

New Requirements for California Settlement and Separation Agreements

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PRACTICE AREAS

Employment and Labor

When drafting settlement and separation agreements with employees, California has imposed a number of requirements and restrictions that must be considered. One of these requirements is set forth in the recently amended California Civil Code Section 1542, which is intended to prevent an employee from inadvertently releasing unknown claims. The protections of Section 1542, however, can be waived. As such, every separation or settlement agreement with a California employee typically should include a Civil Code Section 1542 waiver.

To be effective, the intent to waive the protections of Section 1542 must be clear. While Section 1542 does not require a release to quote the statutory language, the best practice is to quote the statutory language verbatim in the separation or settlement agreement to ensure the employee fully understands that he or she is releasing all claims under the statutes to which the agreement refers, including any claims the employee does not understand, or is not aware of, at the time he or she is signing the agreement.

Effective January 1, 2019, the general release language in Section 1542 was slightly amended. The following text reflects the recent changes:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release which and that, if known by him or her, must would have materially affected his or her settlement with the debtor or released party.

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Although these changes appear to be minor and their impact remains to be seen, California employers should update their form or template separation and settlement agreements to reflect these revisions. Reciting this new language in separation and settlement agreements with California employees or other workers will help limit potential concerns with the release of unknown claims under Section 1542.

We will continue to monitor changes to California law. For questions related to releases under California law or other employment law matters, please contact a member of the Koley Jessen Employment, Labor and Benefits Practice Group.