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MONTHLY

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July 2014

Application to Limit Liability

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Despite New Jersey's historic penchant for placing a premium on employees' rights, the New Jersey Appellate Division recently opened up some room for employers to limit their liability. In a recent decision, *Rodriguez v. Raymours Furniture Co., Inc.*, the Appellate Division held that a provision placed in an employment application waiving the statute of limitations and reducing the period of limitations to six months to bring a lawsuit against the company could be enforceable. 2014 WL 2765273 (App. Div., June 19, 2014). This is welcome news for employers looking to limit potential claims.

THE FACTS

Defendant Sergio Rodriguez sought employment from defendant Raymours Furniture (a/k/a Raymour & Flanigan) ("Raymour"). Rodriguez completed the application form at home and returned it to Raymour, posing no questions or concerns. Immediately above the applicant's signature line on the two-page application form was a section that explained in part that any employment granted would be "at will" and no

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Retired Judge, Superior Court of New Jersey

contract for employment was created by the application. The language most pertinent to the issue here read precisely as follows:

> **Applicant's Statement - READ CAREFULLY BEFORE SIGNING - IF YOU ARE HIRED, THE FOLLOWING BECOMES PART OF YOUR OFFICIAL EMPLOYMENT RECORD AND PERSONNEL FILE.**
>
> ...
>
> 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 was subsequently hired as a Customer Delivery Assistant, and three years later promoted to a team leader position. Following this promotion, Rodriguez was injured on the job and, as a result, took a worker's compensation leave of absence. Upon his return, he was placed on "light-duty" and, shortly thereafter, was able to return to full duty. A few days later, as part of a company-wide reduction-in-force, Raymour laid off Rodriguez. Although Raymour claimed that it did so because of poor job performance, Rodriguez filed a lawsuit in which he alleged that his termination was actually retaliation for his workers' compensation claim and as discrimination against him for his disability. He filed the lawsuit nine months after his termination.

Raymour sought dismissal of the lawsuit on the basis that it was barred by the limitations period set forth in the employment application Rodriguez signed when he was hired. In other words, Rodriguez was required to file his lawsuit within six months and he failed to do so. The trial court granted Raymour's motion. The court found that the claim was indeed time-barred because waiver of the statute of limitations in the employment application was enforceable.

ANALYSIS

The Appellate Division agreed with the trial court and found that the reduced limitations period was enforceable. The court's decision largely revolved around its finding that the employment application, as a contract, was neither procedurally nor substantively unconscionable.

Rodriguez argued that the process by which he completed and signed the application was defective, largely because of his non-fluent English skills and because of his status as a job applicant. He contended that this was a contract of adhesion, because applicants for jobs such as this always are in an inferior position with respect to hiring employers. Although the court agreed that this was a contract of adhesion -- where Rodriguez had no opportunity to negotiate its terms -- the court did not find that this made the contract per se unenforceable, as suggested by Rodriguez.

The court held that "[o]verall, the level of procedural unconscionability attendant to the formation of this contract was minimal." *Rodriguez*, 2014 WL 2765273 at * 9. By definition, job applicants are in a vulnerable position compared to potential employers; however, "[m]ere inequality in bargaining power ... is not a sufficient reason to hold that [such] agreements are never enforceable in the employment context." Id. (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 33 (1991)). Additionally, Rodriguez had been able to complete the application at home, where he stated he received the assistance of an English-fluent friend. Lastly, the application's language was "clear and uncomplicated" and the waiver was in bold and capital letters directly above the signature line.

Next, in analyzing whether the waiver itself was unconscionable, the court highlighted case law demonstrating the comfort of federal and NJ state courts with contracting parties who limit the time in which a claim can be brought. The pertinent caveat is simply that the reduced timeframe must be reasonable. Specifically, the court was unwilling to take on the Legislature's job and bar shorter claim periods. Parties can indeed contract around this issue, even in the employment context.

The court distinguished the discrimination claims at issue here from federal EEOC claims, which require exhaustion of administrative remedies, where a six-month limitation would be impracticable and therefore unenforceable. Here, the court found that, generally speaking, six months is not an unreasonably short time period. Additionally, in comparing the six-month timeframe with the six-month timeframe set under the LAD for the alternative route of filing an administrative claim, the court found that the timeframe is likely reasonable.

Assuming this ruling is not overturned by the New Jersey Supreme Court, New Jersey would not be alone in permitting employers to shorten the statute of limitations on claims filed by employees. Just last year, the New York Appellate Division reached the same conclusion. In *Hunt v. Raymour & Flanigan*, the court upheld a similar provision in an employment agreement after determining that the employment application "demonstrated that the plaintiff contractually agreed to commence any claim or lawsuit against R&F no more than six months after the date of the employment action that was the subject of the claim or

lawsuit." 105 A.D.3d 1005, 1006 (N.Y. App. Div. 2013).

KEY TAKEAWAYS

What does this mean for employers in New Jersey? First, the employment application is a valid and effective place for an employer to bind potential future employees contractually. Second, at that early stage in the employment relationship, employers can shorten the period of time in which employees can bring claims against them, as long as the provision is not unconscionable.

The courts thus appear open to granting employers some flexibility here, emphasizing that contractual parties, even employees or potential employees, are "charged with knowledge of the law and with knowledge of contracts into which they have entered." Although the court considered New Jersey's strong policy interest in "the rights of workers and prohibiting discrimination in the workplace," it found that such an interest was not harmed by enforcement of the contractual limitations period at issue.

If you or your clients are considering reducing relevant statutory limitations periods in your New Jersey employment applications, it would be wise to consider the following factors:

- Ensure the waiver language is prominent on the application
- Place the waiver right before the signature line
- Place the waiver in bold and/or capitalized print
- Keep the language as simple and clear as possible
- Provide the candidates with plenty of time to read and consider the application; allow them to bring it home to be filled out, or at least give them time in your facility to read it without interruption
- Place the same waiver language in multiple places for consistency and frequency, such as in an employee handbook or other documents that employees must fill out
- Recognize that the courts have not approved a limitations period of less than six months to date
- Continue to monitor this case, in the event the New Jersey Supreme Court is asked to consider it and decides to do so

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