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Alan Krumholz
Carmen Natale

The New Jersey Supreme Court is considering whether employers may unilaterally force would-be job seekers to agree to a shortened time frame for filing workplace discrimination claims.

The court heard arguments Dec. 1 on the legality of a clause in an employment application that shortens the statute of limitations for filing a claim under the state's Law Against Discrimination (LAD) to six months after termination of employment.

A phalanx of lawyers argued that a six-month statute of limitations clause in an employment application should be declared unenforceable.

The case involves a plaintiff, Sergio Rogriguez, who filed a suit nine months after he was fired by furniture retailer Raymour & Flanigan. The Appellate Division ruled that the suit was time-barred, even though state law allows two years for such actions.

According to court documents, the statute of limitations waiver was set forth in the two-page application Rodriguez took home and filled out in 2007, when he was hired to help with deliveries.

It stated in 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."

The clause was part of the "Applicant's Statement" just above the signature line and below capitalized letters in boldfaced type instructing, "'Read carefully before signing—if you are hired, the following becomes part of your official employment record and personnel file,'" according to court papers. Additional language waived trial by jury "'in any litigation arising out of, or relating to, my employment with Raymour & Flanigan.'"

"This was a contract of adhesion," said Rodriguez's lawyer, Alan Krumholz. He rejected any argument that the language in the employment application was part of a negotiation between an employer and a potential employee.

"There is a difference between when the parties are negotiating at arm's length and [when] employees need protection," said Krumholz, of Krumholz Dillon in Jersey City.

In cases where plaintiffs are alleging violation of the LAD, there has to be a uniform statute of limitations that is not governed by private employment agreements, Krumholz said.

Forcing employees to abide a six-month statute of limitations would thwart the remedial purpose of the LAD because there would be no time to conduct a thorough investigation or to negotiate a possible settlement.

Chief Justice Stuart Rabner noted that there was no statute of limitations specified in the LAD.

Krumholz said that in most cases, the statute of limitations runs from two years to six years.

Employers, he said, should not be allowed to limit the statute of limitation to less than two years.

- 1|
- 2|
- 3|