

## Yes, You Really Were Giving Up FMLA Rights When You Signed That Document And Accepted 13 Weeks Severance

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Granted that many workers are not sophisticated in legal matters and severance agreements are not always written in plain English, but it seems fairly intuitive that when an employer offers an employee the choice of 13 weeks severance or a performance improvement plan, and the employee takes the severance and signs the document, she is not going to be able to sue the company. Kudos to the U.S. Court of Appeals for the 11th Circuit in striking a blow for that principle in [Paylor v Hartford Fire Ins. Co.](#) As noted above, Paylor signed a severance agreement then brought this FMLA case, claiming that her claims were “prospective” and therefore invalid under Department of Labor regulations (which do in fact state that employees cannot prospectively waive FMLA claims). The case apparently involves various disputed facts between the employer and the employee, but it seems clear that there are both performance issues and FMLA leave going on in similar time frames, which employers will recognize as a recipe for confusion and potential claims. Of course, usually a signed severance agreement is an effective way of avoiding those claims. Paylor, however, claimed that the severance document could not waive claims for FMLA claims based on *past* events because they were prospective because she *had not made the claims yet*. That is a creative argument by Paylor’s lawyer, I suppose, but certainly defies common sense and probably the plain language of the severance agreement. The court was more elegant in its careful analysis of the history of the regulation and related case law, but did conclude that, yes, Paylor had waived her FMLA rights and granted summary judgment to the employer. Of course, by the time an employer has paid to go through discovery, file motions, then brief and argue a matter on appeal, it probably does not feel like it has “won.” There is a limited amount an employer can do in drafting its severance agreements to avoid a dispute over the application of a regulation, but this is another occasion for employers – who are likely already reviewing severance agreements to [avoid the latest salvo from the EEOC](#) – to check in with counsel to make sure their severance agreements do everything possible to avoid this issue.

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