

**SAMPLE RELEASE LANGUAGE UNDER OWBPA**

**BY**

**Peter M. Panken, Esq.  
and  
Susan Gross Sholinsky, Esq.**

**Epstein Becker & Green  
250 Park Avenue  
New York, NY 10177  
212-351-4840**

1. **Always feature the following in Boldface at the top of the release**

**CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT AND GENERAL RELEASE.**

**BY SIGNING THIS AGREEMENT AND GENERAL RELEASE YOU GIVE UP AND WAIVE IMPORTANT LEGAL RIGHTS.**

2. **Always call it an agreement and general release**

I, \_\_\_\_\_, understand and, of my own free will, enter into this **AGREEMENT AND GENERAL RELEASE** (“**AGREEMENT**”) with \_\_\_\_\_ (the “**COMPANY**”) and, in consideration of the severance and termination payment (collectively “**termination benefit**”) described herein, agree as follows:

3. **Spell out date of termination of employment and agree not to reapply for employment**

I hereby acknowledge that my employment with the **COMPANY** terminated on \_\_\_\_\_, 200\_, and agree that I will not hereafter apply for or seek employment or reemployment with the **COMPANY**.

4. **Spell out the consideration, lump sum or salary continuation and make clear that the terminnee only receives such benefits if he/she complies with the Agreement**

On \_\_\_\_\_, 2008 officials of the COMPANY informed me of what I had a right to receive upon the termination of my employment, and explained to me that in addition to those rights, the COMPANY will [give me a lump sum payment of \$\_\_\_\_\_] [continue my salary and benefits for a period of \_\_\_ weeks] , less deductions required by law, as a termination benefit, if, and only if, I sign this AGREEMENT and comply with its terms. I understand that the COMPANY will not be required to provide the termination benefit until after this AGREEMENT becomes effective.

**NOTE: Some people like belts and suspenders and want to specify that the terminnee got everything he was entitled to**

You represent, warrant and acknowledge that the COMPANY owes you no wages, commissions, bonuses, sick pay, personal leave pay, severance pay, vacation pay or other compensation or benefits or payments or form of remuneration of any kind or nature, other than that specifically provided for in this Agreement. You also hereby acknowledge and agree that you have received any and all leave(s) of absence to which you may have been entitled pursuant to the federal Family and Medical Leave Act of 1993, and if any such leave was taken, you were not discriminated against or retaliated against regarding same.

5. **Include a non-admission clause**

I understand that this AGREEMENT does not constitute an admission by the COMPANY of any: (i) liability; (ii) violation of any federal, state or local law, regulation, order or other requirement of law; (iii) breach of contract, actual or implied; (iv) commission of any tort; or (v) other civil wrong.

6. **Spell out as many laws as may be applicable [Note: FMLA is omitted because some Courts invalidate attempted releases of FMLA claims -- stay tuned...]**

I realize there are many laws and regulations prohibiting employment discrimination retaliation for opposing unlawful acts or otherwise regulating employment or claims related to employment pursuant to which I may have rights or claims. These include, without limitation, Title VII of the Civil Rights Act of 1964, as amended, including the Equal Employment Opportunity Act of 1972; the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"); the Americans with Disabilities Act of 1990, the National Labor Relations Act, as

amended; the Employee Retirement Income Security Act of 1974, as amended; the Civil Rights Act of 1991; the Worker Adjustment and Retraining Notification Act of 1988; 42 U.S.C. §1981; the Sarbanes Oxley Act of 2002; \_\_\_\_\_ [TITLE OF STATE AND LOCAL ANTI-DISCRIMINATION LAWS], and federal, state and local human rights, fair employment and other laws. I also understand there are other statutes and laws of contract and tort otherwise relating to my employment. I intend to waive and release any rights I may have under these and other laws, and under laws of contract and tort, but I do not intend to nor am I waiving any rights or claims that may arise under the ADEA after the date that I sign this AGREEMENT.

7. ***Release everything except ADEA claims arising after the date the Agreement is signed, which means that the release should be signed after the termination) and before the consideration is paid. Include agreement that if terminnee does sue, he/she will pay the Company's legal fees***

In exchange for my receipt of the termination benefit, on behalf of myself, my heirs and personal representatives, I release and discharge the COMPANY from any and all charges, claims and actions arising out of my employment or the termination of my employment with the COMPANY, except a charge, claim or action based upon rights or claims that may arise under the ADEA after the date that I sign this AGREEMENT. If I violate this AGREEMENT by filing or bringing any charges, claims or actions contrary to this Paragraph, except for filing a charge or complaint with the Equal Employment Opportunity Commission, in addition to any other remedies which may be available to the COMPANY, including, but not limited to, remedies for breach of contract, I will pay all costs and expenses of the COMPANY in defending against such charges, claims or actions brought by me or on my behalf, including reasonable attorney's fees.

***NOTE: Another alternative is more complex and less understandable but more of a general release:***

In consideration of the payment described above and for other good and valuable consideration, you hereby release and forever discharge, and by this instrument release and forever discharge, the COMPANY from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which you ever had, now have, or which may arise in the future, regarding any matter arising on or before the date of your execution of this Agreement, including but not limited to all claims (whether known or unknown) regarding your employment at or termination of employment from the COMPANY any contract (express or implied), any claim for equitable relief or recovery of punitive, compensatory, or other damages or monies,

attorneys' fees, any tort, and all claims for alleged discrimination based upon age, race, color, sex, sexual orientation, marital status, religion, national origin, handicap, disability, or retaliation, including any claim, asserted or unasserted, which could arise under Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act of 1990; the Americans With Disabilities Act of 1990; the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Employee Retirement Income Security Act of 1974; the Civil Rights Act of 1991; the Worker Adjustment and Retraining Notification Act of 1988; the Corporate and Criminal Fraud Accountability Act of 2002, 18 U.S.C. § 1514A, also known as the Sarbanes Oxley Act; [INSERT STATE AND LOCAL LAWS]; and any other federal, state or local laws, rules or regulations, whether equal employment opportunity laws, rules or regulations or otherwise, or any right under any COMPANY pension, welfare, or stock plans.

8. **Consider a trade secrets clause and possibly a non-compete clause**

9. **Be sure the release covers everyone**

As used in this AGREEMENT, the COMPANY includes its parents, subsidiaries, affiliates and divisions and it and their respective: (i) predecessors, successors and assigns and (ii) past and present directors, officers, representatives, shareholders, agents, employees and their respective heirs and personal representatives of any of them.

**NOTE: Be sure the release of company officials covers everyone. But be careful that corporate folks are not releasing the terminee.**

10. **Consider a confidentiality clause**

I will not at any time talk about, write about or otherwise publicize the terms or existence of this AGREEMENT or any fact concerning its negotiation, execution or implementation. I will not testify or give evidence in any forum concerning my employment or termination of employment with the COMPANY unless required by law or requested to do so in writing by an authorized official of the COMPANY.

**NOTE: Terminees usually want to be sure they can share the terms of the agreement with their family, attorneys and tax advisers, so often the following clause is used:**