



Home /
Insights



The Equal Employment Opportunity Commission (EEOC) has stepped-up its activity with regard to severance agreements, announcing in February that it will go to court to challenge specific terms it believes may unfairly limit the legal rights of the departing employee.

Severance agreements are a tool often used by employers to facilitate a more amicable separation when an involuntary termination occurs. As employers are typically not obligated to provide severance pay, the severance agreement acts essentially as a contract in which the employer receives some “consideration” back from a departing employee in exchange for the severance payments. A common form of consideration received from the employee is their agreement to refrain from engaging in certain behaviors the employer would consider detrimental (see the listing below for prominent examples). The EEOC is zeroing in on such terms within these agreements that may unfairly limit the legal rights of the departing employee.

In February, the EEOC sharpened their efforts with a lawsuit against CVS Pharmacy, alleging the company’s severance agreement interfered with an employee’s right to file discrimination charges or

to communicate and cooperate with the EEOC. The EEOC is challenging a number of provisions in CVS' agreement that are commonly used by employers in severance agreements, including:

- The *cooperation clause*, which requires the former employee to notify the former employer's general counsel if he or she receives a subpoena or other request pursuant to a civil, criminal, or administrative investigation, suit or other proceeding;
- The *non-disparagement clause*, which forbids the former employee from making any statements that would negatively reflect on their former employer or any of its officers, directors or employees;
- The *confidentiality clause*, forbidding the disclosure of any confidential information, including information about personnel, wage and benefit structures, succession plans and affirmative action plans;
- The *general release clause*, which releases the employer from any and all causes of action, lawsuits, and charges, including any claim of unlawful discrimination of any kind; and
- The *covenant not to sue*, in which the former employee agrees not to initiate or file any lawsuits against the former employer and requires the former employee to pay their former employer's legal fees for breach of this covenant.

While it is too soon to tell what will come of the EEOC's lawsuit, there is no question that the enforceability of severance agreements is under fire, and that change is likely.

In the meantime – what should an employer do while this lawsuit is pending?

Here are a couple of steps employers can take to reduce the risk their severance agreement may be found to be unenforceable:

#1 – Include a *severability clause* in a severance agreement stating that any provision in the agreement which is found to be overbroad or illegal will not affect the enforceability of the remainder of the agreement.

#2 – Add a *carve-out provision* to clarify that the employer is not attempting to limit any legal right or obligation the employee might otherwise have under current law. This language should be carefully crafted after consultation with a qualified attorney.

As the enforceability of severance agreements continues to evolve, it will be important for all employers to monitor the EEOC's actions regarding this important tool and seek legal advice accordingly.

If you have questions or concerns about this issue or other legal matters, please contact Smith Debnam attorney Connie Carrigan at ccarrigan@smithdebnamlaw.com.

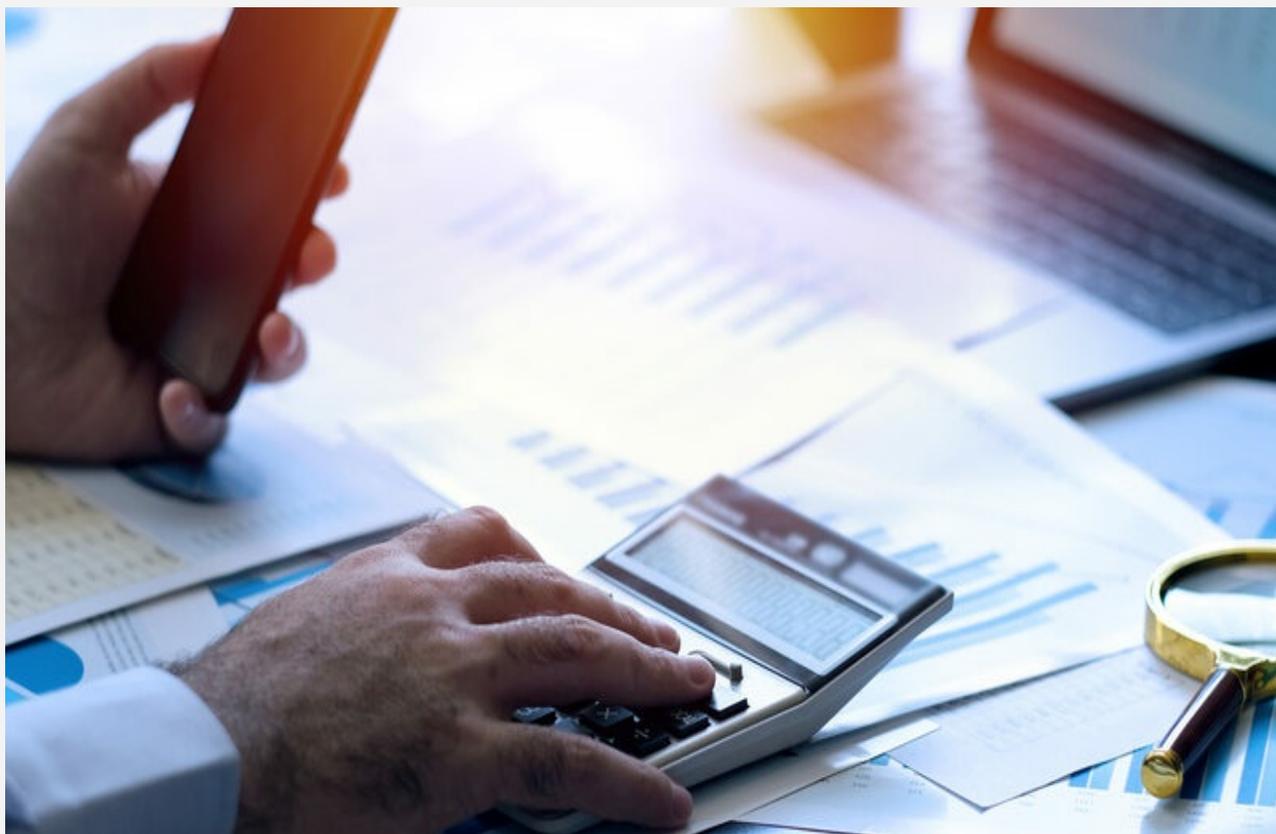
SHARE:



RELATED PRACTICE AREA

TRANSACTIONAL & ADVISORY SERVICES

RELATED ARTICLES



What Small Businesses Need to Know About the Corporate Transparency Act

March 01, 2024

by

Connie Elder Carrigan





It's Déjà Vu All Over Again: US Department of Labor Announces Intent To Revise Overtime Rule

September 11, 2023

by

Connie Elder Carrigan



Use of Pre-Dispute Confidentiality Provisions Regarding Sexual Harassment Will Soon Fall by the Wayside

November 17, 2022

by

Connie Elder Carrigan

[VIEW ALL RELATED ARTICLES](#)

ABOUT THE AUTHOR



Connie Elder Carrigan
OF COUNSEL

ccarrigan@smithdebnamlaw.com

919.250.2119

Connie Elder Carrigan is an accomplished attorney with a passion for helping clients, individuals, employers, and business representatives in planning for their future – from creating initial documents for a new company to advising on compensation,

harassment, discrimination, and employment agreements – to estate planning and trusts and estate administration, Connie advises clients with shrewdness and prudence backed by over three decades of experience.

Contact Us Today

Name

Business Name

Contact Phone

Contact Email

Question or Message

Smith Debnam welcomes your emails and we look forward to assisting you. By clicking this checkbox, you agree that contacting Smith Debnam does not establish an attorney-client relationship and sensitive information should not be sent until an attorney-client relationship has been established.

SUBMIT

CONTACT US

919.250.2000

mail@smithdebnamlaw.com





SMITH DEBNAM RALEIGH

4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000

Fax: 919.250.2100

SMITH DEBNAM CHARLESTON

171 Church Street, Suite 120C
Charleston, SC 29401

Phone: 843.714.2530

Fax: 843.714.2541

[Careers](#)

[Privacy Policy](#)

[Disclaimer](#)

[Sitemap](#)

[Accessibility Policy](#)

