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Contract Law May Trump Statute of Limitations for Employment Claims

By: Felicia Miller-Watson, Esq.

Suppose you are interviewing several candidates for a position with your company. As a part of the interview process, candidates are required to complete and sign a job application. Included on the application is language contractually obligating the employee to file all employment-related claims within six months and waive any contrary statute of limitations. Will this provision hold up under judicial scrutiny? It very well may.

Many employers are adding this type of language to their job applications. The language within the application generally provides that the employee can sue the company only within six months of the particular employment action and that he or she waives any statute of limitations to the contrary. In many states, the statute of limitations far exceeds a six-month period, even ranging up to four years to bring forth a claim against an employer. Consequently, this type of waiver significantly reduces the statute of limitations in filing a claim in many states.

In the past few years, at least two courts have approved of

such a suit limitation provision. First, the Michigan Court of Appeals, in *Clark v. DaimlerChrysler Corp.*, 268 Mich.App. 138, 140, 706 N.W.2d 471, 473 (Mich.App. 2005), dismissed a lawsuit brought by an employee who accepted an offer of early retirement after he was informed that his position was being eliminated due to a reduction in force. The employee later brought suit, claiming that the employer discharged him because of age, in violation of the Michigan Civil Rights Act. In dismissing the lawsuit, the Michigan Court of Appeals held that unambiguous contract provisions providing for a shortened period of limitations ***must*** be enforced unless the provision violates law or public policy, subject to traditional contract defenses. The court further explained that a person who signs a contract is presumed to know and understand its contents, even if he or she has never read it. Likewise, the Northern District of Ohio, in *Sanders v. DaimlerChrysler Corp.*, No. 3:05 CV 7055 (N.D. Ohio), partially dismissed an employee's sexual harassment and gender discrimination claim because the employee had signed a job application with nearly the same suit limitation provision as in the *Clark* case.

This type of waiver is a useful tool for risk management and getting workplace litigation under control. Further, this shortened time period forces an employee to really think and decide whether he or she is serious about going forward with a claim. It also ensures that a claim will be made in such a time that the evidence will not be stale, as employee witnesses are less likely to have moved on and memories will not have faded as much.

However, there have been instances when courts have not enforced limiting provisions. For instance, the California Supreme Court struck down a jury waiver provision in an engagement letter, holding that the provision was unenforceable. *See Grafton Partners L.P. v. Superior Court*, 36 Cal.4th 944 (Cal. 2005). In that case, the California Supreme Court held that the jury trial waiver violated the plaintiff's state constitutional right to jury trial in civil cases. Similarly, the Fourth Circuit Court of Appeals (which covers Maryland, North Carolina, South Carolina, Virginia and West Virginia), has held that claims under the Family and Medical Leave Act of 1993 ("FMLA") cannot be waived by a release, due to certain Department of Labor regulations. *See Taylor v. Progress Energy, Inc.*, 493 F.3d 454 (4th Cir. 2007).

Nevertheless, the growing trend in many states is that this type of waiver is considered to be legal, and has not been held to violate public policy. However, before including this type of waiver within your employment applications, be sure to seek

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