Is a Six-Month Time Limit on Lawsuits Contained in an Employment App Valid and Enforceable in Court?

By: Marshall Melhorn

State and federal courts have issued conflicting decisions on this question. The current state of the law is as follows -

Federal Law – Title VII, the ADEA, and the ADA: In *Logan v. MGM Grand Detroit Casino*, 939 F.3d 824 (6th Cir. 2019), the plaintiff signed an employment application containing the following provision (quoted in relevant part):

> I agree that any claim or lawsuit arising out of my employment with, or my application for employment with, MGM Grand… 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. 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.

The district court ruled that the plaintiff's Title VII discrimination claims were barred as untimely based on the above-quoted provision, but, on appeal, the Sixth Circuit Court of Appeals reversed the lower court's decision:

> The limitation period of Title VII is part of an elaborate pre-suit process that must be followed before any litigation may commence. Contractual alteration of this process abrogates substantive rights and contravenes Congress's uniform nationwide legal regime for Title VII lawsuits. Therefore, we REVERSE the decision of the district court.

Id.; see also, *Thompson v. Fresh Products, LLC*, 2021 WL 139685 (6th Cir. 2021) (employers cannot contractually shorten the statutory limitation period applicable claims asserted under the Americans with Disabilities Act or the Age Discrimination in Employment Act).

Ohio Law: In *Fry v. FCA US LLC,* 2017-Ohio-7005, 143 N.E.3d 1108 (6th Dist.), the Court of Appeals ruled that the shortened limitation period contained in the plaintiff's employment application barred the plaintiff's Ohio law claims. Id. at ¶ 5. The employment application provided as follows:

> In consideration of the review of my application: * * * 7. I agree that any lawsuit arising out of my employment with, or my application for employment with, Chrysler Group LLC or any of its subsidiaries and affiliates must be filed no more than 180 days after the date of the employment action that is the subject of the lawsuit. While I understand that the statute of limitations for claims arising out of an employment action may be longer than 180 days, I agree to be bound by the 180 day period of limitations and I WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.

[Footnote omitted.] Id. at ¶ 6.

In *Fayak v. University Hospitals*, 8th Dist. App. No. 109279, 2020-Ohio-5512 (Dec. 3, 2020), a case involving Ohio law claims only, the plaintiff signed an employment application containing a 180-day limit on filing suit in court. Both the common pleas court and the 8th District Court of Appeals ruled that the plaintiff's claims were barred by the 180-day limit. On April 16, 2021, the Ohio Supreme Court declined review and thereby affirmed the Court of Appeals' decision. In addition, we did not locate a single Ohio Court of Appeals decision to the contrary.

Michigan Law: In, *Harwood v. N. Am. Bancard LLC*, 2020 WL 2065480 (E.D. Mich. 2020), 2020 WL 3833065, the plaintiff signed an employment contract containing the following provision: "any claim or lawsuit arising out of my employment with [Defendant] 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." The district court, applying both Michigan and federal law, determined that the six-month limit barred the plaintiff's Michigan law claims because under Michigan law, "unambiguous provisions shortening the period of limitations are enforceable under Michigan law unless the contract is unconscionable or otherwise against public policy." Id., citing Clark v. DaimlerChrysler Corp., 268 Mich. App. 138, 142, 144 (2005).

However, this case also involved claims under Title VII, and the court, quoting from the Logan decision, ruled that, "Harwood's Title VII claims are not subject to the six-month limitation period" because "the 300-day limitation period to sue under Title VII is a substantive, rather than procedural, rule ... [so it] is not prospectively waivable as it pertains to litigation. Thus, Harwood's Title VII claims are subject to the statutory 300-day limitation period." Id. at Westlaw p. 11, quoting Logan, 939 F.3d at 829.

Conclusion: A six-month (or 180-day) limit on filing claims in court contained in a signed employment application is valid and will operate to bar claims otherwise timely filed under state law, i.e., Ohio law or Michigan law. However, a shortened limitation period contained in a signed employment application is not valid and will not operate to bar claims otherwise timely filed under federal law, i.e., Title VII, the ADA, or the ADEA.