



## Release Of WARN Claims Must Allow A Reasonable Time to Consider Whether to Sign — Or It May Be Involuntary

Forcing employees to sign a release the very day it is presented to them demonstrated that the release was involuntary, according to a federal district court in New York. In *DePalma v. Realty IQ Corp.*, the Court permitted employees to proceed with their WARN Act suit alleging that the employer failed to provide adequate warning of the company's closing, even though the employees had signed release agreements. The employees alleged their employer told them to sign the release on the same day they received the document, notwithstanding that the release allowed a 21-day review period. This case highlights the importance of providing employees with an adequate time period in which to review and sign the release. Also, in a multi-employee reduction in force, employees 40 years of age or older must be afforded 45-days to review, and a 7-day revocation period, among other requirements, to obtain a valid release of a federal age discrimination claim.

## California Jury Awards \$30 Million in Sexual Harassment Suit Against Grocery Chain for Failure to Investigate

Earlier this month, a San Diego jury awarded \$30 million in punitive damages to six female supermarket employees who accused their employer, Ralph's Grocery, of sexual harassment. At trial, the plaintiffs alleged that a manager physically and verbally abused the employees, calling them vulgar names and throwing items like telephones, clipboards, and a 30 to 40 pound mailbag at them. The jury awarded punitive damages primarily because the supermarket failed to investigate and remedy the complaints from the harassed employees. This case highlights the importance of taking timely and appropriate action in response to complaints of sexual harassment.

## Allowing Work At Home Not Necessarily Required to Reasonably Accommodate

Reasonable accommodation does not obligate employers to permit employees to work at home where the employee has exhibited poor performance, according to the Tenth Circuit Court of Appeals. In *Spielman v. Blue Cross*, an employee suffering from a rheumatic disease worked as a full-time nurse consultant. As a result of the employee's low productivity, her employer placed her on a performance improvement plan. The day after being placed on the plan, the employee requested and was afforded a leave of absence. When the employee returned to work, she made a request to work at home as an accommodation pursuant to the ADA. The employer denied this request. The Court upheld this denial based on the employee's poor performance record. While requests to work at home are increasingly common, employers are generally not obligated to allow an employee to work at home, unsupervised, especially where the employee has demonstrated unsatisfactory performance.

## Employer May Not Discharge Employee For Requesting FMLA Leave to Adopt Children

In a recent federal decision, a court ruled that an employer may not terminate an employee based on the employee's request for leave to adopt a child. In *Merli v. Bill Communications, Inc.*, an executive editor for a magazine gave his employer written notice of his intent to take one week's leave to adopt children in Russia. The employee's supervisor expressed concern that the leave would affect the magazine's publication schedule and did not respond to the request. Later that month, the magazine terminated the employee in a staff reduction, but hired a new employee for a substantially similar position. The Court found that such inconsistent actions raised sufficient issues of possible retaliation for requesting FMLA leave, to allow the employee to pursue his lawsuit. This case demonstrates the importance of ensuring that adverse employment actions directed at employees who request a protected leave must be fully supported by legitimate business reasons.

## Permission to Electronically Distribute ERISA Summary Plan Description to Be Expanded

Under a new rule, to be effective October 7, 2002, all pension and welfare benefit plans covered by Employee Retirement Income Security Act are permitted to use electronic means to communicate required information to plan participants. Included in this category are group health plans. The modifications apply to two categories of employees: (1) those employees who can effectively access electronic documents at locations where they are expected to perform duties as employees; and (2) those individuals who consent to receiving documents electronically. These changes significantly expand the opportunities of companies and benefit plan administrators to electronically communicate required information to plan participants.