

Age Discrimination and Release Agreements

by: Joette S. Doran

The Age Discrimination In Employment Act (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Remedies under the ADEA include lost wages, reinstatement and/or front pay (continuing damages for lost wages), and liquidated damages if the jury finds that the employer's conduct was willful.

Often employers will attempt to avoid an action for age discrimination by offering a terminated employee a severance agreement that includes the waiver of a claim for age discrimination. The waiver of legal rights for an age claim will be effective where the employer has complied with the Older Workers Benefit Protection Act (OWBPA). Under the OWBPA the release will be considered valid to waive an age claim where the company complies with the Act by providing adequate consideration, advises the employee to consult with an attorney, provides at least 21 days to consider the agreement, provides 7 days to revoke the agreement after execution and specifically provides that rights under the ADEA are waived. As such, because an agreement drafted under the OWBPA is effective to waive your legal rights, you are well advised to review the facts of your employment situation and the release with legal counsel.

In order to pursue a case of age discrimination, a Charge of Discrimination must first be filed with a state or federal administrative agency. Because the time limitations are strict, if you believe that you are being subjected to age discrimination or that your employment rights are being violated, I encourage you not to delay receiving information regarding your legal rights. For additional employment information, please visit our web site at <http://www.joettedoran.com>

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ADMITTED TO ALL ILLINOIS FEDERAL COURTS AND THE UNITED STATES SUPREME COURT. SHE IS A MEMBER OF THE FEDERAL TRIAL BAR AND IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION, A PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN AND A MEMBER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION.