

WORKERS' COMPENSATION SHOP TALK

QUESTION: When settling a workers' compensation appeal, is it advisable for an employer to do a separate release??

When court appeals of workers' compensation claims are settled, the settlement is usually accomplished using forms. Self-insured employers typically must use BWC forms (SI-42 and SI-43), while state-fund claims are often settled using form documents prepared by the Ohio Attorney General's office. However, in almost all cases I will prepare a separate settlement agreement and release on behalf of my client, and demand that this agreement be incorporated in any settlement. A recent workers' compensation case from Louisiana highlights why this additional precaution can be a good idea.

Peddy v. Aaron's, Inc., Case No 02:18-cv-1625 (E.D.La Feb. 21, 2019), involved an employee who was injured at work in 2009 and received workers' compensation benefits. In 2016, the employer terminated the claimant's light duty position, prompting the claimant to file suit alleging a failure to accommodate, disability harassment, and discrimination. After that lawsuit was filed, but before it was served on the employer, the claimant settled her workers' compensation claim with the employer. A settlement agreement executed by the claimant released the employer from "all liability of any nature whatsoever, whether past, present, or future.....including all claims arising under....the Laws of Louisiana....as a result [of the 2009 workplace injury]." The settlement agreement also prohibited the claimant from filing any claims against the employer "arising from" the 2009 injury. After the suit was filed, the employer brought a counterclaim for breach of contract and indemnification against the claimant, and moved for judgment on the pleadings, arguing that the action was clearly precluded by the workers' compensation settlement agreement.

The trial court granted the employer's motion and entered judgment in its favor, finding that the agreement executed in conjunction with the settlement of the workers' compensation claim clearly barred the discrimination suit. The claimant had released her right to disability and tort claims, which clearly "arose from" the 2009 injury, when she agreed to the broad terms of the settlement. (The lawsuit included claims that the employer created a "hostile work environment" and discriminated against her due to her disabilities.) The court went further, finding that as a result of pursuing the suit in breach of the agreement, the employer was entitled to attorney's fees and costs associated with defending the suit. The court balked at enforcing an indemnification provision based upon the language in that provision.

There are many issues critical to employers that can be clarified or confirmed in a separate agreement including confidentiality, agreements to indemnify against liens, confirmation that the claimant is no longer employed or is precluded from seeking employment in the future, and a release from most employment-related claims. Some claimant attorneys balk at such provisions,



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but settlement is a negotiation and employers should demand terms that are as broad as possible. As noted in *Peddy*, the money you spend negotiating a separate settlement agreement can be an excellent investment and save thousands of dollars later.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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