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# New Jersey Court Okays Provision in Job Application Reducing Statute of Limitations

**July 10, 2014**

In *Rodriguez v. Raymours Furniture Co., Inc.*, No. A-4329-12T3, 2014 WL 2765273 (App. Div. June 19, 2014), New Jersey's Appellate Division upheld a provision in a job application that limited the time in which an employee could sue the company to no more than six months after an alleged adverse employment action. This is the first published opinion that a New Jersey court has rendered on the issue of contractually reducing state statutes of limitations in the employment context. This alert summarizes this significant decision and examines its implications for New Jersey employers.

**Background**

The plaintiff, Sergio Rodriguez, applied for a job as a customer delivery assistant with the defendant Raymours Furniture Company in the summer of 2007. Shortly after receiving the application, the plaintiff returned the completed and signed form to the defendant.[1] One of the provisions in the employment application read:

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.

In 2010, the plaintiff was promoted to the position of driver. As part of that process, he completed a "driver's application form," which asked for his personal information, his employment history, and information regarding his driving experience and driving record. This form did not include any provisions shortening the period during which an action could be brought against the defendant.

In October 2010, the defendant laid off the plaintiff as part of a reduction in force (RIF) based on his "sub-standard job performance." In July 2011, approximately 9 months after his discharge, the plaintiff filed suit, alleging that his termination was in retaliation for having filed a worker's compensation claim and constituted disability discrimination in violation of the Law Against Discrimination (LAD).

The defendant moved for summary judgment on the grounds that plaintiff's complaint was time-barred, *inter alia*. The plaintiff, in turn, argued that the waiver was unconscionable and that it also had been voided by the second application form that he completed (which lacked any such waiver provision). The lower court agreed with the defendant in dismissing the plaintiff's complaint, and the Appellate Division affirmed.

**Holding**

Though the Court acknowledged the imbalance of bargaining power between the parties and otherwise agreed with the plaintiff's contention that the employment application constituted a contract of adhesion, it nevertheless found the waiver enforceable. As an initial matter, the Court cited the well-established principle articulated by the U.S. Supreme Court that parties to a contract may reasonably reduce a statute of limitations. Moreover, the Court stressed the conspicuous placement of the waiver provision within the application, the absence of any undue pressure on the plaintiff, and the reasonableness of the six-month filing period.

The Court also summarily rejected the plaintiff's argument that the application he completed for his promotion to driver constituted a novation that overrode and voided the initial application. The Court reasoned that the second application was "merely a means of obtaining further information from the plaintiff relevant to the new position."

**Takeaway**

Although the Appellate Division enforced the statute of limitations waiver against the plaintiff in this case, employers who prefer to include such waivers in employment applications should prepare for the possibility that a court may invalidate them, in whole or in part. Indeed, under a different set of circumstances, the Court seemed to imply that such a provision could be deemed unconscionable, such as where it is buried in a large volume of documents, the terminology is unclear, or there is pressure to complete and sign the application quickly. Moreover, the Court specifically noted that other courts have struck down such waivers with respect to claims alleged under federal discrimination statutes that require the exhaustion of administrative remedies (e.g., Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act). And, in cases where a New Jersey-based employer uses a multi-state application, it should understand that such waiver provisions may not be enforceable under other state statutes (although several state courts outside of New Jersey have upheld the types of clauses at issue here). If you have any questions or concerns regarding this case, which the New Jersey Supreme Court has been asked to review, please contact your Proskauer lawyer.

[1] Although the plaintiff claimed that he had a limited ability to read or speak English, he lived in the United States for twenty years at the time of the application process and had a close friend translate "the places [that] [he] had to fill out" in the application.

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