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## **Legal Update**

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### Statute of Limitations

# WHEN IS SIX MONTHS NOT ENOUGH TIME?

On December 1, 2015, the Supreme Court of New Jersey heard arguments in Rodriguez v. Raymours Furniture Company, Inc., where the Court will decide whether a clause in an employment application shortening the statute of limitations for a claim under the Law Against Discrimination (“LAD”) from two years to six months after termination of employment is enforceable. The trial court enforced the clause and dismissed the plaintiff’s suit as time-barred, which the Appellate Division affirmed.

In 2007, plaintiff Sergio Rodriguez applied for a delivery position with defendant Raymours Furniture Company, Inc. (“Raymour”). Mr. Rodriguez’s command of English was limited so he enlisted the assistance of his friend to read, translate to Spanish, and complete the employment application. The application contained a conspicuous clause in capital letters stating:

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 APPLICATION THAT IS THE SUBJECT OF THE CLAIM OR LAWSUIT. I WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.

According to Mr. Rodriguez, his friend only translated the portions of the application he had to fill out. Mr. Rodriguez signed and returned the application to Raymour. He was hired as a delivery person and eventually promoted to driver.

On October 1, 2010, Mr. Rodriguez was terminated as part of a companywide layoff plan for substandard performance. On July 5, 2011, nine months after being terminated, he filed suit in the Law Division asserting that Raymour had discriminated against him on the basis of a medical disability in contravention of the LAD.

On a motion for summary judgment, the trial court dismissed the suit as time-barred holding that the parties were free to enter into an agreement shortening the time period within which a lawsuit could be filed provided that the limitation was reasonable and did not violate public policy. The court found that the six-month period was neither against public policy nor unreasonable.

In a published opinion, the Appellate Division affirmed the judgment of the Law Division. The court rejected Mr. Rodriguez's argument that the two-year statute of limitations for LAD claims could never be modified by agreement citing several cases where New Jersey's courts had enforced a limitations period shorter than the one prescribed by statute. The Appellate Division also declined to impose a judicial prohibition on such clauses in employment contracts because it unconstitutionally intrude upon the Legislature's authority.

The court did note that employment application was a contract of adhesion and, therefore, there was some evidence of procedural unconscionability. Nevertheless, a meticulous inquiry into substantive unconscionability was necessary to determine where the six-month limitations period was enforceable. Relying on numerous cases from other jurisdictions and noting that the time frame for filing an administrative claim regarding a LAD violation is six months, the Appellate Division concluded that Raymour's six-month limitations period did not shock the judicial conscience.

At oral argument before the Supreme Court, at least one justice expressed concern that six months was not enough time to allow for a thorough investigation and would increase the frequency of unmeritorious suits being filed to avoid running afoul of the limitations period. Regardless of what the Court decides, it may not have the last word. The Legislature could pass a statute restricting or altogether proscribing clauses shortening statutes of limitations in employment contracts.