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A Minute of News and Views: Exit Interviews and Severance Agreements

In our troubled economy today, many employers are faced with the need to reduce their workforce. Employees are terminated for a myriad of reasons, including poor work performance, attendance issues, lack of work and inability to get along with co-workers or managers. Employees who are terminated may have been facing financial strain even before their source of income was cut off. The shock of losing their livelihood may induce feelings that they were treated unfairly during their employment. In these situations, employers often receive complaints regarding alleged harassment, discrimination, retaliation or other unfair employment practices from employees who are “walking out the door.” Though these claims are often meritless, it is prudent to examine them before the soon-to-be ex-employee has the opportunity to bring his/her claims to an attorney.

New Laws Create Broader Protections

Examining these claims requires more than the typical Title VII or ADEA analysis of race, gender or age bias. In 2009, new employment laws will become effective, including the Genetic Information Non-Discrimination Act (GINA), which gives broader protections to individuals based on their own genetic information or the genetic information of a family member, and the ADA Amendments Act (ADAAA), which gives broader protections to individuals with disabilities. These and numerous other federal, state and local employment laws may create unknown liabilities and the potential for large damage awards to ex-employees.

Exit Interviews Help Avoid Claims

A proven method for avoiding such claims is to conduct exit interviews to determine whether the exiting employee has any unresolved grievances. An exit interview should be conducted by the immediate supervisor, and a representative from human resources. A union employee is entitled to have a representative of his/her choice attend. If the exiting employee raises an unresolved grievance, you should consider (1) investigating the complaint to determine if it has any merit and (2) offering a severance package to that employee in exchange for signing a general release agreement (“severance agreement”).

Severance Agreements Benefit Both Parties

Severance agreements are beneficial to both employers and employees, regardless of whether the exiting employee has an unresolved complaint. For employees, severance agreements provide continued income for a period of time while they find other employment and consideration for waiving their outstanding issues with their employer. For employers, severance agreements bring the issue of unresolved complaints to closure and allows the employer the security of knowing that an ex-employee, who was prone to complaining, will not return in the form of an EEOC charge or expensive lawsuit.

We Can Help

Finally, exit interviews sometimes raise doubts about the decision to terminate an individual or the liabilities an employer may be facing. We encourage you to contact an attorney in Schiff Hardin’s Labor and Employment Group to discuss the ramifications of a termination decision. In addition, if you decide to have an employee sign a severance agreement, please contact us so that we may provide you with assistance in drafting a severance agreement.

Every month, Schiff Hardin’s Labor and Employment Group will be sharing some news and views to consider. For previous notes and comments, please visit our Web site at www.schiffhardin.com/LE-Labor_and_Employment.htm

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