



Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

of counsel
Neal R. Cramer

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EEOC Alleges that Standard Severance Agreement Language Violates Title VII

The Equal Employment Opportunity Commission (“EEOC”) has recently taken aim at pharmacy chain giant CVS, claiming that the separation agreements used by the company with outgoing employees violates Title VII of the Civil Rights Act. The EEOC’s actions are compelling since the targeted provisions are those typically used in most severance agreements. For example, the terms of a standard severance agreement are filled with terms such as "general release of claims," "nondisparagement" and "covenant not to sue." Employers rely on these provisions to end the threat of lawsuits. In exchange for giving up their rights to sue, departing employees receive money or benefits.

According to the lawsuit, the EEOC is claiming CVS conditioned payment of severance benefits on the execution of severance agreements that contained overly broad, misleading, and unenforceable language that unlawfully prevents employees from communicating with the agency or filing discrimination claims. In the lawsuit, the EEOC claims the following provisions of the agreement violate Title VII:

- A cooperation clause requiring employees to notify the company of contacts relating to legal proceedings;
- A non-disparagement clause;
- A non-disclosure of confidential information clause; and
- A general release and covenant not to sue clause.

The EEOC is seeking a permanent injunction that will prohibit CVS from restricting the rights of former employees to file charges or participate in agency proceedings, an order that will allow the re-writing of CVS’s separation agreements, and for CVS to provide an additional 300 days to any former employee who signed the agreement to file charges with the agency.

The EEOC claims that being able to bring charges and communicate with employees plays a critical role in the EEOC’s enforcement policy because it informs the agency of employer practices that may be unlawful. Significantly, the EEOC’s position in this case is a departure from its prior position whereby it has concluded that similar language was in compliance with Title VII. Ironically, CVS modeled its severance agreements with language the EEOC previously found compliant in an earlier lawsuit.



If the EEOC is successful, employers will need to rewrite their severance agreements to make any necessary changes that comply with the court's decision.

Respectfully submitted,

JOSEPH S. PASS, ESQUIRE