

**LABOR AND EMPLOYMENT PRACTICE CASE BULLETIN**  
**RELEASE OF AGE DISCRIMINATION CLAIMS – A MINEFIELD**  
**Syverson v. IBM**

A section of the federal Age Discrimination in Employment Act (ADEA) that is called the Older Worker Benefit Protection Act (OWBPA) codifies factors to evaluate whether agreements releasing claims of age discrimination are enforceable. The OWBPA sets forth numerous requirements before a release will be considered valid. Some of these requirements are straightforward; some are not. Especially problematic is a requirement that all releases be written in “a manner calculated to be understood” by the average employee.

In *Syverson v. IBM*, No. 04-16448 (9th Cir. Aug. 31, 2006), IBM had offered severance to employees released during a reduction in force, but required the employees to sign a release. As required by OWBPA, the severance agreements included language specifically releasing any claim under the ADEA. The agreements also included a covenant that the employee would not sue IBM. The covenant not to sue, however, included language that could be interpreted to exclude age discrimination claims from its scope. The federal Ninth Circuit Court of Appeals determined that this apparent exclusion language created confusion because it could be interpreted as inconsistent with the otherwise clear release of age claims. The court determined that a non-attorney might not appreciate the difference between a release provision and a covenant not to sue. The court rejected IBM’s contention that any confusion was cured because the severance agreements advised the employees to consult with an attorney before signing.

As a result, the court allowed ten former IBM employees to proceed with their age discrimination claims against IBM, even though they had accepted severance and had signed the agreement that included the release of age claims. Moreover, as a general matter, the employees could maintain their lawsuit without returning the severance monies they had received.

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