

## New Jersey's Statute of Limitations for LAD Claims Cannot Be Shortened by a Private Employment Agreement

In *Rodriguez v. Raymours Furniture Company, Inc.*, the New Jersey Supreme Court unanimously held that a provision in an employment agreement which shortens the two-year statute of limitations for discrimination claims to six months is unenforceable, because it would be against public policy and was a contract of adhesions as it was contained in an employment application.

In this case, the employee signed an employment agreement with Raymours Furniture Company, Inc. (Raymours) which prominently stated, in bold, capitalized letters, that he was waiving the statute of limitations for any employment discrimination claims, in favor of a six-month contractual limitation. The Statute of Limitation for this type of claim is two years. Seven months after he was terminated, the former employee filed a claim in Superior Court alleging wrongful termination and disability discrimination under the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -49. Raymour then moved for summary judgment, pursuant to the six-month contractual limitation. The Trial Court granted Raymours' motion, and the Appellate Division affirmed, noting that there was nothing in the NJLAD prohibiting the shortened limitations period.

The New Jersey Supreme Court reversed, finding that the Appellate Court conducted an insufficient analysis of the NJLAD. The Supreme Court noted the dual purpose of allowing an employee to file either in Superior Court (with the two-year statute of limitations) or in the less costly Division of Civil Rights (with a six-month statute of limitations) would be frustrated by this provision, since it would not allow an injured party to seek redress in Superior Court if the Division of Civil Rights action did not timely resolve the complaint within the six-month period. Lastly, since an employee may not immediately bring a potential claim to an attorney, and any investigation by either that attorney, or by the employer, may take longer than six months, the remedial purpose of the statute would be improperly frustrated. Additionally, the Supreme Court focused on the overall, and uniquely important, purpose of the statute to eradicate discrimination and provide for a discrimination-free workplace. The Court noted that amendments to the NJLAD provided further protections, such as for age, disability and marital status; they never *weakened* the statute.

While the Supreme Court acknowledged the public policy that is served by the "freedom to contract," it found that the public interest and remedial purpose of the NJLAD were better served by leaving intact the two-year statute of limitations.

The Court also noted that while the holding was not resulting from the unconscionability argument, that since the clause was contained in an employment agreement the Court would have ruled the same as the employee could not bargain for the terms. As a result, the contract would have been one of adhesions when analyzing under the NJLAD.

**Comment:** With this decision, employers with business in New Jersey are urged to review their policies and procedures and make sure that they are compliant with this decision. It is strongly recommended that employers have in place mechanisms for employees to be able to submit internal complaints, have them adequately investigated and then respond appropriately with corrective action, if needed. Also, employers should review employment agreements to be sure that all agreements conform in regard to this decision.