

Articles

"Four Year Statute of Limitations Applicable to USERRA Claims May Be Reduced by Contract"

Employer Alert

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An issue of first impression interpreting the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") was recently considered by a New Jersey Federal District Court. In *Aull v. McKeon-Grano*, No. 06-2752, 2007 WL 655484 (D.N.J. Feb. 26, 2007) (not for publication), the court determined that the provision in an employment agreement providing that the employee bring any claim against the employer within six-months of termination was binding and enforceable, and trumped the general four-year statute of limitations applicable to claims brought under USERRA.

Tyrone Aull was employed by McKeon-Grano Associates as an architectural designer. Aull's employment was governed by an employment agreement, which contained, among other things, a provision that states that Aull agreed to bring any claim against McKeon-Grano within six months from the date of his termination. While employed at McKeon-Grano, Aull was called to and performed active duty with the United States Army for one year. Upon Aull's return to work, he signed another employment agreement that contained substantially the same terms as the earlier employment agreement. Additionally, Aull was informed verbally by McKeon-Grano that his new job assignment would be for 37.5 hours instead of the 40 hours he had been working prior to going on active duty and that his previous assignment with the University of Medicine & Dentistry of New Jersey ("UMDNJ") had been eliminated because UMDNJ gave that job to another vendor, not to McKeon-Grano.

Subsequent to his return to work on May 2, 2005, Aull alleges that he began performing the same work he had done prior to active duty, with the same duties and working for the same supervisors. Aull alleges that he complained to McKeon-Grano that he was doing the same job as before active duty and therefore he should have the same hours because his job had not in fact been given to another vendor. Aull alleges that he warned McKeon-Grano that its conduct violated his rights under USERRA. On August 2, 2005, McKeon-Grano terminated Aull's employment for poor work performance. On June 16, 2006, approximately 10 months after his termination, Aull filed a lawsuit against McKeon-Grano alleging discrimination and retaliation against him due to his active military service in violation of USERRA. McKeon-Grano moved to dismiss Aull's complaint based on Aull's failure to comply with the contractual statute of limitation stated in his employment agreement. Aull argued that USERRA superseded the employment agreement and therefore his claim was not time-barred.

The court, after considering the provisions of USERRA and the employment agreement, dismissed Aull's complaint. At the outset, the court recognized that while USERRA does not provide an express statute of limitations for bringing a claim under the Act, USERRA claims, nonetheless, were subject to a general *four-year* statute of limitations for federal claims stemming from laws enacted after December 1, 1990. On the question of preemption, the court noted that USERRA supersedes only "State law, contract, agreement, policy, plan, practice, or other matter" that "reduces, limits, or eliminates" any "right or benefit" provided for under USERRA. As such, the court determined that USERRA meant to preempt only *substantive rights* and that statutes of limitations were not substantive rights under USERRA. Consequently, the court concluded that USERRA did not supersede the statute of limitations provision stated in Aull's employment agreement. Finally, the court rejected Aull's argument that his employment agreement was unconscionable, noting that Aull failed to provide any factual basis to support his assertions of unconscionability. Moreover, the court stated that six months was not *per se* insufficient time to bring a lawsuit. Considering the facts of the case, the court concluded that Aull's employment agreement does not rise to the level of unconscionability. In sum, the court decided that USERRA does not prohibit an employee from agreeing to reduce the time to bring a claim under the Act.