

# PUBLICATION

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## New EEOC Guidance for Employees (That's Right – Employees!)

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As is becoming more apparent everyday, employers are facing a new government culture. Agencies like the U.S. Equal Employment Opportunity Commission (EEOC) now have more resources at their disposal, and these agencies are becoming more proactive in addressing employment-related issues. On July 15, 2009, the EEOC issued a technical assistance document entitled, "[Understanding Waivers of Discrimination Claims in Employee Severance Agreements](#)." Remarkably, this document is not intended to provide guidance to employers on how to comply with various employment-related laws, but rather it is intended to provide guidance to employees who may receive such an agreement.

The technical assistance document was issued in conjunction with a public hearing held by the EEOC to discuss the economic downturn, the significant increase in age discrimination charges filed with the Commission, and what the EEOC characterized as "recent controversial Supreme Court decisions on enforcement of the Age Discrimination in Employment Act (ADEA)." For this hearing, the EEOC assembled a panel of speakers who spoke on various age discrimination topics including stereotyping, disparate impact, age-based policies and threats to employee benefits.

As part of the public hearing, the EEOC issued the technical assistance document to provide guidance to terminated employees who are offered severance pay in exchange for a waiver of discrimination claims. The document explains the purpose of severance agreements and releases, as well as the legal requirements for such agreements to be valid, including requirements for a valid release of age discrimination claims under the Older Workers Benefit Protection Act (OWBPA). The document further advises employees that even if they have signed a waiver releasing their employer from claims, they can still file a charge of discrimination with the EEOC without first returning their severance pay. The document even contains an "Employee Checklist," advising employees of factors to consider when they are offered a severance agreement.

While not intended as such, the technical assistance document serves as a useful resource for employers considering distribution of a severance agreement. Indeed, the technical assistance document contains a sample OWBPA-compliant waiver. However, the technical assistance document also serves as notice to all employers that the EEOC will be closely scrutinizing such agreements. While severance agreements can be very useful tools in foreclosing potential employment-related claims, they have very specific legal requirements, and because the EEOC is now focusing its attention on these agreements, employers must ensure that their severance agreements will withstand EEOC scrutiny.

Baker Donelson stands ready to assist you with these and all other labor and employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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