

Re:
Exhibit A: Case No: 07-11337-KG
The SCO Group, Inc

OWBPA's Statutory Requirements

RELEASES OF ADEA CLAIMS AND THE NEW REGULATIONS UNDER THE OLDER WORKERS BENEFIT PROTECTION ACT

I. INTRODUCTION

The Older Workers Benefit Protection Act ("OWBPA") amended the Age Discrimination in Employment Act (the "ADEA") mandating that waiver agreements which purports to release ADEA claims meet certain requirements in order to be valid. Recently, the EEOC issued regulations interpreting these requirements. These regulations were developed by a 20-member committee comprised of management, employee and EEOC representatives. The regulations became effective July 6, 1998 and attempt to clarify many of the OWBPA's requirements which had caused confusion for courts, as well as employers.

II. OWBPA's STATUTORY REQUIREMENTS

The OWBPA's waiver provision seeks to guarantee that employees signing separation agreements have every opportunity to consider their potential litigation options. Specifically, the

statute provides that waivers will not be valid unless they are "knowing and voluntary," a standard that requires the employer to take, at a minimum, each of the following steps:

- (A) The waiver must be part of a written agreement between the employee and employer, which is drafted in language "calculated to be understood" by the employee. If the company uses a form agreement for all departing employees, it should be written for the comprehension of the average individual eligible to participate.
- (B) The waiver must specifically refer to rights or claims arising under the ADEA.
- (C) The employee cannot waive future rights or claims that arise after the execution of the waiver.
- (D) The waiver must be supported by additional consideration over and above anything of value to which the employee is already entitled (e.g., vacation benefits, contractual severance, etc.).
- (E) The employer must advise the employee in writing to consult an attorney before signing the agreement.
- (F) The employee must be allowed up to 45 days to consider agreements proposed as part of an early retirement or incentive program offered to a group or class of employees. Agreements proposed in connection with other kind of separations must allow for a 21-day consideration period (unless litigation is already pending and the waiver is part of a settlement agreement).
- (G) The employee can revoke a signed agreement for up to seven days after executing it.
- (H) The employer who offers an incentive program to a group of employees must disclose, in writing and in comprehensible language,
 - (1) the class or group of employees covered by the program, the eligibility requirements for the program, and any time limits set for participation, and
 - (2) the job titles and ages of all employees eligible for the program, as well as the ages of all individuals in the same job classification or unit who are not eligible for the plan.

29 U.S.C. § 626(f)(1).