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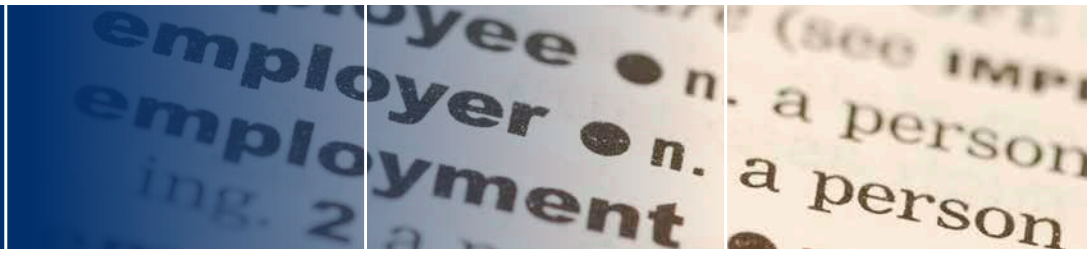

NEWSLETTER
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New Jersey Appellate Court Upholds Contracts Curtailing the Time for Employment Claims: Lessons for Employers

Employers know that there are numerous laws, both state and federal, that allow employees to sue for perceived violations of their rights. Those laws provide not only a dizzying array of theories of liability but also a variety of different time periods in which the employee can start a lawsuit. Some of the periods can be quite lengthy. In New Jersey, for example, an aggrieved employee normally has up to two years to file an alleged unlawful discrimination claim under state law, and up to six years to bring a claim based on an alleged employment contract.

In a recent case, however, an employer successfully argued that its ex-employee only had six months to file any employment-related claims against it because the employee had agreed to that limit in an employment application. In an important decision, the Court in *Rodriguez v. Raymours Furniture Company, Inc.*, Docket No. A-4329-12T3 (App. Div. June 19, 2014) rejected a host of arguments brought by the plaintiff that his prior agreement should be deemed unenforceable, including a claim that such a restriction violated public policy. How the Court reached its result holds lessons for all employers seeking to limit the time period in which they can be sued.

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BACKGROUND

In 2007, the future plaintiff, Sergio Rodriguez, applied for employment with Raymour & Flanigan (R&F), a retail furniture company. Rodriguez completed a two-page employment application that included the following applicant's statement, appearing immediately above the signature line:

> Applicant's Statement — **READ CAREFULLY BEFORE SIGNING — IF YOU ARE HIRED, THE FOLLOWING BECOMES PART OF YOUR OFFICIAL EMPLOYMENT RECORD AND PERSONNEL FILE.**
>
> I understand this employment application is not a promise of an offer of employment. I further understand that should I receive and accept an offer of employment, my employment does not constitute any form of contract, implied or expressed, and such employment will be terminable at will either by myself or Raymour & Flanigan upon notice of one party to the other. My continued employment would be dependent on satisfactory performance and continued need for my services as determined by Raymour & Flanigan.
>
> I authorize investigation of all statements contained in this application. I understand that misrepresentation or omission of facts called for are grounds for a refusal to offer employment or a cause of dismissal if hired.
>
> 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.
>
> I WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, OR RELATING TO, MY EMPLOYMENT WITH RAYMOUR & FLANIGAN, INCLUDING CLAIMS OF WRONGFUL OR RETALIATORY DISCIPLINE OR DISCHARGE; CLAIMS OF AGE, SEXUAL, SEXUAL ORIENTATION, RELIGIOUS, PREGNANCY OR RACIAL DISCRIMINATION; CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT, TITLE IX, AMERICANS WITH DISABILITIES ACT, AGE DISCRIMINATION IN EMPLOYMENT ACT, EMPLOYEE RETIREMENT INCOME SECURITY ACT, FAIR LABOR STANDARDS ACT, AND ALL OTHER APPLICABLE NON-DISCRIMINATION, EMPLOYMENT OR WAGE AND HOUR STATUTES.

Claiming limited fluency in English, Rodriguez took the application home and had a friend translate it for him. Allegedly, the friend did not translate the APPLICANT'S STATEMENT. Nevertheless, Rodriguez signed and returned the application. He was hired. In 2010, Rodriguez completed a new application in connection with a promotion. That application did not repeat the language, quoted above, limiting his right to file any claim to six months.

Within months of receiving the promotion, Rodriguez suffered a work-related injury, necessitating surgery and a medical leave. Three days after his return to work, Rodriguez was caught up in a company-wide reduction in force (RIF).

In the complaint he subsequently filed, Rodriguez claimed that he was selected for RIF not due to his performance, but in retaliation for having filed a workers' compensation claim and due to being disabled. That complaint was filed on July 5, 2011, more than nine months after his selection for RIF. After engaging in discovery, R&F moved for summary judgment. The only argument for dismissal that the trial court reached was the fact that Rodriguez's complaint had been filed more than six months after his discharge, in violation of the agreement he had made when he signed his original employment application. The lower court held that Rodriguez had waived his right to the normal limitations period by signing the application.

THE APPEAL & DECISION

On appeal, Rodriguez made numerous arguments against enforcement of the waiver language found in the employment application. Some of his arguments

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rested on his personal circumstances; others, however, attacked the very concept of allowing an employer to have individuals waive limitations periods chosen by the State Legislature, particularly in legislation designed to protect employee rights. The Appellate Division rejected each argument in a lengthy and well-reasoned decision.

Rejecting Rodriguez's claim of limited English, the Court relied on the well-established principle that an "individual who signs an agreement is assumed to have read it and understood its legal effect." The Court noted that "this principle applies even if a language barrier is asserted."

The Court then turned to Rodriquez's arguments that the shortened limitations period set forth in the application was "unconscionable" and therefore unenforceable as a matter of public policy.

The Court accepted Rodriguez's argument that the employment application represented a "contract of adhesion," in that he had no effective way to negotiate the terms under which he could be hired; it was "take it or leave it." Such a finding can be a factor in finding a contract unconscionable. Rejecting the argument that this fact alone rendered the waiver provision unenforceable, however, the Court turned to the key issue: should it be unlawful as a matter of public policy to enforce a contract that shortens the period of time an individual normally would have to file a lawsuit claiming an unlawful discharge?

The Court rejected the notion that a limitations period cannot ever be modified by contract. The Court pointed to a number of federal and New Jersey cases that have upheld that general principle in a variety of contexts, such as contracts that limit the period of time a consumer can bring a claim for fraud under the New Jersey Consumer Fraud Act, or when businesses can sue for breach of contract.

The issue was whether in this particular case the chosen shortened limitations period was reasonable and did not contravene public policy.

In its detailed analysis, the Court noted that the State Legislature has selected a variety of different time

periods for various causes of action, including two years for New Jersey Law Against Discrimination (LAD) cases, one year for whistleblower claims under the Conscientious Employee Protection Act and six months for unfair labor practice claims under the New Jersey Employee Relations Act. The Court was particularly struck by the fact that the Legislature chose six months (180 days) for claims to be brought under the LAD when filed administratively with the New Jersey Division on Civil Rights. The Court noted that that particular time limit – identical to the one he agreed to in his employment application – undercut Rodriguez's suggestion that six months was an unreasonable time in which to expect someone to bring a claim, stating: "Because the Legislature has set six months for this alternative route, we are hard pressed to judicially declare that six months is an unreasonable, conscience-shocking time period in which a claimant must choose the other available route, a civil lawsuit."

Rodriguez also argued that the APPLICANT'S STATEMENT was ambiguous because in one part it stated that, if employed, plaintiff's "employment does not constitute any form of contract, implied or expressed," yet the employer was attempting to enforce as a contract the provision limiting the time within which a claim must be filed. The Court found this "unpersuasive" because it was obvious from the context that the "does not constitute any form of contract" language pertained only to the fact that, if hired, plaintiff's "employment will be terminable at will either by [him] or [defendant] upon notice of one party to the other." The "at will" and "waiver" provisions were "two distinct terms, each dealing with a different subject.

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One defines the applicant's at-will status if hired. The other addresses the time frame within which the applicant, if hired, must initiate claims or lawsuits against his employer."

The Court also denied that the process in which Rodriguez was presented with the application gave rise to a defense of unconscionably.

The Court observed that the waiver provision was not "buried" in a large volume of documents. "It was contained in a two-page application and set forth very conspicuously in bold oversized print and capital lettering, just above the applicant's signature line. The terminology was clear and uncomplicated." In addition, Rodriguez was given time to consider the application. Indeed, the record showed that he actually took it home to "complete it at his leisure."

The Court also turned aside Rodriguez's (apparent) arguments that he only signed the application under economic compulsion, noting that no one forced him to pursue the application, and that the fact that he may have needed a job did not mean that the employer could not set this term of employment for the applicant to accept or reject. Indeed, to the extent Rodriguez's counsel was not simply making alternative legal arguments, one must note the inconsistency of Rodriguez claiming he supposedly did not even know what he was signing, while simultaneously claiming that he only signed it because he needed a job. Moreover, Rodriguez's argument on this point would, if accepted, mean that an employer could not set lawful terms and conditions of employment for applicants, but instead must take applicants on their own terms, based on the simple claim of unemployment.

Finally, the Court rejected Rodriguez's argument that the new application he filed for promotion superseded the terms of his original application, including the waiver provision, finding that there was simply no evidence that the parties had clearly intended to extinguish the provisions of the original application.

Although Rodriguez had not brought any federal law unlawful discrimination claim, the Court did observe that it would have reached a different result had certain types of federal claims been at issue. Persons bringing certain federal claims, such as alleged discrimination claims under Title VII and the Americans with Disabilities Act, are required by the legislative scheme to first exhaust administrative remedies. The Equal Employment Opportunity Commission (EEOC) has exclusive jurisdiction over the administrative charge for 180 days, effectively blocking a civil action from being filed in the interim. In such a circumstance, the Court noted, a contract provision that required suit to be brought within six months would be unenforceable, since it would have the effect of barring the ability to bring the suit at all; that would violate public policy.

PRACTICAL LESSONS FROM THE COURT'S DECISION

The *Rodriguez* opinion has been approved for publication, meaning that it is binding on all lower (trial level) New Jersey state courts.

Rodriguez is a very useful decision that can be used by businesses to help guard against stale claims. Six months indeed is a reasonable period of time to require individuals to bring employment-related claims, and there is no legitimate reason not to hold individuals to their promises made when asking for employment. Indeed, the *Rodriguez* opinion leaves open the possibility that the same principle might be applied to limit the time *current* employees have to institute litigation, although any such initiative raises issues beyond the scope of this article.

It is important, however, that any limitations waiver language be clear and conspicuous. The *Rodriguez* Court noted that the waiver language was prominently displayed immediately above the applicant's signature line, and that the operative language was placed in all capital letters. The terminology, the Court noted, "was clear and uncomplicated." An employer that had sought to "bury" the operative language or used excessive "legalese" would have had a harder time enforcing it.

The language also should clearly explain when the time period to bring a claim begins to run, and what types of claims are covered.

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Applicants should be given the opportunity, if they wish, to take their time to review the application before signing it. Employers might consider noting that fact in their applications, to help avoid manufactured claims to the contrary.

Finally, employers should not do anything after the employee is hired that might allow the individual to claim that a new document was clearly intended to supersede the terms of the original application's waiver language.

Rodriguez's arguments having been rejected, we can expect future plaintiffs' lawyers to try other types of attacks on statute of limitations waiver provisions, or to argue that facts specific to their clients' situation render waiver language unconscionable. Moreover, at the time of this writing, the legal community press is reporting that the plaintiffs' bar is already mobilizing to try and overturn *Rodriguez* (Gallagher, Mary Pat, "Employer's Curtailing of Time Limit for Suits to Be Tested in N.J.'s High Court," *New Jersey Law Journal*, June 25, 2014). A request by the plaintiff in *Rodriguez* to have the State Supreme Court overturn the holding of the Appellate Division will probably be supported by an *amicus* brief submitted by the organized plaintiffs' bar, which sees the decision as adversely impacting their ability to bring claims against employers.

As matters now stand, however, the Appellate Division's judicious decision presents both an excellent opportunity and a reason for employers to have their employment applications and other policy documents reviewed and revised as necessary to take advantage of the option offered by the *Rodriguez* decision.

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