ASAP™ A Littler Mendelson **Time Sensitive** Newsletter

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In a case of first impression, a federal district court in New Jersey has ruled that an employee is bound by an agreement with his employer to file any claim in connection with his employment, including any USERRA claim, within six months of termination of his employment. The court held that the plaintiff-employee's USERRA claim was time-barred even though the court held USERRA claims can normally be brought within four years.

East Coast Edition

A Littler Mendelson East Coast-specific Newsletter

New Jersey Federal Court Holds that an Employee Is Bound By His Agreement Shortening Time to Sue Under USERRA

By Gregory B. Reilly

Claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which provides employment protections for employees who take military leave, must generally be brought within four years. However, a federal district court in New Jersey has ruled that an employee can be held to a shorter time limitation by agreement with his employer. *Aull v. McKeon-Grano Assocs. Inc.* (D.N.J. 06-2752).

A "Call to Duty" Ends with a Firing

McKeon-Grano Associates hired Tyrone Aull in April 2002. At the time of his hire, Aull entered an agreement with the Company providing that he would bring any employment-related legal claims against his employer within six months of the termination of his employment.

In January 2004, the U.S. Army called Aull to active duty. Aull returned to work in May 2005. In the interim, McKeon-Grano had lost a client's work that Aull had previously performed and, as a consequence, the Company provided Aull with a new assignment resulting in his working hours being reduced 2.5 hours to 37.5 hours/week. In response, Aull complained to the head of the Company that the hours reduction violated his USERRA rights. In August 2005, McKeon-Grano fired Aull for poor work performance. On June 16, 2006, more than ten months after his termination, Aull filed a lawsuit against the Company alleging USERRA violations.

The Employer's "Opening Shot" Is Fatal: Employee Bound By His Agreement to SixMonth Limitation Period

In response to Aull's lawsuit, McKeon-Grano filed a motion to dismiss on the ground that Aull's USERRA claims were time-barred by his signed agreement requiring any legal claims be brought within six months from the date of his termination. Aull argued in response that his agreement was superseded and preempted by USERRA.

Upon review, the court explained that the issue was "a matter of first impression." As an initial matter, the court noted that the USERRA statute does not contain an express statute of limitations. In the absence of an express statute of limitations, the court determined that a four-year limitation applied based on the limitations period set forth in 28 U.S.C. section 1658(a) applicable to all federal laws enacted after December 1, 1990.

Although the USERRA statute does not address its own limitations period, USERRA does expressly state that it "supersedes any State law … , contract, agreement, policy, plan practice or other matter" if it "reduces, limits, or eliminates in any manner any right or benefit." Aull argued that this language meant his agreement with the Company could not be enforced. The court rejected this argument finding that the "right or benefit" language of USERRA was a reference to a substantive right to compensation

and working conditions – not a right to a particular statute of limitations period. The court further noted that if Congress intended that USERRA's limitation period could not be waived "then presumably Congress would have more expressly stated such." The court, therefore, dismissed Aull's complaint even though it would have been timely filed under the four-year limitations period that the court held was otherwise applicable.

Strategy & Tactics for Future Battles

On first impression, the court's decision suggests that all employers could benefit from entering agreements with their employees setting forth a uniform (and short) limitations period for commencing legal actions arising from employment-related disputes. Unfortunately, the "battle" is not won this easily. Although the *Aull v. McKeon-Grano* case states that enforcing a limitations agreement is possible for USERRA-based claims, the court did not consider whether such an agreement would be enforceable with respect to other employment statutes such as Title VII, the ADEA or ADA. Unlike USERRA, these other statutes have express limitations periods. Likewise, the Equal Employment Opportunity Commission (EEOC) has made clear that an employer cannot interfere with an employee's right to file a discrimination charge. Reducing the time to file a charge (even with the employee's agreement) arguably creates interference. Moreover, although these issues were beyond the scope of the district court's opinion, the court (and other courts) have made clear - agreements reducing the limitations period are unenforceable if the time period is unreasonably short or the employee's agreement was obtained as the result of duress, fraud or misrepresentation. Finally, we note that given this was a case of first impression, it is possible that the plaintiff may appeal to the Third Circuit.

The bottom line: The enforceability of employer-employee agreements reducing the limitations period for bringing employment claims remains uncertain. The district court's decision, however, suggests that such agreements could be of assistance to employers depending upon the underlying legal claim and assuming the agreement does not unreasonably preclude the employee from asserting his or her statutory legal rights.

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