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# Federal District Court Rejects EEOC's Challenge to CVS' Standard Separation Agreement

By Thomas P. Brady / Sep 22, 2014

On September 18, 2014, Judge John Darrah of the U.S. District Court for the Northern District of Illinois dismissed the EEOC's lawsuit against CVS challenging CVS' standard separation agreement. The judge will issue a written opinion explaining his decision at a later date.

In February 2014, the EEOC filed an action against CVS Pharmacy claiming several standard provisions contained in CVS' separation agreement violated Title VII. CVS' five page single spaced separation agreement contained many standard provisions which the EEOC alleged violate Title VII, including:

Requiring the employee to notify CVS' general counsel if the employee is contacted by an administrative agency investigating CVS.

Prohibiting the employee from disparaging the business or reputation of CVS, its officers, directors or employees.

Requiring the employee not to disclose to a third party information concerning the Corporation's personnel, including the skills, abilities, and duties of the Corporation's employees, wages and benefits structure, succession plans and information concerning affirmative action plans.

Releasing all "charges" including "any claim of unlawful discrimination of any kind."

A covenant not to sue the employer on any complaint, claim, action or lawsuit of any kind, or initiate, file or cause to be filed any action, lawsuit, complaint or proceeding asserting a released claim. Under the separation agreement, the employee also agreed to pay the Corporation's attorney fees if the employee violates this paragraph.

The covenant not to sue provision contained a sentence stating "[n]othing in this paragraph is intended to or shall interfere with Employee's right to participate in a proceeding with any appropriate federal, state or local government agency enforcing discrimination laws, nor shall this Agreement prohibit Employee from cooperating with any such agency in its investigation."

The EEOC alleged that CVS, through its separation agreement, engaged in a pattern and practice of resistance to the employees' rights to file a charge and participate and cooperate with investigations by the EEOC or state fair employment practice agency. The EEOC requested the court enjoin the use of the separation agreement provision and permit employees who signed the agreement 300 days to file charges with the EEOC.

The court's dismissal of the claim demonstrates the EEOC's overreach. In claiming that the various provisions contained in CVS' separation agreement led to a pattern and practice preventing employees from filing a charge, the EEOC ignored the plain language of the separation agreement informing the employees that the agreement did not prevent them from filing a charge. The judge's dismissal allows employers to continue to use standard language, which protects the employers' confidential information, prevents future claims from an employee who settles all claims and helps employers defend claims brought against the employer. Employers should continue to use language in their separation agreements informing the employee that the agreement does not prevent the employee from filing a charge with the EEOC.

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