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NJ Appellate Division Allows Employer to Choose its Own Limitations Period

By Christopher Lowe and Samuel Sverdlov

Limitation periods are of special concern to employers as they work to reduce potential frivolous employment law suits and to receive timely notice of potential exposure. Last week, an appellate court in New Jersey entered an encouraging decision for employers state-wide—permitting employers to contractually shorten the statute of limitations period.

In *Rodriguez v. Raymours Furniture Company, Inc.,* the plaintiff, an Argentinian immigrant with limited-proficiency in English, was hired as a Helper for Raymour & Flanigan in early 2007. At the time of his hiring, he filled out an application that clearly stated in capitalized font, that any claim or law suit against Ramour & Flanigan must be filed within six months, and that he "waives any statute of limitations to the contrary." Although the plaintiff testified that he was unable to read much of the application, he conceded that he took the application home, had certain portions translated by a friend and had no questions about the documents content at the time he applied. Nevertheless, the plaintiff claimed that the shortened limitation period is unconscionable and contrary to public policy, and urged the court to "judicially impose a prohibition on agreements shortening limitation periods specifically in employment contracts."

Unpersuaded by the plaintiff's arguments, the Appellate Division declined to legislate from the bench, holding that although the employment contract was a contract of adhesion, it was neither procedurally nor substantively unconscionable and did not contravene any public policy. The court considered that the plaintiff was fully aware of the fact that he was truncating his limitation period when he signed the contract,[1] that the disputed provision was conspicuously put forth in oversized bold print and clearly located within a two-page document, and that courts nationwide that have considered shortened limitations periods in employment contracts have given them widespread approval.[2]

While New Jersey courts have never previously considered shortened limitations periods in employment contracts, at least not in any published decision, they have fallen in line with a widespread judicial philosophy that looks more favorably on contractually agreed-upon limitation periods. Employers should still exercise caution, however, as any determination of unconscionablity will be fact dependent, and the New Jersey Supreme Court has yet to weigh in on the issue. Moreover, a contractually shortened limitation period is far less likely to be enforced in the context of a federal charge of discrimination because of the exclusive jurisdiction of United States Equal Employment Opportunity Commission and the exhaustion of administrative remedies requirement there.

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[1] When the plaintiff submitted his signed contract without any questions or concerns, he was deemed to have read and understood its terms and conditions.

[2] The court additionally dismissed plaintiffs contention that upon his promotion, the new application he filled out, which had no mention of the truncated limitations period, constituted a novation and thus voided the initial application. As the court held, a novation is never presumed, and new contracts "must exhibit a clear and definite intention on the part of all parties that its purpose is to supersede and eliminate a prior contract."

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