bodman

A Workplace Law Update

Bodman PLC **January 25, 2023**

An Agreement to Shorten the Statute of Limitations on Employment Claims is Enforceable but Employers Must Prove an Agreement

By: Gary S. Fealk, Member, Workplace Law Group

In Michigan, it is well-established that the statute of limitations for claims of discrimination, harassment and most other employment-based claims may be shortened by the agreement of the employer and the employee. This includes agreements to shorten the statute of limitations contained in employment applications. ***See Timko v. Oakwood Custom Coatings, Inc.,*** 244 Mich App 234 (2001). However, whenever employers seek to enforce an employment contract, including a contract to shorten the statute of limitations, it is their burden to prove that the employee agreed to the terms.

A recent Michigan Supreme Court case demonstrates the importance of making sure new hire paperwork, including agreements relating to employment, are actually executed. ***In McMillon v. City of Kalamazoo*** (decided January 11, 2023), the Michigan Supreme Court reversed a Court of Appeals ruling upholding the dismissal of an employee's discrimination claims as untimely. The trial court and the Court of Appeals relied on a 2004 employment application signed by the employee that shortened the statute of limitations to nine months. The plaintiff, however, was not hired for the position applied for in 2004. Instead, in mid-2005 she was contacted by the employer for potential employment and was later hired. The employer claimed that it was entitled to rely on her previous application and agreements made as part of that application. Plaintiff argued that in 2005 she was required to restart the hiring process, never filled out a new application, and did not believe that her previous application containing the shortened limitations period was binding. The Michigan Supreme Court ruled that there was an issue of material fact as to whether Plaintiff had notice that her prior application materials and employment terms would apply to her employment beginning in 2005 and reversed the dismissal.

The lesson of this case is that whenever an employer seeks to bind employees to contractual terms, such as shortening the statute of limitations, it must be meticulous about obtaining signed documentation. Whether the agreement is an application, a handbook acknowledgement agreement, or a standalone document, make sure to obtain actual signed documents. To be safe, if an agreement is contained in an application, it is a good idea to have the employee sign off on the agreement again upon hire. Also, if an application is put on hold, and the individual is later considered for a position, have that person sign a

new application/agreement. If a former employee is rehired obtain new signed agreements. These steps will avoid any ambiguity as to what the employment terms are and whether the employee agreed.

It should also be noted that, in a concurring opinion, one justice remarked that because the Michigan Supreme Court has never ruled on the validity of contractually shortened limitations periods in an employment situation, she would be in favor of reviewing that issue in the future ***if it is presented to the Court***. Importantly, however, the Court's opinion does not change the well-settled precedent that statutes of limitations may be shortened in a contract between an employer and an employee.

Bodman's Workplace Law Group is available to assist employers with their employment agreements, handbooks and applications to help minimize potential liability. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

WORKPLACE LAW PRACTICE GROUP			
	AARON D. GRAVES | *Chair* 313.392.1075 agraves@bodmanlaw.com	**JOHN T. BELOW** 248-743-6035 jbelow@bodmanlaw.com	**ALEXANDER J. BURRIDGE** 313.393.7560 aburridge@bodmanlaw.com
	JOHN C. CASHEN | *Of Counsel* 248.743.6077 jcashen@bodmanlaw.com	**AMANADA MCSWEEN EMPEY** 313-392-1056 aempey@bodmanlaw.com	**GARY S. FEALK** 248-743-6060 gfealk@bodmanlaw.com
	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com	**MICHELLE L. KOLKMEYER** 248.743.6031 mkolkmeyer@bodmanlaw.com	**KAREN L. PIPER | *Of Counsel*** 248.743.6025 kpiper@bodmanlaw.com
	REBECCA C. SEGUIN-SKRABUCHA 248.925.1936 rseguin-skrabucha@bodmanlaw.com	**MELISSA M. TETREAU** 248.743.6078 mtetreau@bodmanlaw.com	**DAVID B. WALTERS** 248.743.6052 dwalters@bodmanlaw.com