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New Jersey Employers Cannot Reduce Employees' Time To File Discrimination Claims From Two Year Statute Of Limitations, Rules Unanimous New Jersey Supreme Court

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[Joanna S. Rich](#)

Executive Summary: The New Jersey Supreme Court has held that employment agreements shortening the time in which an employee may file a discrimination claim against his or her employer under the New Jersey Law Against Discrimination (LAD) are unenforceable. In a decision issued June 15, 2016, the Court unanimously ruled (6-0) that a six-month time limit for filing claims contained in an employment application was unenforceable and did not bar the plaintiff's disability discrimination claims. *See Rodriguez v. Raymours Furniture Company, Inc.*, No. A-27-14 (June 15, 2016).

Background

The LAD prohibits discrimination in employment, housing, and public accommodations. A complaining party has two years to sue in court or six months to file a charge of discrimination with the state's Division on Civil Rights. The LAD does not require a plaintiff exhaust administrative remedies before suing in court.

In *Rodriguez* the plaintiff, Rodriguez, was an Argentine native with limited proficiency in English. When he applied for employment with

Raymours, the company gave him an employment application containing the following provision:

I AGREE THAT ANY CLAIM OR LAWSUIT RELATING TO MY SERVICE WITH RAYMOUR & 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.

Rodriguez had portions of the agreement translated before signing and returning it to Raymours. Several years later, Rodriguez injured his knee at work, requiring a leave of absence for treatment and surgery. Two weeks after returning to work, Rodriguez's employment was terminated. The company claimed Rodriguez was terminated as part of a company-wide reduction in force. Rodriguez disputed Raymours' explanation and alleged his knee injury was the real reason for the termination.

Rodriguez subsequently sued the company, claiming he was discharged because of his disability in violation of the LAD, and in retaliation for seeking workers' compensation benefits, in violation of the Workers' Compensation Act. Raymours moved for summary judgment, arguing his lawsuit was barred by the six-month waiver provision in the employment application. The trial court dismissed Rodriguez's suit, finding the provision was clear and unambiguous and the contractually shortened time limit was neither unreasonable nor against public policy. Rodriguez appealed and the Appellate Division affirmed, holding that, absent a controlling statutory prohibition, parties to a contract could modify a statute of limitations so long as the resulting time period was reasonable.

New Jersey Supreme Court Rejects Shortened Limitations Period

The New Jersey Supreme Court reversed, finding that the LAD's two-year statute of limitations afforded certain substantive rights that the waiver's six-month time limit precluded. The Court acknowledged that Rodriguez's suit involved private interests, but noted that a contractually shortened statute of limitations would curtail not only Rodriguez's private interest in pursuing his claims, but also the public interest in eradicating discrimination furthered by Rodriguez's pursuit of his personal claim. Additionally, the court stated that shortening the period for bringing a claim could result in fewer claims being pursued or frivolous claims being filed because less time was available to investigate. The Court also noted that a shortened time period to file a claim could negatively affect employers' ability to respond to discrimination complaints.

In a footnote, the Supreme Court also found that the six-month time limit was unenforceable as to Rodriguez's workers' compensation retaliation claim because it was "derivative" of Rodriguez's disability discrimination claim. The Court did not discuss what constituted a derivative claim, leaving its limitations open to interpretation by later litigants and courts.

The Supreme Court also analyzed whether the time limit was procedurally and substantively unconscionable, and thus unenforceable. The Court noted that a term's inclusion in an employment application did not make it *per se* a contract of adhesion, and that courts must look to the parties' respective bargaining powers. Here, however, the Court found because employment application was presented to Rodriguez on a "take it or leave it basis," it involved "indicia of procedural unconscionability" requiring further analysis of

- the subject matter of the contract,
- the parties' relative bargaining positions,

- the degree of economic compulsion motivating the accepting party, and
- the public interests affected by the contract.

While the Supreme Court's decision acknowledges that not every agreement contained in an employment application is unconscionable, the fact-intensive analysis will likely create uncertainty as to the enforceability of similar form contracts.

Absent from the opinion is any discussion of the employment application's jury trial waiver, which immediately followed the six-month time limit for filing a claim. Given the New Jersey Supreme Court's discussion of the LAD's importance in combatting unlawful discrimination, such provisions may be closely scrutinized.

Employers' Bottom Line

Many employers use contractually shortened statutes of limitation to add a level of certainty to employment disputes, as memories fade and personnel may frequently turn over during the two-year period in which disgruntled employees may sit on their discrimination claims. Employers who use such provisions must revisit their policies and may face a temporary increase in claims by employees who previously believed that their claims had expired.

If you have any questions regarding this decision or other labor or employment issues, please feel free to contact the author of this Alert, [Joanna Rich](mailto:jrich@fordharrison.com), jrich@fordharrison.com, who is a senior associate in our Berkeley Heights office.

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