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Federal Court Strikes Contractual Limitations Period Defense in FMLA Case

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Ruling in the case *Madry v Gibraltor National Corp, a* Magistrate Judge in the Eastern District of Michigan recently held that it would be contrary to public policy to enforce a 180-day limitations period on an employment application, which would result in dismissal of a claim brought under the Family and Medical Leave Act (FMLA).

Because the application also required employees to pay attorneys' fees and costs if they sued and lost, the Magistrate determined that was further evidence the agreement should be struck as contrary to public policy.

The FMLA provides for a two-year limitations period and three years if the violation is willful. See 29 USC 2617(c)(1) and(2). The court recognized that, generally, parties are free to shorten the statutory limitations by contract.

However, Department of Labor regulations prohibit employers "from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the [FMLA], and … [e] mployees cannot waive, nor may employers induce employees to waive, their rights under FMLA." 29 CFR 825.220(a) and (d).

The defendant in *Madry* argued that the agreement did not require the waiver of any substantive right, only a procedural right. However, the court rejected this argument because it was "a distinction without a difference" in light of the public policy expressed in the regulations. By shortening the limitations period and requiring unsuccessful employees to pay costs the provisions separately, and/or together, such agreements "are designed to deter employees from exercising their rights and insulate the defendant from its obligations under the FMLA."

While a split now exists on this issue in the federal district courts, no federal appellate court has weighed in with both the Sixth and Eight Circuit Court of Appeals declining to rule on the issue when the opportunity was presented*. See Bates v 84 Lumber Co.* (CA 6) and *Woods v DaimlerChrysler*

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Corp. (CA 8).

Eventually, the courts will sort this out, but in the meantime, employers should continue to require employees to stipulate to shorter limitations periods as a condition of employment. However, requiring the employee to pay attorneys' fees and costs may be counter productive and cause the term to be struck in the future, keeping in mind the old adage "pigs get fat but a hog will go to slaughter."

The Equal Employment Opportunity Commission (EEOC) takes the position that contractual limitations periods are unenforceable for federal civil rights claims. There have been one or two district court opinions that have struck such agreements because, as they were written, the shorter limitations periods effectively prevented employees from pursuing civil litigation given the EEOC's initial exclusive jurisdiction of federal civil rights claims.

One thing is clear, badly drafted agreements will not be enforced. To ensure a properly worded contractual limitations period, contact the author of this article or any Plunkett Cooney employment law attorney.

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