

Checklist for Settlement of Employment Cases

Recitals

- Parties
- Nature of dispute
- Nature of employment
- Dates of employment

Termination of employment

- Date of termination
- Resignation
- Lay-off
- Retirement
- Other termination of employee

References

- Letter of reference
- Other contacts
- Personnel records

Payment

- Nature of payment: settlement, severance, continuation
- Other payments (e.g., vacation pay, expense reimbursements)
- Timing of payment (rescission period; structured settlement)
- Payment of costs (e.g., mental health services)
- Payment to employee and attorney
- Security for future payments

Release

- Mutual releases or release only by employee
- General or specific release
- Consideration for ADEA release

Covenant not to sue

- Litigation
- Administrative claims
- Cooperation with EEOC/MCAD investigations

Termination of litigation

- Stipulation of dismissal with prejudice
- Entry of stipulated judgment
- Withdrawal of administrative claims

No admission of liability/disputed claim

Apology or other statement of regret

- Written or oral
- Scope of apology

Confidentiality of agreement

- Liquidated damages for breach
- Scope and exceptions
- Confidentiality agreement for 3rd parties

Joint statement re: termination

- Press release
- Response to press inquiries

Confidentiality of business information

- Scope of coverage
- No past disclosure
- Limits on future disclosure

Non-disparagement

- One-way or mutual

Non-competition

- Customers
- Recruitment of employees

Cooperation with employer

- E.g., in case of investigation

No application for re-employment

Continuation of services

- Employee or consultant
- Compensation
- Termination
- Description of services
- Separate agreement

Continuation of benefits (COBRA and beyond)

- Health, life, and disability insurance
- Cost of coverage
- Retirement plans
- Stock options
- Others

Repayment of loans by employee or employer

- Amount
- Payment terms

Outplacement services

- Provider of services
- For how long?

Tax treatment of payments

- Withholding
- Form of reporting (W-2; 1099)
- Indemnification for tax liability

Indemnification for employee's liability

- Coverage
- Exceptions (e.g., misconduct)

Unemployment insurance

- Will claim be opposed by employer?

Physical Property

- Removal of employee's personal belongings
- Return of employer's property

Intellectual property

- Description
- Ownership; rights

Transitional arrangements

- Access to premises
- Access to voice mail and computer
- Forwarding of mail

Employee's attorney's fees and costs

- Documentation
- Separate payment

Dispute resolution

- Negotiation
- Mediation
- Arbitration

OWBPA provisions (ADEA claims)

- Waiver is part of a written agreement
- Refers to ADEA claims
- No prospective waiver
- Consideration (beyond what employee was already entitled to)
- Employee advised in writing to consult an attorney
- Review period (21 days); revocation period (7 days)
- Separate agreement?

Boilerplate

- Binding agreement
- Entire agreement/merger clause
- Modifications in writing
- Authority to execute agreement
- Voluntary execution; opportunity to review with counsel
- No assignment
- Binding on successors
- Severability
- Jurisdiction
- Governing law (place of employment; place of execution)
- Captions

- Counterparts
- Notices
- Notarization

Creativity

- E.g., remediation or recognition by employer, in-kind payments, etc.