

PUBLICATION

Lesson to Employers: Be Specific in Settling Employment Claims

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The Tennessee Supreme Court recently issued a decision that provides an important lesson for employers when they settle employment claims that are ancillary to EEOC charges. In *Perkins v. Metropolitan Gov't of Nashville and Davidson County*, the employee filed a series of age discrimination and retaliation charges with the EEOC. She also filed a claim with the Metro Civil Service Commission. Her employer settled by paying her \$45,000 with a general release and a waiver of reinstatement.

Nonetheless, after taking Metro's settlement money, the employee filed suit for retaliation under the ADEA. Metro sought summary judgment on the basis that Plaintiff had already received backpay, waived reinstatement, and released her claims, so there was no adverse employment action to litigate. The trial court granted summary judgment to Metro, and the Court of Appeals affirmed the trial court. However, the Tennessee Supreme Court disagreed.

The Supreme Court noted that the settlement agreement contained a specific carve-out for the former employee's EEOC charge, indicating that "Ms. Perkins' complaint filed with the EEOC is not a part of this agreement." Based on this carve out, the Court reasoned that the former employee could still pursue her claims because she had not received all of the available relief under the ADEA.

The decision makes no mention of why the carve-out was included in the first place. However, settlements of employment claims often contain a carve-out for the filing of an EEOC charge or participation in an EEOC investigation. The EEOC take the position that any private agreement that prohibits filing a charge or participating in an EEOC investigation is null and void and possibly even illegal. Therefore, most settlement agreements for employment claims indicate that an employee is not precluded from filing a charge or participating in an EEOC investigation, but the claimant waives any monetary damages relating to any claim filed with the EEOC. An employee can legally waive any monetary damages relating to any claims filed with the EEOC.

Metro did not include such nuanced language in its settlement agreement. As a result, it must defend a suit by a former employee to whom it already paid \$45,000 in a failed attempt to buy peace.

The lesson for employers is to make sure that any carve-out for EEOC charges in a settlement agreement specifically waives monetary damages for any claims filed with the EEOC.