**Appendix E**

**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.