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Employment Law

# C&R Agreements May Waive Subsequent Employment Law Claims

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As is often the case in the practice of law, the simplest of details can have the hugest impact on the outcome. Take for example, the recent case from the Eastern District of Pennsylvania of *Zuber v. Boscov's*, No. 15-3874 (E.D. Pa., Apr. 7, 2016). What was believed to be a rather benign settlement and release of a workers' compensation claim turned out to be a complete bar to a subsequent claim brought in federal court under the Family and Medical Leave Act (FMLA).

According to the decision, plaintiff Craig Zuber sued his employer, Boscov's, asserting claims for interference with his FMLA rights and wrongful termination in violation of his FMLA rights. Zuber suffered a compensable eye injury while working for the defendant on Aug. 12, 2014. After missing a brief period of time from work, Zuber returned to work, and was fired on Sept. 10, 2014, for an alleged security breach, per the opinion. Eventually, Zuber resolved his workers' compensation claim on April 8, 2015, pursuant to a compromise and release agreement between Zuber and Boscov's workers' compensation carrier.

By way of background, Section 1000.5 of the Workers' Compensation Act provides a vehicle for settling a worker's compensation claim through a "compromise and release" of any and all liability that is claimed to exist under the act on account of injury or death in 77 P.S. Section 1000.5. With respect to interpretations of compromise and release agreements, the Pennsylvania Supreme Court has stated that such agreements are to be construed in the same manner as contracts generally. (See *Nationwide Insurance v. Schneider*, 906 A.2d 586, 595 (Pa. Super. 2006).) The intention of the parties to a written release is paramount. Therefore, a compromise and release agreement should be interpreted in a manner "which ascribes the most reasonable, probable and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished."

In the *Zuber* case, the language of the compromise and release read, in pertinent part: "In exchange for employee forever relinquishing any and all rights to seek any and all past, present and/or future benefits, including, but not limited to, wage loss benefits, specific loss benefits, disfigurement benefits, and/or medical benefits for or in connection with the alleged Aug. 12, 2014, work injury claim ... employer and employee intend for the herein compromise and release

agreement to be a full and final resolution of all aspects of the Aug. 12, 2014, alleged work injury claim and its sequela whether known or unknown at this time." It was this specific language the court found to provide a complete bar to Zuber's FMLA claims.

The court contrasted the wording of the compromise and release, which contained a release of "all aspects of the Aug. 8, 2014, alleged work injury claim and its sequela whether known or unknown at this time" with prior case law interpreting a less expansive compromise and release. In *Canfield v. Movie Tavern*, No. 13-3484 (E.D. Pa., Dec. 12, 2013), the release in question stated that the "agreement resolve[d] any and all workers' compensation claims, including but not limited to scarring and specific loss, arising out of the claimant's employment with Movie Tavern Partners." In *Canfield*, the court found that the release executed by the plaintiff was exclusively limited to plaintiff's workers' compensation claims and did not waive plaintiff's Americans with Disabilities Act (ADA) claims arising out of the same injury. Unlike the narrower wording in *Canfield*, the language in *Zuber's* release contained broad, all-encompassing language such as any "sequela whether known or unknown at this time" and that the plaintiff was "forever relinquishing any and all rights to seek any and all past, present and/or future benefits ... or any other monies of any kind." The instant release, according to the court's opinion, was clearly drafted with the intent to include these types of related employment claims arising out of the work injury. As a result, the court determined that the execution of a compromise and release agreement in connection with the workers' compensation claim served as a complete waiver of any FMLA claims or retaliation claims.

As one who routinely practices in both the workers' compensation and employment law worlds, this result is particularly harsh. In today's practice of settling workers' compensation claims, most employers (and their insurance carriers) insist on a letter of resignation and/or a signed general release of any and all potential claims in addition to the compromise and release agreement. This practice suggests that most employers who demand such a general release do not believe the generic language of the compromise and release is sufficient to waive any subsequent employment law claims.

For many years, the prevailing belief was that a generic compromise and release would not release anything other than the specific injury claim. In light of more recent developments, and now the *Zuber* decision, practitioners would be well served to double-check the language in the release to make sure to preserve any subsequent claims. In addition to the myriad of other cross-over issues between workers' compensation and employment law, employee rights lawyers must be vigilant in protecting their client's rights.

To be safe, if you do not want to risk having your client's employment (or other) claims waived (or risk losing your law license), I suggest parroting the language from *Canfield* in the compromise and release. Specifically, the preferred wording should read: "This agreement resolves any and all workers' compensation claims, including but not limited to scarring and specific loss, arising out of the claimant's employment." It is not advisable to include all-inclusive language such as: "the C&R [compromise and release] completely resolves all claims and issues" or "this settlement is a final one which forever ends your entitlement to any and all such benefits" or "this is a final settlement which forever releases employer for any additional benefits arising from the work injury."

One last thing, if you do not happen to represent the employee in the workers' compensation case, and you are only handling the employment claims, you should make every attempt to reach out to counsel before a settlement of the workers' compensation case. This area of the law can be very

tricky and it is never safe to assume every worker's compensation lawyer will know to avoid these pitfalls. •

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