

Waivers must meet strict rules to avoid ADEA claims

Requiring employees being laid off to sign waivers in order to receive severance pay doesn't always effectively prevent them from filing age discrimination claims under the Age Discrimination in Employment Act (ADEA). A recent Tenth U.S. Circuit Court of Appeals decision applied existing legal standards to find that a waiver of ADEA claims must meet very strict requirements.

The Case

When the Weyerhaeuser Company discharged 31 employees at its Valliant, Okla., mill, it sent out a letter and group termination notice. This notice identified both the discharged and non-discharged workers by only their titles and ages. The discharged employees received a release of claims and a calculation of severance pay.

Sixteen of the workers who had signed releases later sued Weyerhaeuser, but the trial court rejected their claims of age discrimination. When the employees appealed to the Tenth Circuit, however, it disagreed with the trial court and allowed the workers to proceed with their claims in *Kruchowski v. Weyerhaeuser Co.*

The Tenth Circuit ruled that the waiver wasn't knowing and voluntary under the Older Workers Benefit Protection Act (OWBPA). The waiver failed to meet the minimum "knowing and voluntary" requirements in two ways. First, the "decisional unit" or pool of workers being considered for discharge wasn't accurately described. Some distributed materials referred to all salaried workers, while other materials referred only to the group of salaried workers who reported to the mill manager.

Second, Weyerhaeuser didn't provide accurate "eligibility information" to the discharged workers. The precise

factors—such as each employee's leadership, abilities, combination of abilities, technical skills, behavior, and how the employee fits into the business needs of the company—used to determine who was to be discharged weren't indicated *before* the workers signed the release.

What This Means to Counties

Be extremely careful when implementing exit-incentive programs to avoid lawsuits under ADEA. It's important that waivers used comply strictly with OWBPA requirements and spell out the bases for workers being let go.

For more information, contact CTSI at 303-861-0507.