiff or federal employee complainant cannot file a charge of discrimination or EEO complaint alleging discrimination in violation of the OWBPA. Rather, it provides for declaratory or injunctive relief that can eliminate the waiver of an ADEA claim. As such, the failure to provide the required notice would likely void a settlement agreement, severance agreement, or other waiver of claims with respect to the ADEA claims.

### **The OWBPA imposes strict requirements on employers, including federal government agencies.**

If a covered employee signs an agreement that does not meet the OWBPA requirements, the receipt of the benefits by the federal EEO complainant or plaintiff, and the failure to return such

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<sup>1</sup> OWBPA, §201, 104 Stat. 983, 29 U. S. C. §§626(f)(1)(B), (F), (G).

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benefits, does not serve to waive the ability to pursue the ADEA claim. Rather, the waiver of the ADEA claim is invalid. However, the employer can seek to reduce any award for the age claims by the amount paid through the settlement agreement.

### **Conclusion**

Although the OWBPA does not provide for specific remedial relief in the event of a violation, it is crucial that the notice requirements of the OWBPA are met. The OWBPA is designed to protect older workers from inadvertently releasing claims or being improperly pressured into foregoing discrimination actions. A release that does not meet the requirements of the OWBPA would not bar the complainant from pursuing ADEA claims.

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