

## Employee Release of Claims Held Not to Include Discrimination Claim

When an employee signs a release upon termination, the employer generally assumes that the employee cannot later bring a lawsuit relating to the termination. This assumption has been shaken by a New York appellate court's recent decision, which reversed a trial court's ruling and held that a release of "any and all claims" did not cover a potential discrimination claim.

In *Johnson v. Lebanese Am. Univ.*, 922 N.Y.S.2d 57 (1st Dep't 2011), the defendant University terminated plaintiff allegedly for poor performance. Roughly five months later a former co-worker at the University told the plaintiff that she had been told that the plaintiff was fired because of his "lifestyle choices." Plaintiff, who was gay, commenced an action alleging he was unlawfully terminated based on his sexual orientation in violation of New York State and City Human Rights laws.

Plaintiff had been paid severance and had signed a release when he was fired. The release stated that plaintiff was releasing "any and all claims" relating to his service with the University:

I, the undersigned Robert Johnson do hereby declare that I have received from the Lebanese American University the sum of \$4,651.94 as an ex-gratia payment in full settlement of any and all claims and entitled related to my services of whatsoever nature with the above mentioned University up to June 10, 2008.

I therefore hereby remise, release and completely discharge the Lebanese American University and all of its responsible officers of and from all actions or rights that I may ever have against the University in respect of my above mentioned service.

In witness whereof I have signed this full, final and irrevocable Release and Discharge this day of 6/30/08.

Despite that the release described the severance payment as "ex-gratia," plaintiff alleged he believed the payment was for back pay and benefits owed to him. In addition, although the release stated that the plaintiff was releasing "any and all claims," the plaintiff claimed he did not understand the release to include discrimination claims, which were not specified in the release. He argued that he did not have any reason to consider discrimination claims when executing the release since the reason given by the University for his termination was poor performance. Finally, the plaintiff claimed that he was not told to consult an attorney.

Prior to discovery being conducted, the University moved for summary judgment based on the release. The trial court found that plaintiff had released all his claims and granted the University's motion. The Appellate Division, First Department reversed. Citing a decision from the Court of Appeals, the First Department held that there have been instances where a "release has been avoided with respect to un contemplated transactions" despite the general language of the release. Despite acknowledging precedent that a release does not have to expressly mention a

discrimination claim to be “valid and binding,” and despite the fact that the plaintiff released the University “from all actions or rights that I may ever have against the University” in connection with “my services of whatsoever nature” with the University, the Court found that the release could be read as not encompassing discrimination claims.

Noting that releases must be “fairly and knowingly made,” the Court found there was an issue of fact as to the fairness of the release. While not rising to the level of fraud, the Court held that by telling the plaintiff he was being terminated for poor performance when, in fact, he may have been terminated for a discriminatory reason, may have been an “overreaching or unfair circumstances, which, if proved, would render enforcement of the release inequitable.”

In addition, although the release language stated that the compensation was “ex-gratia,” the Court found this was not enough to make clear that the severance payment was in addition to monies owed the plaintiff. The Court held that if the severance payment was for wages and benefits already earned, as plaintiff alleged, then tying the payment to the release constituted “overreaching” by the employer. The Court noted that the employer did not submit an affidavit challenging plaintiff’s claim that the payment was for wages owed.

The Court further found that the amount of severance called into question the scope of the release. While acknowledging that courts “do not ordinarily question the amount of consideration” paid to a releaser in exchange for a release, in this case, the Court found that the “relatively small amount” of severance called into question the employer’s claim that the payment was in exchange for a release of all claims.

The dissenting opinion provides some hope that, if appealed, the decision will be reversed. Judge Andrias in his dissent found that the release was a release of all claims and not just for unpaid wages. Judge Andrias stated there is no language in the release to suggest that the release of “all claims” was limited to wage and benefits claims. He went on to say that plaintiff’s subjective view that the release was limited in scope was insufficient to find the release unenforceable as to claims of discrimination without some objective evidence that the parties intended a limited release.

No employer wants to learn they are being sued after paying an employee severance in exchange for a release. This case highlights that releases are not forms but complex legal documents that must be properly negotiated and drafted with the guidance of informed and knowledgeable legal counsel. Please contact [Moses & Singer employment attorneys](#) to make sure your release agreements fully protect your company.

If you have questions regarding this Alert, please contact the author, **Kimberly Klein** at 212.554.7853/[kklein@mosessinger.com](mailto:kklein@mosessinger.com).

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The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-1299  
Tel: 212.554.7800 Fax: 212.554.7700

2200 Fletcher Avenue  
Fort Lee, NJ 07024  
Tel: 201.363.1210 Fax: 201.363.9210  
Abraham Y. Skoff, Esq.  
Managing Attorney for New Jersey



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