

# Considering a Reduction in Force? Time to Revise Your Separation Agreement Template

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As economists argue whether a recession is on the horizon, some employers may begin to prepare to cut expenditures, including through a reduction in force. While not necessary under most state laws, many employers opt to provide severance to employees they choose to lay off. This severance is usually provided by way of a separation agreement in exchange for the employee's agreement not to bring certain claims against the employer, among other things. As employers begin determining whether they will undergo a reduction in force, they should ensure their separation agreements adhere to applicable state laws.

For example, in March 2022, Oregon's Governor, Kate Brown, signed [Senate Bill 1586](#) into law. This Bill expands Oregon's Workplace Fairness Act (the "Act"), with the amendments taking effect on January 1, 2023. Currently under the Act, a separation agreement cannot include a non-disclosure and/or a non-disparagement provision preventing the employee from discussing discrimination detailed under ORS 659A.030, 659A.082, or 659A.112 unless the employee requests the inclusion of such provision(s) in the agreement. Further, a separation agreement may also not include a no-rehire provision unless the employee similarly requests the inclusion of the provision in the agreement. If the employee elects to include such provisions in the agreement, the Act requires employers to provide all employees, regardless of age, seven (7) days to revoke the agreement after executing it, and the agreement must clarify as much.

Senate Bill 1586 amends the Act and prohibits employers from including confidentiality provisions concerning the amount of or the fact of any settlement. The existing seven (7) day revocation period now also applies if such a confidentiality provision is included in an agreement. Employers are further prohibited from making an offer of settlement or separation conditional upon an employee requesting to include any of these restricted non-disclosure, non-disparagement, no-rehire, and/or confidentiality provisions. Additionally, employers seeking to enter into a settlement or separation agreement must provide employees with a copy of their anti-discrimination policy.

The law affords individuals aggrieved under the Act a private right of action, and they may recover a civil penalty of up to \$5,000 as well as reasonable attorney's fees. Additionally, any restricted provisions agreed to in violation of the Act are considered void and unenforceable.

Aside from Oregon, multiple states have certain requirements and restrictions that impact the

construction of separation agreements. For example, under Minnesota's Human Rights Act, employers must provide all employees, regardless of age, at least fifteen (15) days to revoke an executed agreement if such agreement contains a release of claims. And, Illinois prohibits employers from including any clause that prevents an employee from making truthful statements or disclosures regarding unlawful employment practices. While this does not cover the gambit of state laws requiring and restricting what an employer must include in a separation agreement, employers should be cautious as they begin rolling out their separation agreements. Additionally, as reductions in force continue, employers should be cautious of new and pending laws potentially impacting their separation agreement templates.

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National Law Review, Volume XII, Number 314

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