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APPLICATION DENIED: TIME TO BRING EMPLOYMENT DISCRIMINATION SUIT CANNOT BE REDUCED BY CONTRACT

By: Deborah H. Share

Two years ago, we informed you via this newsletter of an Appellate Division decision affirming the enforcement of a six-month limitations period on an employee's claims against an employer, found in an employment application. See *Rodriguez v. Raymours Furniture Co.*, 436 N.J. Super. 305 (App. Div. 2014). At that time, we warned that the good news for employers might be short-lived, depending upon any review by the New Jersey Supreme Court. Upon review, the New Jersey Supreme Court in fact reversed the decision below - employers cannot contract with employees to reduce limitations periods for discrimination claims. *Rodriguez v. Raymours Furniture Co.*, 2016 WL 3263896 (N.J. June 15, 2016).

BACKGROUND

Plaintiff, 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 to the company. 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 that no contract for employment was created by the application. The language most pertinent to the issue here read 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.

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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. Raymour claimed that it did so because of poor job performance.

Rodriguez filed a lawsuit in Superior Court alleging that his termination was in fact retaliation for bringing a workers' compensation claim and was discrimination against him for his disability. Rodriguez filed the lawsuit nine months after his termination.

Upon completion of discovery, Raymour moved for summary judgment, seeking to have the lawsuit dismissed, claiming that the lawsuit was barred by the limitations period set forth in Rodriguez's job application prior to being hired. The trial court granted Raymour's motion and dismissed the lawsuit, finding that the reduced limitations period was enforceable, and thus the lawsuit was brought too late. The court determined that Rodriguez had effectively waived his right to the longer statute of limitations under the law.

Rodriguez appealed, and the Appellate Division affirmed the trial court's dismissal of the lawsuit. Rodriguez appealed to the New Jersey Supreme Court, and the Court granted certification.

THE DECISION

The Supreme Court noted that the Appellate Division had largely relied on the right of private parties to contract as desired. However, the Supreme Court emphasized that the Law Against Discrimination ("LAD") is unique, in that it serves both private and public interests. The Appellate Division had failed to sufficiently assess the issues of public policy and goals of the LAD, with inordinate focus on the right of private parties to contract.

Invoking the New Jersey Legislature's broad remedial goals in creating the LAD, the Supreme Court stated that the Legislature had "cast a wide net in crafting what is included among LAD violations." The right to contract privately cannot outweigh the public interest in ensuring that LAD claims are brought in the effort to eradicate discrimination. The Supreme Court saw the individual claims and lawsuits themselves as "designed to also further a public interest."

Additionally, the Supreme Court lauded the "dual-enforcement scheme" set up under New Jersey law, which provides litigants with two ways of enforcing the LAD: a lawsuit through the court system and a claim made through the Division on Civil Rights ("DCR"). The DCR is an administrative remedy by which an aggrieved individual may potentially obtain quicker and cheaper relief. The statute of limitations for bringing a lawsuit under the LAD is two years, whereas the time limit to bring a claim through the DCR is six months. The notion is that a litigant has two possible avenues, with the potential to pursue both, depending on the circumstances. The Supreme Court was concerned that litigants might be foreclosed from pursuing the DCR route, if they were forced to choose the court setting and bring a lawsuit so quickly (assuming a contractual reduction in the limitations period to bring a lawsuit).

The Supreme Court was further concerned that claims of discrimination and related lawsuits generally take time to raise, as potential litigants may not even know they have a claim for some time. Another concern was that attorneys might "file a premature LAD action" if the limitations period was shortened, in the effort to get it in on time. Finally, the Supreme Court suggested that the two-year statute of limitations serves as an incentive for employers, who are responsible for investigating workplace complaints. The timeframe grants employers sufficient time to conduct such investigations.

As such, the Supreme Court reversed, and held that employees, or potential employees, cannot waive their rights to the two-year statute of limitations period under the LAD through a private contract, such as the application for employment in question here.

WHAT DOES THIS MEAN FOR EMPLOYERS NOW?

First, we recommend the removal of any waivers of the standard two-year limitations period for discrimination claims employers may have placed in applications or other employment documents.

Second, this serves as a reminder to shore up all processes related to employee terminations and other adverse employment actions. We always recommend that employers ensure that they properly and fully document every adverse employment action. Without the ability to shorten the time to bring a lawsuit, proper documentation before and at the time of such actions will serve employers well should a lawsuit arise up to two years down the road. Consult legal counsel if there are any questions about an adverse employment action that may be risky in terms of company liability.

Finally, consider other useful tools for employers in this area. For example, employers have some control over the forum of any such claims, such as by including a mandatory arbitration provision that is clear and unambiguous.

The Porzio Employment Law Monthly is a summary of recent developments in employment law. It provides employers with an overview of the various legal issues confronting them as well as practical tips for ensuring compliance with the law and sound business practices. This newsletter, however, should not be relied upon for legal advice in any particular matter.