



*Employment Litigation and Counseling Practice Group
Fresh Ideas For Your Employment Needs*

Coughlin Duffy LLP represents corporate clients, from small family-run businesses to Fortune 500 companies, in all facets of employment law. We regularly appear and represent our clients throughout the country in state and federal trial and appellate courts, in administrative proceedings before federal and state agencies, and in arbitrations and mediations. We also provide day-to-day counseling, advice, training, and other assistance to our clients on all aspects of the employment relationship, from wage and hour, contract, and non-compete issues to family leave, disability, discrimination and harassment matters.

For more information on our services, please contact:

Leslie A. Lajewski, Esq.
(973) 631-6061
llajewski@coughlinduffy.com

or

Steven J. Luckner, Esq.
(973) 631-6065
sluckner@coughlinduffy.com

www.coughlinduffy.com

The Employment Law Lowdown

June 26 2008

E- ALERT

BEWARE: EVEN A MINOR ERROR WHEN COMPLYING WITH OWBPA WILL RESULT IN AN INVALID RELEASE AND WAIVER

The importance of following the Older Workers Benefits Protections Act (OWBPA) requirements "to the letter of the law" was recently emphasized in *Peterson v. Seagate US LLC*, 2008 U.S. Dist. LEXIS 42179, No. 07-2502, (decided May 28, 2008).

Peterson is a class action matter wherein plaintiffs allege that they were discriminated against based upon their age. The plaintiffs sought a declaration from the court that the releases and waivers they signed in connection with a reduction in force (RIF) were invalid because (1) the plaintiffs were not properly advised of the number of individuals affected by the RIF, and (2) the disclosures regarding the job categories affected by the RIF were confusing. The plaintiffs were told that 154 employees would be affected by the RIF. In fact, 152 employees were affected by the RIF. The court held that since the employer misidentified two employees, the employer failed to properly advise the plaintiffs of the number of employees affected by the RIF. The court noted that OWBPA has "strict, unqualified statutory stricture on waivers" and that it does not "incorporate[] . . . exceptions or qualifications." "The absence of even one of OWBPA's requirements invalidates a waiver." The waivers were held invalid as a matter of law.

As to the description of job categories affected by the RIF, the employer identified the positions by job title and job code. The plaintiffs claimed that the descriptions were confusing because the employer failed to provide any definitions of the job codes. The court agreed, holding that "without knowing what the job codes stand for...the charts, as presented, do not provide information in a manner calculated to be understood by the individual employees." The releases and waivers were held invalid on this ground as well.

While reductions in force can be a chaotic and stressful time for a company, as seen by *Peterson*, employers must ensure that all release and waiver offers meet the strict requirements of OWBPA. Since employees are allowed to retain the consideration provided to them when a waiver is invalidated, failure to comply with OWBPA can be extremely costly.

For more information about this new case, or the requirements of OWBPA, contact Leslie A. Lajewski or Steven J. Luckner.

© 2008 Coughlin Duffy LLP. All rights reserved. The materials presented herein are for informational purposes only and are not offered as legal advice. No reader should act on the basis of these materials without seeking appropriate professional advice as to the particular facts and applicable law involved. Any opinions presented herein are the opinions of the individual author(s), and do not necessarily reflect the opinion of Coughlin Duffy LLP or any of its attorneys or clients.