Federal Appeals Court Strikes Down Contractual Time Limits On Bringing Age And Disability Discrimination Claims

Insights
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The 6th Circuit Court of Appeals recently held that employers cannot contractually shorten the statute of limitations for filing suit under the Americans with Disabilities Act (ADA) or the Age Discrimination in Employment Act (ADEA). The court's January 15 holding in *Thompson v. Fresh Products, LLC*, extended a prior ruling from 2019 that prohibited enforcement of abbreviated claims period provisions on Title VII claims (outside of maybe arbitration agreements). The upshot? The *Thompson* decision has further blunted Kentucky, Michigan, Ohio, and Tennessee employers' ability to reduce employment discrimination liability exposure through abbreviated claims period provisions. This article addresses the court's logic in *Thompson*, what the decision means for employers in the 6th Circuit's jurisdiction, and what those employers can do in response to this ruling.

Case Background

Cassandra Thompson is a 50-plus year old African-American with arthritis who was employed as a production worker for a Fresh Products facility in Ohio. She signed a handbook acknowledgment with a clause stating that she agreed to file any claim arising out of her employment "no more than six (6) months after the date of the employment action that is subject [sic] of the claim or lawsuit."

On January 27, 2017, Fresh Products laid her off. Five days later, she filed a charge with the Ohio Civil Rights Commission (OCRC) and the Equal Employment Opportunity Commission (EEOC). The OCRC issued a "no probable cause" finding in the employer's favor in mid-September 2017, almost eight months later, and the EEOC did not issue the production worker a right-to-sue letter until early March 2018.

87 days after receiving her right-to-sue letter and over 16 months after being laid off, Thompson filed a lawsuit for age discrimination (ADEA), disability discrimination (ADA and Ohio law), and race discrimination (Title VII and Ohio law). The lower district court granted the employer's summary judgment motion in its favor on all claims, ruling that the claims were untimely under the handbook acknowledgment's abbreviated claims period provision. Thompson then appealed her case to the federal appeals court.

Case Logic

Although the 6th Circuit ultimately affirmed the ruling for the employer on different grounds, the court first addressed whether the limitations periods in the ADA and ADEA can be abbreviated by an agreement. The court held no, as "the limitations periods in the ADA and ADEA give rise to substantive, non-waivable rights" for two main reasons: (1) both laws contain a "self-contained limitations" period of 300 days (note: all 6th Circuit states are "deferral" jurisdictions, meaning that the state labor commissions all defer to the EEOC's deadlines for filing claims); and (2) "altering the time limitations surrounding these processes risks undermining the statute's uniform application and frustrating efforts to foster employer cooperation" (e.g., pre-suit conciliation).

Practical Meaning: What Should 6th Circuit Employers Do?

This decision does not mean employers in the 6th Circuit must completely abandon abbreviated claims period provisions. Six-month (or 180-day) abbreviated claims period provisions are still enforceable against most state law claims, at least in Michigan and Ohio, as well as other federal claims that do not have self-contained limitations periods like ERISA and 42 U.S.C. § 1981 (race discrimination) claims.

Further, the ADA, ADEA, and Title VII's limitations periods are all 300 days, which means that employers can arguably enforce 300-day abbreviated claims period provisions against claims under all three laws. Finally, abbreviated limitations periods in arbitration agreements with employees may still be enforceable against ADEA and ADA claims. *Thompson* did not address whether its abbreviated claims period prohibition extended to arbitration agreements, but the 2019 predecessor case did briefly. In that case, the 6th Circuit stated in dicta (i.e., nonbinding language) that a one-year limitation to bring a Title VII claim to arbitration was enforceable based on policy reasons underlying the Federal Arbitration Act.

In closing, 6th Circuit employers looking to enforce (or create enforceable) abbreviated claims period provisions should review your provisions to ensure that you do not have categorical limitations periods of six months or less. If any of them do, then you should consider (with the advice of legal counsel) including amended abbreviated claims period provisions in your next handbook acknowledgment, new employment applications, or as a standalone agreement. Regardless, you should consider having legal counsel review you abbreviated claims period provisions if they have not been reviewed in two or more years, as this area of the law has changed over the past few years.

Conclusion

We'll continue to monitor developments in this area, so make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. If you have any questions about how this decision may impact your business, please contact your Fisher Phillips attorney or any attorney in our Kentucky, Michigan, Ohio, and Tennessee offices.

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