



**STATE OF OKLAHOMA
OFFICE OF PERSONNEL MANAGEMENT**

"Working for Oklahoma"

OPM 10-18

DATE: June 23, 2010

TO: All Appointing Authorities

FROM: Oscar B. Jackson, Jr., IPMA-CP, Administrator and
Cabinet Secretary of Human Resources and Administration

**SUBJECT: Waiver and Release of Claims for Reductions in Force
and Voluntary Outs**

The current budget shortfall within the state and its impact on agency appropriated funds have caused many agencies to consider the option of reducing their work forces, in many cases through the use of reductions in force or voluntary out programs. Both reductions in force and voluntary outs entail the payment of certain benefits to separating employees. As required for reduction-in-force severance payments (and highly recommended for voluntary out benefits), employees are asked to sign a waiver of claims in connection with the receipt of the benefits. These waivers are intended to insulate the employing agency from claims by the employee and to release the agency from any liability arising from the employment or termination.

In termination actions, it is customary for employers to request waivers of claims under the Age Discrimination in Employment Act (ADEA). As a result of amendments made by the Older Workers Benefit Protection (OWBPA) of 1990, the ADEA establishes specific conditions for a waiver of ADEA rights and the manner in which the waiver process should proceed. Unless the waiver and release conforms to these specific requirements, the release will not be effective. We believe the waiver and release developed by the Office of Personnel Management (copy of voluntary out agreement attached) generally meets these requirements. However, our review of the statutory requirements reveals that there is additional information which must be provided to affected employees in order for the waiver and release to be valid. Specifically, 29 USCA Sect. 626 (f)(1)(H) requires that the following information be furnished to participating employees in writing, in a manner calculated to be understood by the average individual eligible to participate:

- (1) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

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human resource services to our partner agencies to achieve their missions."*

(2) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

This information need not be included in the waiver and release document, but must be furnished to the employee in writing at the time the employee is provided with the waiver and release. Failure to provide the required information to employees may render invalid the release of claims from the ADEA.

This memo does not provide a comprehensive listing of the provisions of the federal ADEA and regulations promulgated thereunder; therefore, it is recommended that the provisions of the ADEA be reviewed by legal counsel.

If you have any questions on this matter, please contact Tom Patt, OPM Assistant Administrator for Management Services at (405) 522-0422, or Kara Smith, OPM General Counsel, at (405) 522-1736.

Attachment

STATE OF OKLAHOMA
(NAME OF AGENCY)

VOLUNTARY OUT AGREEMENT AND GENERAL RELEASE

The (AGENCY NAME), hereinafter referred to as the Agency, and the employee named below, who will be separated from employment on the date indicated, agree to participate in a voluntary buyout pursuant to 74 O.S. §840-2.28A.

Employee Name:

Position Title:

Social Security Number:

Division/Unit:

Separation Date:

PAYMENT OF FUNDS PURSUANT TO THIS AGREEMENT IS CONTINGENT UPON CONFIRMATION BY THE OFFICE OF STATE FINANCE THAT FUNDS TO REIMBURSE THE AGENCY ENTERING INTO THIS AGREEMENT ARE AVAILABLE. IF THE AGENCY DOES NOT OBTAIN THE REQUIRED CONFIRMATION OR IF THE OFFICE OF STATE FINANCE COMMUNICATES TO THE AGENCY THAT THE FUNDS TO REIMBURSE THE AGENCY ARE NOT AVAILABLE, THIS AGREEMENT SHALL NOT BE ENFORCEABLE AGAINST THE EMPLOYEE BY THE AGENCY OR BY ANY OTHER ENTITY AND SHALL NOT BE ENFORCEABLE BY THE EMPLOYEE OR ANY PERSON OR ENTITY REPRESENTING THE INTEREST OF THE EMPLOYEE AGAINST THE AGENCY.

Upon execution of this Agreement, the Agency shall pay to the Employee the following:

- a. The cost of employee-only health care insurance premiums for 18 months. This will be a one-time lump-sum cash settlement. The Employee is responsible for continuing his or her health insurance and the payment of any premiums;
- b. A \$5,000.00 lump-sum payment;
- c. The full amount of the Employee's next longevity payment; and
- d. The unused annual leave in accordance with the accumulation limits in 74 O.S. §840-2.20.

I accept the above payment and in consideration thereof I agree to voluntarily sever my employment relationship with the Agency; furthermore, I release and discharge the Agency and its successors, attorneys, agents, employees, officers and members from all claims, liabilities, demands and causes of action known or unknown, fixed or contingent, equitable, legal or administrative, which I may have or claim to have against the Agency as a result of my employment or retirement from employment, including but not limited to the following:

Oklahoma Personnel Act 74 O.S. §840-1.1 et seq.	Oklahoma Anti-Discrimination Act 74 O.S. §954
Americans with Disabilities Act 42 USC §§12101-12217	Rehabilitation Act of 1973, as amended 29 USC §701 et seq.
Civil Rights Act of 1866 and 1871, as amended 42 USC §§1981, 1983, 1985 and 1986	Civil Rights Act of 1964, as amended 42 USC §2000e et seq.
Civil Rights Act of 1991 2 USC §§601, 1201, 1202, 1219 and 1220	Executive Order 11246 (1965) 41 CFR 60
Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended 38 USC §4100 et seq.	Fair Labor Standards Act 29 USC §201 et seq.
Age Discrimination in Employment Act Of 1967 29 USC §621 et seq.	

I understand that I am waiving rights that I might have under these laws that have arisen as of the date I sign this Notice and General Release. This release and waiver does not have any effect upon any claim I may have against the Agency that may arise after the date this release is signed by me. This General Release does not have any effect on past, pending or future workers' compensation claims for on-the-job injuries.

I understand that I am prohibited from being employed by the Agency for a period of three (3) years from the date as of which the employee was last employed by the Agency. This prohibition also applies to contract work with the Agency.

I have carefully read and fully understand all of the provisions of the Voluntary Out Agreement and General Release. The documents set forth the entire agreement between the Agency and me. I acknowledge that I have not relied upon any other representation or statement, written or oral.

I understand I have a maximum of forty-five (45) days to consider whether to accept the payment offered under the Agreement. I also realize that I have seven (7) calendar days from the date I sign and deliver this Agreement and General Release to

