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Keeping it Short: Employers Can Use Employment Applications to Reduce Employees' Time to Sue

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In a rare victory for employers, New Jersey's Appellate Division upheld an employment application provision that shortened the two-year statute of limitations applicable to claims against an employer to six months. *Rodriguez v. Raymours Furniture Company, Inc.* is the first published (and therefore binding) New Jersey case on this issue, and paves the way for New Jersey employers to shorten, through their employment applications, the statutory limitations period for applicants and employees to bring lawsuits against them, subject to the mandate that the shortened period be reasonable.

Factual Background

In applying for his initial position with the company, the plaintiff completed a two-page application with a section entitled, "Applicant's Statement" immediately above the signature line. In addition to disclaiming that the application was a promised offer of employment, and instructing that any employment offered would be at-will, this section stated, in capital letters:

> 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.

The Applicant's Statement also included, in capital letters, a waiver of "trial by jury in any litigation arising out of or relating to my employment." At the beginning of the Applicant's Statement, the application advised in bold, capital letters to "READ CAREFULLY BEFORE SIGNING." Despite claiming, in his subsequent lawsuit, that he was unable to fully understand English (notwithstanding living in the United States for the previous 20 years), the plaintiff signed the application the day after he received it after completing it at home with a friend's assistance.

The company hired the plaintiff one week later. Approximately three years later, the company promoted him to the position of driver. In connection with the promotion, the plaintiff filled out a driver's application to provide personal information, employment history and information regarding driving experience and driving record. The form did not contain any language regarding the shortened statute of limitations or waiver of a jury trial.

The plaintiff subsequently sustained an injury on the job, resulting in him taking a leave of absence from work. Three days after the plaintiff's return to work on full duty, the company instituted a company-wide reduction-in-force, laying off over 100 workers, including the plaintiff.

Nine months later, the plaintiff sued the company, alleging that he was terminated because of his alleged disability in violation of the New Jersey Law Against Discrimination (LAD) and in retaliation for filing a workers' compensation claim. He did so well within the two-year statutes of limitations applicable to those claims.

At the close of discovery, the company moved for summary judgment on several grounds, including the claim that the plaintiff's complaint was time-barred by the six-month limitations period set forth in his job application. The trial court granted the company's motion and dismissed the case on that basis, holding that the parties entered into a valid contract that did not impose an unreasonable limitation and did not violate public policy. The court also rejected the plaintiff's argument that the driver's application, which did not include a limitations provision, constituted a novation that overrode and voided the initial application.

The Court's Approval of Contractually Shortened Limitations Periods

The Appellate Division upheld the dismissal and enforced the shorter limitations period set forth in the application. In doing so, the court dismissed the plaintiff's argument that the contract was unconscionable. While the court accepted that the contract was one of adhesion, or a take-it-or-leave-it contract that foreclosed the opportunity for negotiation, that did not make the shorter period per se unenforceable, in part because the plaintiff was under no compulsion to apply for or accept the position. Additionally, the length of the document containing the limitations provision (only two pages), the appearance of the provision (capital letters under a bold capitalized heading), the location of the provision (immediately above the signature line), and the language of the provision (clear and simple) all weighed against a finding of unconscionability. The court also placed significance on the fact that the plaintiff was under no pressure to complete and sign the application quickly, as he had been permitted to take it home and complete it at his leisure.

The court likewise rejected the plaintiff's argument that the judiciary's wide acceptance of two-year limitation periods for discrimination and retaliation claims, and New Jersey's strong public policy in favor of protecting workers' rights, precluded a contractual reduction of the allowable time in which to file suit. The court relied on a well-settled line of case law, beginning with a 1947 U.S. Supreme Court decision, *Order of United Commercial Travelers of America v. Wolfe*, which holds that statutes of limitation may be modified as long as there is no statute that expressly prohibits such modifications. In this respect, the court also recognized that numerous other federal and state courts across the country had approved contractually-shortened limitations periods, particularly with respect to statutes like the LAD that, unlike its federal counterparts, do not require the filing of an administrative charge prior to filing a lawsuit. The court noted further that there was nothing unreasonable about a six-month limitations period, given that the legislature had chosen that same period of time for the filing of a complaint with the New Jersey Division on Civil Rights, an employee's alternative route for enforcing rights under the LAD.

The court dismissed plaintiff's contention that upholding the shorter limitations period would be unfair because doing so would deprive many employees of any forum for redress. In a refreshingly non-paternalistic response, the court held, based on well-established law, that an individual who signs a document is assumed to have read it and understood its legal effect, regardless of an alleged language barrier.

Lastly, the court summarily rejected the plaintiff's alternative argument that his subsequent driver's application constituted a novation, rendering the provisions in his first application null and void. The court held that a novation cannot be presumed, but must be demonstrated by a clear intent to override a previous contract. Since there was no evidence of such intent—the second application merely sought information regarding his driving experience and record, rather than setting forth terms of employment—there could be no novation.

Recommendations for Employers

In accordance with the Appellate Division's holding in *Rodriguez*, it is recommended that employers with operations in New Jersey revise their employment applications to include shorter limitations periods for bringing employment-related claims, with these guidelines in mind:

1. The limitations period must be reasonable. *Rodriguez* instructs that six months is a reasonable time period. Enforcement of a shorter limitations period could be problematic.

2. The employment application should be relatively short and written in clear, understandable language. Although the *Rodriguez* court held that the plaintiff's purported language barrier in that case did not prevent enforcement of the shortened limitations period, employers should consider translating their application into the language most easily understood by their applicant pool.
3. The provision containing the shorter limitations period should be set out in bold typeface, with a larger and/or capitalized font and positioned prominently immediately above the signature line.
4. The application should contain a directive for applicants to read the application carefully.
5. The applicant should not be rushed or pressured in reviewing and completing the application and should be permitted to complete the application at home.

The *Rodriguez* decision is also informative as to the potentially limited enforceability of shorter limitations periods. Although they should be worded to encompass all employment-related claims, contractually shortened limitations periods will generally be enforced only as to those claims that do not require the exhaustion of administrative remedies before proceeding to court. Thus, in New Jersey, shorter contractual limitations periods are enforceable as to state statutory claims, such as those under the LAD, Conscientious Employee Protection Act and Family Leave Act, as well as common law claims, such as for wrongful discharge or intentional infliction of emotional distress. Most federal employment claims, such as those filed under Title VII of the Civil Rights Act, the Americans with Disabilities Act and the Age Discrimination in Employment Act, would likely remain unaffected. Nevertheless, since most employees sue under the more favorable state laws, including a properly shortened limitations period in an employment application may put a swift end to such claims.

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