Sixth Circuit Nixes Shortening the Statute of Limitations Period for ADA and ADEA Claims

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Authors:

Jeffrey S. Shoskin
Brice C. Smallwood

In *Thompson v. Fresh Products, LLC*, 2021 WL 139685 (6th Cir. 2021), the court held employers cannot contractually shorten the statute of limitations period for claims brought under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). This decision echoes the court's rationale from *Logan v. MGM Grand Detroit Casino*, 939 F.3d 824 (6th Cir. 2019). In *Logan*, the court determined that the statute of limitations period for claims under Title VII cannot be contractually shortened.

Background

Upon hire, Cassandra Thompson signed the employee handbook acknowledgment page which provided the following: "I agree that any claim or lawsuit arising out of my employment with Fresh Products must be filed no more than six (6) months after the date of the employment action that is subject [sic] of the claim or lawsuit. While I understand that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, I agree to be bound by the six (6) month period of limitations set forth herein and I waive any statute of limitations to the contrary."

Soon thereafter, Thompson was laid off. Thompson ultimately filed a lawsuit – more than six months after she was laid off. The lawsuit alleged ADEA, ADA, and Title VII claims and their Ohio state counterparts.

Sixth Circuit's Decision

Relying on the shortened limitations period in the handbook, the district court dismissed Thompson's ADEA and ADA claims. It, however, did not time bar Thompson's Title VII claims based on the Sixth Circuit's *Logan* decision. On appeal, and relying on *Logan*, the appellate court held the employer could not shorten the statute of limitations period for the ADA or ADEA claims. Specifically, the court

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stated, "where statutes that create rights and remedies contain their own limitation periods, the limitation period should be treated as a substantive right which may not be waived."

Like Title VII, both the ADA and ADEA include an explicit statute of limitations period. Thus, under the court's analysis, the employer could not contractually shorten the statute of limitations period specifically set forth in those statutes. The court emphasized that permitting the parties to shorten the period to file a federal discrimination lawsuit may remove an employer's incentive to cooperate with the EEOC. Such a result, the court reasoned, would undermine the value of pre-suit cooperative processes and frustrate the uniform application of the statute.

Ohio's Discrimination Laws

The *Thompson* court, however, determined the shortened statute of limitations period was applicable to Ohio discrimination claims. Unlike federal law, Ohio's discrimination laws (Ohio Revised Code §§ 4112.01- 4112.99) did not include a specific statute of limitations for lawsuits alleging disability or race discrimination. Therefore, federal courts have upheld shortened contractual limitations periods on discrimination claims brought under Ohio law. Ohio law, however, is about to change.

On January 12, 2021, Ohio's governor signed the Employment Law Uniformity Act ("Act") into law. The Act, in part, creates a uniform two-year statute of limitations period for workplace discrimination claims. See our January 15, 2021 client advisory here. The Act takes effect on April 15, 2021.

Takeaway

Employers in Kentucky, Michigan, Ohio, and Tennessee should review their employment documents (e.g. applications, offer letter, handbooks, and contracts) to ensure compliance with this Sixth Circuit decision.

For more information about this decision, please contact Jeff Shoskin, Brice Smallwood, or any member of Frost Brown Todd's Labor & Employment practice group.

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