Table of Contents

CHAPTER 1. SEVERANCE AGREEMENTS

3 1.1	Introduction
§ 1:2	Drafting considerations
§ 1:3	Release of claims
§ 1:4	—General enforceability of a release
§ 1:5	—Releases of age discrimination claims
§ 1:6	——A valid release must be knowing and voluntary
§ 1:7	— Exit incentives offered to a group
§ 1:8	— Other ADEA release issues—Prospective rights
§ 1:9	———Supervision of the release process
§ 1:10	———Ratification of releases and tender back of
	consideration
§ 1:11	— — Other limitations on release challenges
§ 1:12	Title VII Considerations
§ 1:13	Provisions to include in severance agreements—
	Purpose of the agreement
§ 1:14	—Release of claims
§ 1:15	—No right to reinstatement
§ 1:16	—Recital of consideration
§ 1:17	—Nondisparagement
§ 1:18	—Job references
§ 1:19	—Unemployment compensation
§ 1:20	—Personnel file access
§ 1:21	—Continuation of benefits
§ 1:22	—Outplacement
§ 1:23	—Restrictive covenants
§ 1:24	—Covenant not to sue
§ 1:25	—Compliance
§ 1:26	—Acknowledgment of voluntariness
§ 1:27	—Integration clause
§ 1:28	—Assignment
§ 1:29	—Construction and severability clause
§ 1:30	—Choice of law
§ 1:31	——Substantial relationship
§ 1:32	——Public policy
§ 1:33	——Absence of effective choice
§ 1:34	—Review and revocation periods
§ 1:35	Other severance agreement issues—Corporate issues
§ 1:36	—Employee Retirement Income Security Act
§ 1:37	—State laws
3 1.38	—Securities considerations

- § 1:39 —Family and Medical Leave Act
- § 1:40 —Worker Adjustment and Retraining Notification Act
- § 1:41 —Tax considerations
- § 1:42 —Union issues
- § 1:43 Conclusion

CHAPTER 2. CHECKLIST FOR SEVERANCE AGREEMENTS

- § 2:1 Introduction
- § 2:2 Preliminary considerations

CHAPTER 3. ANNOTATED CHECKLIST FOR DRAFTING SEVERANCE AGREEMENTS

- § 3:1 Purpose of the agreement—Recitals
- § 3:2 Recital of consideration
- § 3:3 Release of claims
- § 3:4 Confidentiality
- § 3:5 Nondisparagement
- § 3:6 Restrictive covenants
- § 3:7 Covenant not to sue
- § 3:8 Recitation of laws covered by the release
- § 3:9 Outplacement and other affirmative covenants
- § 3:10 Ongoing cooperation
- § 3:11 No right to reinstatement
- § 3:12 Alternative dispute resolution
- § 3:13 Return of company property
- § 3:14 Job references
- § 3:15 Review and revocation
- § 3:16 Loans
- § 3:17 Mitigation
- § 3:18 Consulting relationship
- § 3:19 Bonuses
- § 3:20 Stock options
- § 3:21 Clawback
- § 3:22 ERISA
- § 3:23 Pending claims
- § 3:24 Medical continuation benefits
- § 3:25 Attorneys' fees
- § 3:26 No knowledge of illegal activity
- § 3:27 Unemployment benefits
- § 3:28 Personnel file access
- § 3:29 Compliance
- § 3:30 Acknowledgment of voluntariness
- § 3:31 No admission of wrongdoing

Table of Contents

§ 4:16

§ 4:17

§ 4:18

§ 4:19

§ 3:32	No right to give interviews or write books
§ 3:33	Integration clause
§ 3:34	Assignment
§ 3:35	Construction and severability clause
§ 3:36	Choice of law
§ 3:37	Assignment of inventions or work product
§ 3:38	Termination scenarios
§ 3:39	Taxation issues
СНА	PTER 4. SAMPLE FORMS
§ 4:1	Agreement and general release between Gateway, Inc. and Bart Brown
§ 4:2	Employment agreement and general release between Eveready Battery Company, Inc., Energizer Holdings, Inc., and Harry L. Strachan
§ 4:3	Separation and settlement agreement between Duke Energy Corporation and executive
§ 4:4	Severance agreement between Unifi, Inc. and Michael E. Delaney
§ 4:5	Severance agreement between Unifi, Inc. and Stewart Q. Little
§ 4:6	Termination agreement between MethylGene, Inc. and executive
§ 4:7	Severance agreement and general release between Healthways, Inc. and executive
§ 4:8	Separation agreement between SeaChange International, Inc. and executive
§ 4:9	Separation agreement between Gerber Scientific, Inc. and Shawn Harrington
§ 4:10	Release agreement and severance agreement between Symmetry Medical, Inc. and an executive
§ 4:11	Lorillard, Inc. Form of Severance Agreement
§ 4:12	Involuntary termination severance agreement between Fusion-io, Inc. and executive
§ 4:13	Severance agreement between White Electronic Designs Corporation and Edward White
§ 4:14	Severance Agreement between P&F Industries, Inc. and Executive
§ 4:15	Severance agreement between Selectica, Inc. and employee
§ 4:16	Change of Control severance agreement between

Ardelyx, Inc. and executive

executive

Change-in-Control and Severance Agreement between

Severance agreement between Giga-tronics, Inc. and

Severance agreement between Heat Biologics, Inc. and

Windstream Services, LLC and executive

§ 4:20	Severance agreement between Southcross Energy Partners GP, LLC and executive
§ 4:21	Severance agreement between Express, Inc. and executive
§ 4:22	Separation agreement and release between Chesapeake Utilities Corporation and an executive
§ 4:23	Amended and restated executive severance agreement between American Superconductor Corporation and Executive
§ 4:24	First-year change of control severance agreement between BlueArc Corporation and Executive
§ 4:25	Executive severance agreement between RCM Technologies, Inc. and an executive
§ 4:26	Change in control severance agreement between UniPixel, Inc. and executive
§ 4:27	Change in control severance agreement between Federal Home Loan Bank of San Francisco and Executive
§ 4:28	Accord and satisfaction and release—Between employer and executive employee pursuant to severance agreement
§ 4:29	Covenant not to sue—In conjunction with severance agreement
§ 4:30	Change in control severance agreement with release of claims and covenant not to sue
§ 4:31	Amended and restated executive severance agreement
§ 4:32	Severance agreement, resignation and mutual release
§ 4:33	Change in control severance agreement for executive officers and certain key employees
§ 4:34	Executive Severance Agreement and Release
§ 4:35	Severance agreement and release under California law
§ 4:36	Severance pay plan and agreement
§ 4:37	Change-in-control severance agreement
§ 4:38	Change-in-control agreement
§ 4:39	Senior Executive Severance Agreement
§ 4:40	Executive Severance Agreement
§ 4:41	Executive severance agreement and release of claims
§ 4:42	Change in control and severance agreement of Model N., Inc.
§ 4:43	Executive severance agreement and release of claims
§ 4:44	Executive severance plan of performance food group company
§ 4:45	Sample severance agreement where company does not have specific severance policy
§ 4:46	Sample severance policy limiting payments to executive officers without shareholder approval
§ 4:47	Severance agreement and release with chart of ages of employees terminated and not terminated

Table of Contents

§ 4:48	Executive severance agreement with future employment agreement regarding specific competitive businesses
§ 4:49	Sample Executive Severance Plan from medical testing company
§ 4:50	Sample Executive Severance Plan from Tennessee Valley Authority
§ 4:51	Sample Severance Agreement including parachute payment limit
§ 4:52	Sample Confidentiality, Trade Secrets, Non-Solicitation and Severance Agreement
§ 4:53	Sample amended and restated severance agreement

Table of Laws and Rules

Table of Cases