

## Publications

### **Labor and Employment Alert: New Jersey Supreme Court Holds Public Policy Trumps Freedom of Contract**

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In a case of first impression, the New Jersey Supreme Court unanimously held that an employer's attempt to contractually shorten the two-year statute of limitations for claims under the New Jersey Law Against Discrimination (LAD) violates public policy and so is unenforceable. After reviewing the LAD's legislative history and purpose, the Court concluded that "a private agreement that frustrates the LAD's public-purpose imperative by shortening the two-year limitations period for private LAD claims cannot be enforced."

In *Rodriguez v. Raymours Furniture Company*, plaintiff Rodriguez completed an employment application that included the provision in bolded capital letters, "I agree that any claim or lawsuit relating to my service with Raymours & 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." About three years after being hired, Rodriguez was injured at work, took a leave of absence, and was terminated two days after returning to work. Nine months later, Rodriguez sued alleging illegal employment discrimination based on actual or perceived disability in violation of the LAD. Raymours countered that Rodriguez's suit was filed beyond the agreed-upon six month statute of limitations. The trial court and appellate court found that the shortened statute of limitations was not unreasonable and did not violate public policy. The New Jersey Supreme Court disagreed.

The Court rejected Raymours's argument that parties can privately contract to shorten the statute of limitations under the LAD. This is because a claim under the LAD "is not a simple private claim;" instead, "we have the public interest to consider. " While acknowledging a general freedom of contract in New Jersey, the Court found this freedom was outweighed by the LAD's "powerful legislative statement of purpose." The Court concluded that "the private right of action authorized by the LAD advances and fulfills the private and legislatively declared public interest in the elimination of discrimination. Hence a contractual limitation on an individual's right to pursue and eradicate discrimination of any form prohibited under the LAD is not simply

shortening a limitations period for a private matter. If allowed to shorten the time for filing plaintiff's LAD action, this contractual provision would curtail a claim designed to also further a public interest. As to the LAD, there is a marriage of interests that cannot be divorced."

Aside from this overwhelming public interest, the Court found that a shortened statute of limitations "effectively eliminates claims." According to the Court, this is because it takes time for an aggrieved individual to realize he or she has been discriminated against and find an attorney. Apparently, this may not occur within a six-month period and the individual would therefore lose his or her right to file an action in court. Similarly, the remedy of filing a charge with the New Jersey Department of Civil Rights (which, under the LAD, must be done within six months) would be "eviscerated" with a shortened limitations period.

Interestingly, the Court also said that the longer statute of limitations actually helps employers because it allows them to thoroughly investigate and respond effectively to internal complaints of discrimination. Given this, "any shortening of the current two-year statute of limitations period imposed by law would seriously affect an employer's ability to protect itself."

Businesses with employees in New Jersey will need to review their employment agreements and revise any shortened statute of limitations that may run afoul of the LAD. It's unclear at this point whether an employer can carve out the LAD from such a provision so that non-LAD claims would still be subject to the shorter limitations period. Those businesses will also need to ensure appropriate document retention for a two-year period for potential LAD claims.

Contact your Vorys lawyer if you have questions about the New Jersey Law Against Discrimination or best practices for preventing and responding to claims of workplace discrimination.