

# PUBLICATION

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## What?!? I Thought We Settled That Case! The Sixth Circuit Weighs in on Overbroad Settlement Agreements Under OWBPA

August 27, 2009

We recently reported on the EEOC's guidance concerning waivers of employment law claims, particularly the release of age discrimination claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefits Protection Act (OWBPA). Days later, the United States Court of Appeals for the Sixth Circuit issued an opinion in *Neely v. Good Samaritan Hosp.*, 6th Cir., No. 07-4281, *unpublished opinion 7/31/09*, which further explored the complexities of securing a valid age discrimination release under these two laws.

In *Neely*, the Sixth Circuit Court of Appeals was asked whether an employee could revoke her entire settlement agreement, which included the seven-day revocation period required under the OWBPA, even though she never complained about or brought a claim of age discrimination in the underlying action.

The employee in *Neely* originally filed a complaint against Good Samaritan Hospital alleging race discrimination in violation of Title VII of the Civil Rights Act of 1964, as well as state-law claims for harassment and retaliation. Importantly, she asserted no claim of age discrimination. But after the parties settled the employee's claims at a pre-trial mediation, her employer drafted a settlement agreement that included a release of age claims under the ADEA as well as a provision allowing the employee to revoke the entire agreement within seven days, as required under the OWBPA.

The employee soon experienced a "change of heart" and gave timely notice of her "revocation" of the entire agreement. Her employer, upset at being sent back into litigation, filed a motion to enforce the settlement agreement, arguing that the revocation clause was ineffective, as the employee had never asserted an age claim in the underlying litigation. Thus, the employer argued, the seven-day revocation period was simply a technical addition to the agreement, which the employee never bargained for, and which was solely included given that the employee had agreed to sign a "general release" of all potential claims, including age discrimination claims. The trial court agreed with the employer and upheld the settlement agreement.

But on appeal, the Sixth Circuit reversed the trial court, reasoning that the parties had negotiated a "general release" of *all* claims, whether asserted or not, which necessitated compliance with the OWBPA's seven-day waiver period. Hence, the Court reasoned, since the revocation period was required for a valid release of age claims, it was properly included in the settlement agreement and effectively provided the employee with the right to revoke the settlement of even her non-age claims.

*Neely* serves as a reminder of the complexities involved in effectively securing a release of employment claims – even once an agreement in principle is reached! Here, the employer apparently was not counseled that it could likely have foregone seeking an age discrimination release (the statute of limitations had likely expired), or that it could have explicitly limited the revocation period to the waiver of the employee's (nonexistent) age claims. Accordingly, employers and their advocates must be diligent when crafting settlement agreements and releases in order to provide for the greatest protection in the event of a breach or revocation.

Baker Donelson can assist you with these and other labor and employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge,*

*Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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