

I. EMPLOYMENT LAW

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 Co., Inc.*, 2016 N.J. LEXIS 566, ___ N.J. ___ (2016). plaintiff Sergio Rodriguez, applied for a job with defendant Raymours Furniture Company, Inc., t/a Raymour & Flanigan. The employment application that he signed read, in bolded capital letters, "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."

In mid-September 2007, plaintiff was hired as a Helper, an at-will position. In November 2008, he was transferred to another location and promoted to Driver. Early in April 2010, plaintiff injured his knee in a work-related accident, requiring surgery and physical therapy. On October 1, 2010, two days after he returned to full-duty work, plaintiff was terminated. Although informed that his termination was due to a company-wide reduction in force, plaintiff asserted that others with less seniority or distinguishing features were retained.

On July 5, 2011, nearly seven months after his termination, plaintiff filed a complaint against defendant in Superior Court, alleging, in part, illegal employment discrimination based on actual or perceived disability, in violation of the LAD. Defendant moved for summary judgment based on the waiver provision, asserting that plaintiff's complaint was filed beyond the agreed-upon six-month limitations period. Plaintiff contended, in part, that the provision was unconscionable and unenforceable. The trial court granted summary judgment to defendant, finding that the provision was clear and unambiguous, and that the contractual shortening of the limitations period was neither unreasonable nor against public policy.

Plaintiff appealed, and the Appellate Division affirmed. Although the panel found that the employment application amounted to a contract of adhesion, it determined that it was enforceable in light of its clear, unambiguous language and the ample time plaintiff had to review it. The panel further held that, absent a controlling prohibitory statute, parties may modify a statute of limitations if, as here, the shortened time period is reasonable and does not violate public policy.

The Supreme Court reversed in a unanimous decision. The Court observed that the Appellate Division "had available to it, and cited, only cases that generally dealt with private agreements to shorten statutes of limitations pertaining to common law actions and cases that did not engage in any searching analysis of whether public policy was contravened by the shortening of a limitations period for a public interest statute." The Court noted that the LAD, however, involves "intertwined" private and public interests. Notwithstanding the private interests involved in the LAD, "[i]f 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.”

The Court held that:

a shortening of that period undermines and thwarts the legislative scheme by effectively divesting the aggrieved party of the right to pursue an administrative remedy.” Additionally, since claimants may not immediately be aware of their cognizable claims, shortening of the period will effectively eliminate claims and frustrate the public policy of uniformity and certainty. Conversely, the shortened period may also compel attorneys to file premature LAD actions. Finally, the two-year period also allows an employer the opportunity to protect itself and promote the eradication of discrimination by investigating and resolving complaints before an LAD claim is filed.