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INSIGHTS

Too Late, Even If Not Too Little: Joining a National Trend, New Jersey Puts the Brakes on Driver's Claims as Untimely based on Employment Application

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When does two years become six months? When a signed employment application says it does.[1]

Last month, New Jersey recognized the express lane permitting employers and employees to set their own limitations periods, even if shorter than statutory limits. ***Rodriguez v. Raymours Furniture Co., Inc., No. A-4329-12T3, 2014 WL 2765273 (App. Div. June 19, 2014).*** In the first published New Jersey opinion on this issue, the court dismissed as untimely a challenge to a layoff filed well within the two-year statutory limitations periods but outside the six-month limit set in the employment application.

The decision reinforces the national trend of judicial enforcement of contractual agreements shortening employment-related limitations periods, at least under certain conditions. The U. S. Courts of Appeals for the Sixth (Kentucky, Michigan, Ohio and Tennessee), Seventh (Illinois, Indiana and Wisconsin) and Ninth (Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) Circuits, as well as numerous federal district courts and state appellate courts, have enforced such provisions.

How the Rubber Hit the Road

In 2007, plaintiff Sergio Rodriquez completed, signed and submitted an employment application and was hired as a Customer Delivery Assistant for Raymours & Flanigan furniture company. At the end of the two-page application form, in capital letters and directly above his signature, Rodriquez agreed:

> I AGREE THAT ANY CLAIM OR LAWSUIT RELATING TO MY SERVICE WITH RAYMOURS & FLANIGAN MUST BE FILED NO MORE THAN SIX (6) MONTHS AFTER THE DATE OF THE EMPLOYMENT ACTION THAT IS THE SUBJECT OF THE CLAIM OR LAWSUIT. I WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY. …

In 2010, Rodriquez was promoted to Driver, completing a different application form which had no provision shortening the limitations periods. Promptly after this promotion, he was injured delivering furniture and went on a six-month workers' comp leave. He was laid off three days after his return to work.

Nine months later, Rodriquez filed a complaint alleging retaliation for filing a worker's compensation claim and disability discrimination in violation of the New Jersey Law Against Discrimination (NJLAD). The trial court dismissed the complaint as untimely, and the appellate court affirmed.

On *de novo* review, the appellate court first rejected plaintiff's claim that the shortened limitations period was unconscionable. Although the form was a contract of adhesion because its terms were non-negotiable and there was disparity in the bargaining positions of the parties, the court found the agreement was entered consensually. The court scrutinized the length of the application form and both the placement and font-size of the limitations provision, highlighting the short length of the form and the conspicuous appearance of the provision, directly above the signature line. The court found the provision was not substantively unconscionable because (1) the subject matter of the provision was a valid term in an employment contract; (2) although defendant had a superior bargaining position, plaintiff was under no compulsion to apply if dissatisfied with the terms; (3) plaintiff presented no evidence of an extraordinary level of economic compulsion and (4) enforcement of the provision posed no adverse effect on public policy or interests.

The court also rejected the contention that the statutory two-year limitations period could not be modified by private contract, noting U. S. Supreme Court authority that such provisions are enforceable "in the absence of a controlling statute to the contrary … provided that the shorter period itself shall be a reasonable period,"[2] and finding that a judicial prohibition on such voluntary agreements would itself "intrude upon the prerogative of the Legislature." Recognizing that many other state and federal courts had approved contractually-shortened limitations periods—including a recent New York decision enforcing the very same Raymours application provision—the court noted that six months is also the NJLAD claim filing deadline.

The court rejected Rodriquez's claims that he had insufficient English language skills to understand the application terms, noting his level of education and proficiency in English in completing his job assignments.

The court also rejected claims that the later Driver's Application constituted a novation voiding the initial contract. The court found that the second form was a solicitation of additional information relating to driving rather than a novation absent a showing of clear intent by the parties to supersede the prior contract.

Rodriquez in the Rear View Mirror:
Rodriguez provides important pointers for employers, even those with no New Jersey operations:

- Employment agreements (including applications) shortening statutes of limitations may be enforced if they are reasonable and conspicuous. Here the six-month limit was in all caps, introduced by a caution in bold letters and placed directly above the applicant's signature on a short application form.

- Agreements on other terms relating to litigation of claims, such as waiver of the right to jury trial and/or requiring arbitration, may also be enforceable.

- Private contractual limitations periods for federal claims that require exhaustion of administrative remedies (*e.g*. Title VII) or are not waivable (*e.g.* the Fair Labor Standards Act, Family & Medical Leave Act) will not be enforced. Time limits for asserting other claims (*e.g*. state law claims and federal age discrimination or Section 1981 claims) can be shortened by private agreements.

- Consistency among terms in different forms and policies supports their validity and avoids challenges.

- Applicants should not be rushed or pressured into completing or submitting application forms or other agreements and should be given plenty of time (as the applicant defines "plenty") to review its contents. Internet applications can support applicants' total control of the process.

- An offer of translation of English documents, or a requirement that the applicant certify proficiency in English if required by the job, can eliminate a later denial of competence, competency or consent.

- Choice of law provisions can help enforce a favorable contractual limitations clause anywhere, especially when coupled with a contractual selection of venue and applicable statutes of limitations.

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[1] *Evan Guimond, Bracewell & Giuliani LLP summer associate served as a contributor to this client alert.*

[2] *Order of United Comm. Travelers of Am. v. Wolfe*, 331 U.S. 586, 608 (1947).