

21 Days or 45 Days: How Many Days Does an Employee Have to Review A Separation Agreement?

08/12/25

The Age Discrimination in Employment Act (ADEA) of 1967 protects applicants and employees, 40 years of age and older, from discrimination on the basis of age in hiring, promoting, separating, compensating or the terms, conditions or privileges of employment. In 1990, the ADEA was amended by the Older Workers Benefit Protection Act (OWBPA), which added rules on how much time employees must be given to review severance or separation agreements.

In order for a waiver of rights and claims under the ADEA to be valid and enforceable, usually through a severance or separation agreement, it must be “knowing and voluntary.” The minimum requirements of the law to determine whether a waiver is “knowing and voluntary” is that it is in writing, must include specific language, that consideration (something of value, usually money) is being offered and that the employee is provided with a specific amount of time to both consider the agreement offered and to revoke their acceptance of the offer.

If one employee who is 40 years old or older is being terminated, the individual must be given a period of at least 21 days to consider the agreement. If a group or class of employees are selected for termination as part of a “decisional unit,” any of whom are 40 years old or older, and are offered a waiver in connection with the termination of their employment, they need to be provided with at least 45 days within which to consider the agreement. If 21 days or 45 days, as the case may be, is not offered, a waiver may not be considered “knowing and voluntary.”

In addition to the minimum required consideration period based upon the circumstances, every agreement under the ADEA/OWBPA must provide a period of 7 days, following execution, during which the individual may revoke their acceptance of the agreement. It is not until the 7 day revocation period has expired and the former employee has not exercised their right to revoke their acceptance of the agreement that the agreement becomes effective.

Importantly, any material changes to the employer’s final offer restarts the running of the 21 or 45 day period, while changes that are immaterial do not restart the running of the time periods. The parties can further agree, regardless of whether the changes are material or immaterial, that the changes do not restart the running of the time period.

Unsure How Long to Give for a Separation Agreement Review? We Can Help.

The amount of time an employee must receive to review a waiver of rights under the ADEA and OWBPA for it to be valid and enforceable is a **fact-sensitive determination**.

If you need assistance evaluating your obligations concerning an employee’s separation agreement, contact the [Employment Law Team](#) at Wilentz.

Attorney

- Meghan Chrisner-Keefe

Practice

- Employment Law