

**Sample Settlement Agreement and Release for an
Employment Law Claim**

As submitted to the Missouri Bar Association
Labor and Employment Law Committee
October 2004

Drafted by a Committee working group
comprised of Attorney/Mediator Bruce S.
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representing management and Ferne Wolf,
representing employees

SAMPLE SETTLEMENT AGREEMENT AND RELEASE
FOR AN EMPLOYMENT LAW CLAIM (10/30/04)

INTRODUCTORY NOTES:

1. This form is intended to be a sample settlement agreement containing the provisions typically included in the settlement agreement of an employment law case. The form was developed by a working group under the auspices of the Missouri Bar Association Labor and Employment Law Committee and has been approved as to form by the Committee. The working group was comprised of attorneys Bruce Feldacker, who serves as a mediator of employment law disputes, Terry Potter who represents employers, and Ferne Wolf who represents employees in such matters. This sample release form, without modification, is intended to be a fairly drafted document containing the provisions commonly included in the release of employment law claims. It may be used “as is” in some cases, especially in cases in which one of the parties is not represented by counsel (“pro se”), or may serve as the starting point or as a “check list” by attorneys drafting their own release form. **SOME PROVISIONS OF THE SAMPLE AGREEMENT MAY NOT APPLY IN A PARTICULAR CASE, AND YOU SHOULD CROSS-OUT AND INITIAL ANY PROVISIONS THAT YOU DO NOT WISH TO INCLUDE.**
2. Every case is different, and the law is subject to change. Thus, any individual using this form should first consider contacting his/her own attorney for advice. Neither the Missouri Bar, the Labor and Employment Law Committee, nor the members of the working group assume any liability for the correctness of the form or its use in any particular case by attorneys or unrepresented individuals. Any user should carefully read the entire release and understand its terms before signing it. **THERE ARE MANY VARIATIONS POSSIBLE IN A FAIRLY AND PROPERLY DRAFTED EMPLOYMENT RELATED RELEASE FORM. THUS, IT SHOULD BE CLEARLY UNDERSTOOD THAT THE USE OF THIS FORM IS NOT RECOMMENDED BY THE MISSOURI BAR OR THE EMPLOYMENT LAW COMMITTEE IN PREFERENCE TO ANY OTHER FORM, NOR REQUIRED IN ANY CASE. NO REQUIREMENT TO USE THIS FORM IS INTENDED; NOR SHOULD ANY SUCH REQUIREMENT BE IMPLIED.**
3. Paragraph 6 of the settlement form includes two alternative release provisions. Paragraph 6A(i) is a narrow release of the matters in dispute; Paragraph 6A(ii) is a broad release of all claims. Both options are included because a broad release of all claims may not be appropriate or mutually agreeable in all cases. Paragraph 6C permits the parties to exclude other specific matters from the dispute. Paragraph 14 provides space to include other matters in the release that are not otherwise provided for in the form. There are special provisions for age discrimination in Paragraph 15.
4. Under Paragraph 6B, this release form does not release workers’ compensation claims, as such claims cannot be released pursuant to Missouri Revised Statutes Section 287.390.1 unless approved by an administrative law judge or the commission. Also, under Paragraph 6B, the release does not release

vested retirement benefits, vested employment benefits, or rights under COBRA (unless these are the actual subject of the settlement). These matters are excluded because the issues are frequently separate and distinct from the issues involved in most employment law disputes, may involve parties (such as trust funds or insurance companies) that are not party to the litigation, or may involve matters on which the parties to this release do not have sufficient knowledge or information to execute a release. If the parties wish to include these items in the release, they may cross out the exclusionary language in Paragraph 6C and add such claims as released items in Paragraph 14 (special provisions).

5. Paragraph 10 of the release includes a non-disparagement clause. The need for such a clause may vary from case to case, and the parties to the release may have different viewpoints on the matter. Thus, the clause is designated as “optional.”

PLEASE INITIAL BELOW TO CONFIRM THAT YOU HAVE READ THE INTRODUCTORY NOTES BEFORE USING THIS RELEASE.

Initials _____ Initials _____

(10/30/04)

SAMPLE SETTLEMENT AGREEMENT AND RELEASE

FOR AN EMPLOYMENT LAW CLAIM

(Please review the Introductory Notes and initial Page II of the Notes before using this agreement. Be sure to cross-out and initial any provisions of this form that do not apply in this matter.)

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between _____ (hereinafter referred to as “Claimant”) and _____ (hereinafter referred to as “Employer”). In consideration of the following promises, the parties agree to the following:

A. The parties desire to resolve all matters arising out of Claimant’s employment related claims against Employer;

B. Claimant has asserted certain claims against Employer based upon and arising out of his/her employment with Employer, which claims he/she has brought against Employer in a Charge of Discrimination (“Charge”) filed with the Equal Employment Opportunity Commission, Charge No. _____, and filed with the Missouri Commission on Human Rights, Charge No. _____, and which are the basis for an action denominated _____ v. _____, Case No. _____, filed in the _____ (the “Action”). [Note: List any other causes of action in Paragraph 14 below entitled “Special Provisions in this Agreement and Release.”]

C. Employer has denied, defended and disputed the allegations and claims contained in the Charge and Action; and

D. The parties desire to settle and resolve the Charge and Action and all other disputes and claims which have been or could have been asserted between them. [Note: If any claims are not resolved by this Release, so indicate in Paragraph 6B and 6C below.]

THEREFORE, for and in consideration of the mutual releases, covenants and undertakings hereinafter set forth, and for other good and valuable consideration, which each party acknowledges, it is agreed as follows:

1. Payment. Within 15 business days following execution of this Agreement or within 15 business days following the period required by Paragraph 15 (Special Provisions for Age Discrimination), if applicable, Employer agrees to pay Claimant the total amount of _____ Dollars and Zero Cents (\$_____.00) for settlement of all claims against Employer that Claimant could have sought, including but not limited to his/her claim for damages alleging physical injury. Said payment shall be divided as follows:

a. \$_____.00 in back pay with applicable taxes withheld.

b. \$_____.00 in compensatory damages from which Employer will not withhold any taxes.

c. \$_____.00 as attorney fees to Claimant's attorney and made payable to Claimant's attorney.

d. \$_____.00 as _____ (please specify category).

e. The Employer will provide the Employee with an IRS Form 1099 for all payments made pursuant to this settlement which must be reported to the Internal Revenue Service.

However, the terms of Paragraph 1 shall have no force if Claimant revokes his/her acceptance of this Agreement pursuant to Paragraph 15 (Special Provisions for Age Discrimination).

2. Withdrawal and Dismissal. In exchange for the receipt of the payment provided to Claimant pursuant to the terms of this Agreement, Claimant agrees either to: (a) If suit has been filed, to withdraw the aforementioned Action and file a stipulated dismissal with prejudice of the aforementioned action with the _____; or (b) If suit has not been filed, to request withdrawal of his/her EEOC and MCHR Charges within seven (7) business days following payment.

3. Taxes. Each payor of a payment under this Agreement and each recipient of a payment under this Agreement will be responsible for all taxes that he/she is legally responsible to pay as a result of this Agreement.

4. Re-employment. Claimant hereby waives any right or claim to reinstatement as an employee of Employer and agrees that he/she will not knowingly seek or accept employment in the future with Employer or with any of Employer's parents, subsidiaries or affiliated corporations, divisions or partnerships, or with any successor or assign. If, through mistake or inadvertence or otherwise, Claimant applies for employment with any of the aforementioned entities, then he/she shall withdraw his/her application immediately upon notice without any recourse, legal or otherwise, and to the extent that claimant has already been hired, he/she will

resign immediately upon notice without any recourse, legal or otherwise. This shall not impact Claimant's right to maintain employment with any entity which, subsequent to this Agreement, becomes Claimant's employer or a parent, subsidiary or affiliated corporation, division, partnership, successor or assign of Employer.

5. Costs and Fees. Except as specified herein, each party will bear its respective costs and fees, including attorneys' fees incurred in the litigation of this matter.

6A. RELEASE OF CLAIMS. SELECT EITHER PARAGRAPH 6A(i), LIMITED RELEASE, OR PARAGRAPH 6A(ii), GENERAL RELEASE, BY PLACING AN "X" IN THE APPROPRIATE BOX AND INITIALING THE BOX FOR THE OPTION SELECTED.

6A(i). Initials _____ Limited Release of Claims Related to This Controversy. Subject to the exclusions that may be listed in Paragraphs 6B or 6C below, Claimant and Employer hereby mutually release and forever discharge each other and each of their affiliates, subsidiaries, parent corporations and their respective agents, present and former directors, officers, executives, employees, predecessors and/or successors in interest, attorneys, heirs and assigns, from any and all matters, claims, complaints, charges, demands, damages, causes of action, debts, liabilities, controversies, judgments and suits of every kind and nature whatsoever, **arising out of the same subject matter or occurrence as this claim/cause of action**, as of the date of this Agreement, foreseen or unforeseen, known or unknown, including but not limited to, those arising out of Claimant's employment with Employer and, if applicable, the termination of such employment.

6A(ii). Initials _____ General Release. Subject to the exclusions that may be listed in Paragraphs 6B or 6C below, Claimant and Employer hereby mutually release and forever discharge each other and each of their affiliates, subsidiaries, parent corporations and their respective agents, present and former directors, officers, executives, employees, predecessors and/or successors in interest, attorneys, heirs and assigns, **from any and all matters, claims, complaints, charges, demands, damages, causes of action, debts, liabilities, controversies, judgments and suits of every kind and nature whatsoever, as of the date of this Agreement**, foreseen or unforeseen, known or unknown, including but not limited to, those arising out of Claimant's employment with Employer and the termination of such employment.

The claims, complaints and actions released include, but are not limited to, any claims Claimant may have relating to his/her employment with Employer, including any claims for attorneys' fees or claims of violations arising under the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (except as excluded by Paragraph 6C), the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., the False Claims Act, 31 U.S.C. § 3729 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., or any other relevant federal, state or local statute or ordinance, or arising under common law, including but not limited to torts, contracts or public policy claims.

6B. Unless specifically listed in Paragraph 14 of this release (Special Provisions), neither Paragraph 6A(i) or 6A(ii) of this release applies to claims, if any, involving Claimant's worker's

compensation claims [matter(s) Number(s). _____], vested retirement benefits, vested employment benefits, or rights under COBRA.

6C. Initials _____ Note: Due to the nature of an industry or a claim, it may be necessary to remove other claims from this release. If so, check and initial the box and complete the following sentence. **[CROSS OUT THE SPACE IF YOU ARE NOT USING IT.]**

In addition to the matters listed in Paragraph 6B, this release also does not apply to the following matter(s):

6D. If either party violates this Agreement by suing the other party for any reason for which suit is precluded by this Agreement, the suing party agrees that he/she will pay all costs and expenses incurred by the nonsuing party in defending such a lawsuit, including reasonable attorneys' fees.

7. Suit for Enforcement. If either party sues the other party for enforcement of this Agreement, the prevailing party shall receive its reasonable attorneys' fees and expenses for pursuing said action.

8. Mutual Non-Admission. Claimant and Employer agree that nothing herein shall be construed as an admission by either of them of any wrongdoing or violation of any applicable law, and that nothing in this Agreement shall be so construed by any other person.

9. Mutual Confidentiality. The dollar amount of this Agreement may not be disclosed to any person or entity except that Claimant and Employer may disclose the dollar amount of this Agreement: (a) To their respective attorneys, to their respective tax advisors, to agents of governmental taxing authorities acting in their official capacities, to agents of governmental equal-employment, fair-employment, human-rights, or human-relations agencies acting in their official capacities, or pursuant to lawful subpoena, as may otherwise be required by law; (b) To defend the attorneys for either party against claims for professional negligence, malpractice or misconduct; (c) With express, written permission of the other party; (d) Employer may disclose, on a “need to know” basis, the dollar amount of this Agreement to its board members, officers, agents, and employees; and (e) Claimant may disclose the dollar amount of this Agreement to Claimant’s immediate family and to anybody with whom he/she has a relationship that the law recognizes as “confidential” or “fiduciary.” It shall not be a breach of this Paragraph or of this Agreement for either party to state that “the case has been settled to the parties’ mutual satisfaction” (or substantially similar comment) or to disclose or refer to anything that is public record.

Nothing in this Paragraph or in this Agreement is intended to or shall be construed to impede the right or the duty of the parties to file taxes honestly, to report income honestly, to testify truthfully under oath, or to cooperate with any government investigation.

10. Initials _____ Mutual Non-Disparagement. (OPTIONAL, PLEASE INITIAL AND CHECK THE BOX IF THIS PARAGRAPH IS TO BE INCLUDED IN THE RELEASE). The parties agree that neither will engage in any conduct or communications designed to disparage the other.¹

11. Consultation with Attorney. The parties hereby acknowledge that they have a right to consult an attorney and that they have specifically consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby waive their right to do so. The parties further acknowledge that they fully understand this Agreement and the effect of signing and executing the Agreement.

12. Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

13. Neutral Letter of Reference and Neutral Reference Checks. All reference checks (both written and oral) will be answered in a neutral manner, and all letters of reference will be written in a neutral manner, and such reference letters and responses to reference checks will supply information concerning Claimant's name, dates of employment, job title, job duties and salary (if such information is requested). It is agreed that all requests for references will be submitted to _____ or his/her successor.

¹ Note: some parties may consider a liquidated damage provision as part of the settlement. Suggested language has not been included in this model settlement as there is no general agreement as to the need for such a provision or its scope.

14. Initials _____ If there are special provisions to be added to this release, check and initial the box and insert the provisions in the space provided. **[CROSS OUT THE SPACE IF YOU ARE NOT USING IT.]** Special Provisions in this Agreement and Release.
(Please specify)

15. Special Provisions for Age Discrimination. In addition to the provisions contained herein, and by execution of this document, Claimant expressly waives any and all rights to claims arising under the Age Discrimination in Employment Act of 1967, as amended, and:

a) Claimant acknowledges that his/her waiver of rights or claims arising under the Age Discrimination in Employment Act of 1967 (the "ADEA") is in writing, written in a manner calculated to be understood, and is understood by him/her.

b) Claimant expressly understands that this waiver refers to rights or claims arising under the Age Discrimination in Employment Act of 1967;

c) Claimant expressly understands that by execution of this document, he/she does not waive any ADEA rights or claims that may arise after the date this Agreement is executed.

d) Claimant acknowledges that the waiver of his/her rights on claims arising under the Age Discrimination in Employment Act of 1967 is in exchange for the consideration outlined above, which is above and beyond that to which he/she is otherwise entitled to receive from the Employer;

e) Claimant acknowledges that the Employer expressly advised him/her on _____ (date), by this document, to consult with an attorney of his/her choosing prior to executing this document;

f) Claimant has been advised by the Employer that he/she is given a reasonable period of time (21 days if the claim filed alleges a violation of the ADEA) within which to consider this document and may revoke this Agreement for a period of 7 days after execution by Claimant, and this Agreement shall not become effective or enforceable until this period has expired.

16. Entire Agreement and Severability. The parties agree that this Agreement may not be modified, altered, amended, or otherwise changed except upon written consent by each of the parties hereto. Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the parties agree that the remaining provisions shall remain in full force and effect.

17. Miscellaneous. This Agreement constitutes the entire agreement among the parties, and there are no other understanding or agreements, written or oral, among them on the subject. Separate copies of this document shall constitute original documents, which may be

signed separately but which together shall constitute a single agreement. This Agreement will not be binding on any party until signed by all parties or their representatives. This Agreement shall be effective as of the date of the last signature.

END OF RELEASE

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CLAIMANT:

I HAVE READ THIS SETTLEMENT AGREEMENT AND RELEASE AND, UNDERSTANDING ALL OF ITS TERMS, I SIGN IT AS MY FREE ACT AND DEED.

Date _____
_____ Claimant

State of _____ (SS)

County of _____

On this _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Notary Public

Page 12 of 13 Initials _____ Initials _____

EMPLOYER:

I HAVE READ THIS SETTLEMENT AGREEMENT AND RELEASE AND,
UNDERSTANDING ALL OF ITS TERMS, I SIGN IT ON BEHALF OF
_____ AS MY FREE ACT AND DEED.

Date _____
Employer _____

By: _____

Title: _____

State of _____
County of _____ (SS)

On this _____ day of _____ in the year _____, before me, the undersigned notary public,
personally appeared _____, known to me to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed
the same for the purposes therein. In witness whereof, I hereunto set my hand and official seal.

Notary Public

Page 13 of 13 Initials _____ Initials _____