

NJ Supreme Court Holds That Statute of Limitations To Sue Under NJ Law Against Discrimination Cannot Be Contractually Shortened

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The New Jersey Law Against Discrimination (LAD) does not specify a statute of limitations period, however in 1993 the New Jersey Supreme Court held, in *Montells v. Haynes*, that the two-year personal injury statute of limitations applied to LAD claims.

Rodriguez v. Raymours Furniture raised an issue of first impression – whether the two-year limitation period could be contractually shortened. As part of his job application, the plaintiff in this case was asked to carefully read and sign an agreement stating that any claim relating to his employment at Raymour & Flanagan would need to be brought within six months of the action triggering that claim.

The plaintiff was then injured in a work-related accident, and was subsequently terminated two days after returning to work, allegedly due to a company-wide reduction in workforce. Nearly seven months after his termination, he filed a complaint alleging actual and perceived disability discrimination. The defendant was granted summary judgment by the trial court based on the plaintiff's initiation of his lawsuit beyond the agreed upon six-month time period.

The Appellate Division upheld the trial court, reasoning that the language of the waiver provision was clear and unambiguous, that the plaintiff had been given enough time to review the waiver provision, and that parties may modify a statute of limitations absent a statutory prohibition.

On June 15, 2016, the New Jersey Supreme Court reversed the Appellate Division on two grounds. First, the Court held that a right to contract must be measured against the strong legislatively declared public purpose of the LAD to eradicate discrimination. Second, the Court noted that by creating the Division on Civil Rights (DCR) – with which aggrieved parties

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can file a complaint within six months of the accrual of the cause of action – the legislature provided an alternative forum in which to prosecute alleged discrimination.

A claim with the DCR may be withdrawn at any point before the final decision is made, and claimants may then proceed in the Superior Court. However, if the limitation period was contractually limited to six months, the claimants' ability to avail themselves of the two alternative routes would be significantly curtailed. The Court found that "a shortening of the limitations period applicable under the law undermines and thwarts the legislative scheme that includes the DCR remedy as a meaningful option" and therefore held that the waiver provision in *Rodriguez* was unenforceable.

What Should Employers Do Now?

In certain instances, the practical impact of the *Rodriguez* decision may be significant. It is imperative that employers ensure that their job applications and employee manuals do not rely on the earlier Appellate Division ruling, and/or contain provisions that attempt to shorten the two-year limitation period to bring a LAD claim. Employers should also alert their human resources personnel of this change. Employers should, however, be mindful that the *Rodriguez* decision is limited to LAD claims. Therefore, agreements to shorten the statute of limitations in the context of other claims may still be enforceable.

If you have any questions regarding the issues discussed in this Alert, please contact the author, **Maja M. Obradovic**, a member of the firm's **Employment Law Practice Group** and **Litigation Department**.