

L a b o r & E m p l o y m e n t
A L E R T

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COURT INVALIDATES WAIVERS OF FMLA CLAIM IN SEVERANCE AGREEMENT

On August 29, 2006, the United States District Court for the Eastern District of Pennsylvania ruled that a release of claims in a severance agreement did not release claims under the Family and Medical Leave Act (FMLA). *Dougherty v. Teva Pharmaceuticals USA*, Civil Action No. 05-2336 (E.D. Pa. Aug. 29, 2006). The court relied on a Department of Labor regulation stating that employees cannot waive, or induce employees to waive, their rights under the FMLA. The court also found that the remaining waivers of other claims failed because the agreement did not contain a severability clause that preserved the agreement's release of other claims in light of the failed FMLA waiver.

In light of this decision, employers need to be aware that releases in severance agreements may not protect them from FMLA claims. Employers also should include severability clauses in their severance agreements so that remaining waivers remain enforceable where one waiver is deemed invalid. Such "severability" clauses generally state that all provisions of the severance agreement are severable, and if any of them is determined to be invalid or unenforceable for any reason, the remaining provisions and portions of the agreement remain unaffected. Unfortunately for the employer, the severance agreement in *Dougherty* lacked such a clause.

There also may be circumstances in which a severance agreement could accomplish essentially the same thing as a release of FMLA claims, such as when the employee voluntarily resigns and the severance agreement confirms such resignation. The reason for this is that another section of the FMLA regulations specifically provides that an employee's entitlement to FMLA leave, maintenance of health benefits and job restoration "cease" "[i]f an employee unequivocally advises the employer either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated ..."

The bottom line is that employers should recognize that releases in severance agreements may not protect them from FMLA claims, but that there are steps employers may still take in order to maximize the protection they desire from such releases.

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.