Limiting Your Liability by Agreeing to Shorten the Period of Time in Which an Employee can Bring a Lawsuit

THURMAN V. DAIMLERCHRYSLER, INC.:¹

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Introduction
In some states, employees may have six years or more in which to bring a lawsuit against their employer. What if an employer could reduce that period to six months? They may be able to do so. The United States Court of Appeals for the Sixth Circuit recently held in Thurman v. DaimlerChrysler, Inc. that a reduced limitation period for bringing a cause of action against an employer contained in an employment application was reasonable and enforceable.² This case provides a potential model for employers to use to limit their exposure to employment litigation; particularly litigation based on events that may have occurred years ago.

Background of the Case
In October 1993, Connie Thurman ("Thurman") filled out an application for employment with DaimlerChrysler to work at a stamping plant in Michigan. The application contained the following clause:

READ CAREFULLY BEFORE SIGNING . . .
I agree that any claim or lawsuit relating to my service with [DaimlerChrysler] or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary.

The application also stated that, "This application will be considered active for twelve (12) months from the date filed. If you are hired, it becomes part of your official employment record." Thurman signed the application acknowledging that she read and understood it.

DaimlerChrysler hired Thurman in November 1994, and she became a member of the bargaining unit at the stamping plant. In September 1999, Thurman was engaged in a conversation with a co-worker, James Pittman ("Pittman") at the plant. Thurman excused herself to attend a meeting and as she was leaving, Pittman allegedly grabbed her breast. Thurman reported the incident and DaimlerChrysler investigated. DaimlerChrysler concluded that under the circumstances there was insufficient evidence to discipline Pittman regarding the alleged incident. Thurman filed a charge with the Michigan Department of Civil Rights.

A month later, as Pittman walked past Thurman in the plant cafeteria, he grabbed his crotch and made a crude gesture. Thurman reported this incident to management. DaimlerChrysler investigated and imposed a 10-day suspension on Pittman for violating its standards of conduct. Thurman filed a criminal complaint against Pittman following the second incident to which Pittman pled guilty.

¹ 397 F.3d 352 (6th Cir. 2004).
² The Sixth Circuit covers Ohio, Michigan, Kentucky and Tennessee.
In January 2000, Thurman transferred to another shift, and in February 2000, she went on a leave of absence. On June 1, 2000, she and her husband filed a lawsuit against Pittman and DaimlerChrysler alleging violations of the Michigan Civil Rights Act, Title VII of the Civil Rights Act of 1964, Section 1981, and various state tort claims.

The Court's Decision

The United States District Court for the Eastern District of Michigan granted summary judgment to DaimlerChrysler and dismissed Thurman's claims as untimely pursuant to the abbreviated limitations period contained in the employment application. Thurman appealed to the Sixth Circuit. The Sixth Circuit affirmed the lower court's decision.

Thurman asserted four grounds upon which she contended that the district court erred. First, Thurman argued that the abbreviated limitations period in the application did not apply because DaimlerChrysler did not hire her until after twelve (12) months had lapsed since she completed the application. According to Thurman, because the application was considered "active" for only twelve (12) months, the limitations period no longer applied.

The Court quickly concluded that this argument lacked merit. The application clearly stated that upon being hired, the application became part of the individual's employment record. The Court looked to Michigan case law that had concluded that employment applications become part of the employment contract.3

Second, Thurman contended that the application was superseded by the collective bargaining agreement and that the shortened limitation period had to be in the collective bargaining agreement to be effective. The court concluded, however, that individual contracts are not automatically superseded by collective bargaining agreements; that nothing in the collective bargaining agreement precluded such a limitation; and that, shortening statutes of limitation is not a mandatory subject of collective bargaining. Accordingly, this argument failed too.

Third, Thurman claimed that the limitations period was unenforceable because it was an unconscionable contract of adhesion (that is, a contract between parties with significantly unequal bargaining power). The Court rejected this argument concluding that there was nothing inherently unreasonable about a six-month limitation period on bringing an employment-related lawsuit, and that Michigan courts had previously concluded that parties may contract to such shortened limitation periods so long as they are reasonable. Reviewing Michigan case law, the Court found that such abbreviated limitation periods are reasonable if: (a) the claimant has sufficient opportunity to investigate and file an action; (b) the time is not so short as to work a practical abrogation of the right of action; and (c) the action is not barred before the loss or damage can be explained. The Court stated that the evidence showed that Thurman had ample opportunity to assess damages and file an action within the six month time frame at issue.

Finally, Thurman contended that she did not voluntarily and knowingly sign the waiver. The Court quickly rejected this argument by noting that the language at issue was sufficiently highlighted; that she signed the application admitting that she read and understood the application; and moreover, she admitted in her deposition that she understood the limitation and did not have any disagreement with it at the time. Thus, the language at issue was clear on the application.

Thurman Decision Consistent with Other Court Decisions

This was not the first time that the Sixth Circuit had concluded that a six-month abbreviated limitations period was reasonable in an employment context. The Sixth Circuit had previously concluded that there is nothing inherently unreasonable about a six month limitations period contained in an employee agreement.4 Likewise, other federal circuit courts have similarly concluded that a six month abbreviated limitations period in an employment context is reasonable: Seventh Circuit (applying Illinois law)5; and Ninth Circuit (applying California law).6 Indeed, the United States Supreme Court has stated that, "In the

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absence of a controlling statute to the contrary, a provision in a contract may validly limit, between the parties, the time for bringing an action on such contract to less than that prescribed in the general statute of limitations provided that the shorter period itself shall be a reasonable period.7

Accordingly, the Court's decision in Thurman appears to be in line with other courts that have addressed the issue. Thus, rather than a coincidence based upon a unique set of facts, the Court's decision appears to provide that so long as reasonable, an employer, with the employee's assent, may abbreviate the limitations period for bringing an action against an employer relating to the employee's employment.

**How Does This Affect You**

The Thurman case clearly signals that there may be an opportunity for employers to reduce the time period in which employees or former employees can bring an action against them. There are a number of issues, however, to consider in implementing such a limitation:

- **Highlight the waiver in the application or other document -- more than what was done in the Thurman case -- to signal its importance. It may be worthwhile to bold all of the language or otherwise bring attention to its importance.**
- **Have the employee sign the document or application in which the limitation exists. The Thurman case and related cases are based upon principles of contract law, and the failure of the employee to sign may result in a missing element of a contract -- mutuality or mutual assent (that is, a signature showing agreement to the terms).**
- **Make sure your state does not have laws or court decisions that limit or restrict the ability of parties to reduce limitations periods.**
- **If you have a bargaining unit, make sure that there are no provisions in the collective bargaining agreement that may preclude such limitations.**
- **Make sure the time period to which the limitation has been reduced is reasonable. It is strongly suggested that any reduced limitations period not be less than six months in the employment context. As noted by the Thurman court, the six-month limitation period is not without support in federal employment laws: Title VII of the Civil Rights Act of 1964 and the National Labor Relations Act each contain a six-month statute of limitations period.**

All of this does not ensure that an employer's attempt to abbreviate the limitations period will be successful in every instance. In many jurisdictions, attempts to reduce the limitation period for employment-related claims appears to be untested. Moreover, whether the shortened limitations period will be upheld by a court may also depend on the nature of the action at issue. For instance, courts have held that an attempted shortening of the statute of limitations of claims arising under the Fair Labor Standards Act ("FLSA") to one year was unreasonable due to the remedial scheme and the two and three year statute of limitations set forth in the FLSA.8

Nonetheless, the trend appears to support such reduced limitation periods. Even if courts conclude the reduction does not apply to certain federal laws such as the FLSA, it may nonetheless be worth the effort to reduce the limitations period for state law tort and contract claims, particularly in states that have lengthy statute of limitations on state law employment claims.

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6 See, Soltani v. Western & Southern Life Ins. Co., 258 F.3d 1038 (9th Cir. 2001).