

Compliance Check 2020

May 2019

Welcome to the fifth issue in our series, *Compliance Check 2020*, a monthly publication that will help you perform a self-assessment of your company's compliance with federal, state and local employment laws and regulations.

This edition is designed to assist you in conducting a self-assessment of your company's approach to separation agreements, including a waiver and release of claims.

When drafting the terms of a separation agreement, failure to adhere to federal and state requirements can result in a release being unenforceable or invalid. Moreover, as states respond to the #MeToo movement, many jurisdictions are changing the requirements for obtaining a valid release – particularly one that includes a release of harassment-related claims.

As you review your templates or forms, be aware that the requirements for obtaining a valid release have changed recently. Most HR professionals are aware of the requirements to satisfy the Older Workers Benefit Protection Act when it comes to obtaining a release of an age discrimination claim under federal law. In New York, however, if a waiver and release contains a confidentiality provision, the agreement must provide for a non-waivable 21-day review and 7-day revocation period. And Minnesota requires a 15-day revocation period for any release of claims under the Minnesota Human Rights Act. Given these state-specific requirements, it is critical to remember that one size truly does not fit all.

Here are some questions to help you assess whether your company needs to revise any of its forms or practices in relation to the waiver and release of claims:

- ☒ **Does your company regularly review and update its template waiver and release agreements?**
- ☒ **Has your company entered into employment agreements that provide for the payment of severance and an agreement to release of claims?**
- ☒ **Does your form agreement provide the mandated review and revocation periods required under any applicable federal or state law?**
- ☒ **Does your form agreement include all the parties (e.g., affiliates, agents, employees) who should be covered by the release?**
- ☒ **Does your form agreement include the protection of confidential company information, and has it been updated to include language required by the Defend Trade Secrets Act?**
- ☒ **Does your agreement address the requirements of the EEOC, SEC, OSHA and other agencies to permit employees to engage in whistleblowing activities or participate in government investigations?**
- ☒ **Does your form agreement include a confidentiality provision that is compliant with applicable state or local law?**
- ☒ **Does the agreement only include the release of claims that legally can be waived by the employee?**
- ☒ **Are employee benefits and Medicare eligibility addressed?**

Additional Resources

For more insight on these issues, please see our previous publications:

- Thompson Hine *Labor & Employment @lert*: [New Jersey Enacts Limits on Employment and Settlement Agreements](#)
- Thompson Hine *Business Law Update* article: [Severance Agreements: One Size Does Not Fit All](#)
- Thompson Hine *Labor & Employment @lert*: [#MeToo Movement Highlights Importance of Employer Response to Sexual Harassment](#)

FOR MORE INFORMATION

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