

THE STATUTE OF LIMITATIONS: THE COMPLICATED PRACTICE OF A SIMPLE IDEA

By Timothy R. Franzen

In many areas of law, a concept may appear simple at first glance. Under scrutiny, however, the concept that once appeared so simple may prove to be complicated.

The statute of limitations is one of these concepts.

The idea is relatively simple. A statute of limitations is a law that provides a deadline or “limitations period” in which a person or business may bring a lawsuit. If a person or business attempts to bring a lawsuit after the limitations period has expired, the suit will be dismissed at an early stage, even if the case otherwise is compelling.

Consider an example. An employer discharges an employee. That employee wishes to sue the employer for discrimination. The employee waits multiple years – until after the limitations period for his claim has expired – before bringing his lawsuit against the employer. The employer, without addressing the merits of the employee’s claims, may seek and be granted a dismissal of the lawsuit. The employer can avoid responding to the allegations, providing documents and information in discovery, having a public trial on the merits of the employee’s claim, and incurring significant expenses associated with lengthy litigation.

Knowing the general statute of limitations for claims your business is most likely to face will allow you to craft appropriate document retention policies. Businesses should retain documents for at least as long as the limitations period lasts for claims the business is likely to face so that the documents may be used in its defense. Many limitations periods are six years long, but some claims may be shorter or longer.

Knowing the statute of limitations also allows a business to have some certainty about potential liabilities. Although there are possible tolling issues, it is good to know the general period to make sure you are not writing off liabilities or destroying documents too early.

If a person or business has a potential claim, merely knowing that the limitations periods exists is important. If you think that you may have a claim, you should see an attorney to understand your options sooner rather than later. The longer you wait, the more likely it is that you will lose your option to use the courts to enforce your claim.

It sounds so simple. But on closer scrutiny, every step of applying a statute of limitations to a particular case can be complicated.

What Period Applies?

The first challenge is determining what statute of limitations applies. There are numerous types of claims that can be brought based on the same incident, and these claims may or may not have the same limitations period.

Taking the previous example again. A discharged employee may bring a discrimination claim against his former employer, which has a one-year limitations period under Minnesota law. However, the employee may have a claim for breach of an employment contract as well, which has a two or three year limitations period, depending on the circumstances. Both limitations periods will apply to their respective claims in the lawsuit.

In order to know what limitations period applies to a given incident, one needs to identify the universe of possible claims and their corresponding limitations periods.



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Why are there so many different limitations periods? It would be much easier to have one limitations period for all possible claims. While a single limitations period may be an easier and less-complicated approach, it might not be the most fair.

If you put yourself in the position of a person facing a lawsuit, it is not difficult to see why limitations periods are beneficial. As time passes, evidence becomes scarcer, less reliable, and more expensive to obtain. Witnesses' memories will fade, witnesses will move away, and documents will be lost or destroyed.

Additionally, having a limitations period will encourage potential plaintiffs to bring their cases when the dispute is fresh. If a potential plaintiff is not upset enough to bring the claim within a reasonable amount of time, the claim cannot be that important.

Moreover, a potential plaintiff may delay bringing a case for strategic reasons. For instance, if a plaintiff's case is made much weaker by a certain witness, the statute of limitations would prevent a plaintiff from simply waiting to bring the claim until that witness became unavailable to testify. Courts generally disapprove of such gamesmanship.

All of these concerns would weigh in favor of having a relatively short limitations period. However, if we consider the issue from the perspective of a potential plaintiff, we can see the arguments for longer limitations periods.

Is it fair that a person's otherwise valid claim is barred simply because the person took too much time? Sometimes people are not even aware that they have a potential claim until it is too late to bring the claim. If the limitations period has expired, wrongdoers can get away with their bad acts simply because they were lucky the individuals they wronged were not more proactive or perceptive. Is there such a

big difference that a plaintiff should be able to sue six years after the incident, but not six years and one day after the incident?

Policy goals support having both short limitations periods and long limitations periods. It makes sense for the law to develop a mix of limitations periods in order to more fully effectuate these goals.

Also, one limitations period for all claims would not take into account the dramatic differences between claims. Should the limitations period for wrongful death based on asbestos exposure be the same for a simple breach of contract? And, if so, what period of time would be fair for plaintiffs and defendants for both claims?

Therefore, the competing policy goals and the number of different types of claims results in a large number of different limitations periods for different claims. In Minnesota law alone there are enough limitations periods to fill a book 450 pages long.

When Does the Period Start and End?

Assuming you know the relevant claims and the particular limitations periods, the next step would seem to be to calculate the limitations period beginning and end dates. Again, this sounds simple, but it is complicated in practice.

First, you would need to know when the limitations period starts. At this point, you only know how long the clock needs to "tick," but you do not know when the clock starts ticking. This may vary depending on the claim and the state.

The general rule in Minnesota is that the limitations period begins to run when the cause of action "accrues," which basically means when all the elements of the claim have occurred. This will be a very fact-specific determination.

For example, in a claim for negligence, the limitations period could begin when the negligent act occurred, or it could begin later if the harm from that negligent act was delayed. Moreover, for claims based on fraud, the limitations period begins when an individual knew or should have known about the underlying basis for the claim, even if the elements of the claim occurred long before. When an individual actually knows or should have known a claim exists will depend on the unique factual circumstances of each case.

Second, you would need to know what a potential plaintiff must do to bring the claim within the limitations period. This, too, depends on the state, the claim, and whether the claim is brought in federal or state court.

In federal court, a claim is initiated when a complaint is filed with the court, regardless of whether the opponents know the case is open. In Minnesota, the claim is initiated when the opposing parties are notified of the complaint, even if it has not yet been filed with the court. Other states may have different rules.

Also, there are some claims that require going to an administrative agency before going to the courts. Filing a charge with these agencies may be enough to initiate a claim within the limitations period (or at least stop the clock from ticking while the agency makes a decision).

In addition, as earlier noted, different claims have different limitations periods. Therefore, if a plaintiff brings multiple claims against a defendant, there may be multiple clocks ticking, and the clocks may have started ticking at different times.

How Do You Calculate When the Limitations Period Will Expire?

If you know all the applicable limitations periods, when these clocks started ticking, and what an individual must do to initiate their claim within the limitations period, it would seem that all the information is gathered. You know the deadline and when that deadline will pass. What else could there possibly be?

The most complicated aspect comes within the limitations period itself, because the clock is not necessarily continually counting down. There have been several theories developed that will stop or “toll” the limitations period after it has started, which results in essentially an extended limitations period. In other words, a judge may determine that, even though the calendar says the limitations period has expired, the clock was not actually ticking for a portion of time.

Statutes of limitations can be harsh at times. In Minnesota, an individual generally does not even need to be aware that he or she has a claim in order to lose that claim due to an expired limitations period. Stopping the limitations clock from ticking is a method the courts and the Legislature may use to mitigate the harshness.

There are several reasons a limitations period may be tolled. When the potential plaintiff is a minor or insane, the limitations period will be adjusted to provide some time for the plaintiff to bring a claim when the person is an adult or of sound mind. Another option for tolling the limitations period occurs if a potential plaintiff is barred from bringing a claim by a court. For example, if an individual files for bankruptcy protection, an injunction is automatically imposed preventing creditors from making claims until the bankruptcy is concluded.

Other exceptions are equitable estoppel and fraudulent concealment. These doctrines state that if the potential defendant lies or acts to conceal the fact that someone has a valid claim against the defendant, the limitations period will be tolled until the injured party has uncovered the lie or concealed fact. Courts do not want to allow potential defendants to benefit from lying or concealing their wrongdoing.

At times, the court will invoke a doctrine called “equitable tolling” when a plaintiff has allowed the limitations period to expire through no fault of their own. A potential defendant would have no way of knowing in advance that a court might invoke equitable tolling because it is not based on any wrongdoing of the defendant.

Equitable tolling is not widely used, however, because simple inadvertence or failure to realize the statute of limitations exists will not be enough to toll the limitations period. The person bringing the claim must have been diligent in bringing the claim and must have been prevented from doing so by a factor out of his or her control. Additionally, before invoking equitable estoppel, a court will consider how allowing the claim to continue would harm the defendant.

In sum, there are several ways that a court could conclude that a seemingly expired limitations period is actually still ticking. Some of these can be known in advance, but some may be completely unknowable to an individual or business facing a claim.

Bottom Line

The bottom line with the statute of limitations is that, although it is a simple concept, it is very complicated in practice. Figuring out when a limitations period has expired will take an analysis of all the factors discussed above and others not addressed here. Knowing that the simple concept exists, however, is an important first step.

