LEGALEASE SOLUTIONS LLC

23400 Michigan Avenue, Suite 101
Dearborn, MI 48124
Tel: 1-(866) 534-6177 (toll-free)
Fax: 1-(734) 943-6051
Email: contact@legaleasesolutions.com
www.legaleasesolutions.com

Validity of Contractual Provisions Shortening Time to Bring an Action in Michigan

Question Presented

What minimum time period is considered acceptable to uphold an employment agreement provision shortening the time to less than 180 days in filing arbitration claim?

Short Answer

Michigan Court generally uphold the period of limitation stipulated in an employment contract whether it is 180 days or 90 days, provided the shortened period of limitation is reasonable, not opposed to public policy or law, and if the claimant has waived the statutory limitation knowingly, intelligently, and voluntarily.

Discussion

UNDER MICHIGAN LAW, CONTRACT PROVISIONS THAT SHORTEN THE TIME TO BRING AN ACTION ARE VALID IF THEY ARE REASONABLE

Michigan courts have consistently held that contracting parties may agree to an abbreviated statute of limitations so long as it is reasonable. *Timko v. Oakwood Custom Coating, Inc.*, 244 Mich. App. 234, 239 (2001). In *Timko*, Plaintiff employee sued defendant employers for age discrimination. Defendants moved for summary disposition

contending that plaintiff's claim was barred by a six month statute of limitation as agreed to in plaintiff's employment contract. *Id.* The Trial Court granted the Defendants motion and the Plaintiff appealed. The Appellate Court affirmed the judgment of the Trial Court because it was undisputed that plaintiff agreed to a reduced statute of limitations for filing any claims in his employment contract. In determining whether the period of limitation shorter than the applicable statute of limitation is reasonable, the Appellate Court applied a three prong test and observed:

> Parties may contract for a period of limitation shorter than the applicable statute of limitation provided that the abbreviated period remains reasonable. The period of limitation is reasonable if (1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained.

Id. at 239, 240. *(emphasis added)*

The court, after applying the three prong test found that the Plaintiff's record were devoid of any explanation as to why a six month statute of limitations, as agreed to by the parties, did not provide Plaintiff with sufficient opportunity to determine the viability of a possible claim. *Id.* The Court observed that at least two federal courts applying Michigan law have found that a six-month period of limitation contained within an employment agreement, qualified as reasonable. *Id*. at 240. Further, the Court justified the reasonableness of six-month period of limitation and stated that no inherent unreasonableness accompanies a six-month period of limitation. *Id.* Moreover the *Timko* court pointed out that several Michigan and federal laws provide for periods of limitation shorter than six months an the context of various employment actions including the Whistleblower's Protection Act which provides for a 90 day period. *Id.* at 242, 243.

Thus, in the light of *Timko,* Rainbow Child Development Centers can enter into an employment agreement with a shorter period of limitation than the applicable statute of limitation whether it is 180 days or 90 days, provided that the prescribed period is reasonable and satisfies the three standards applied in *Timko.*

Further, the court in *Clark v. DaimlerChrysler Corp*., 268 Mich. App. 138 (2005) questioned the applicability of the reasonableness rule holding that an unambiguous contractual provision providing for a shortened period of limitations is to be en-forced as written unless the provision would violate law or public policy. Id. at 141. In *Clark*, Plaintiff employee sued defendant employer, asserting that the employer had forced him to retire and had discharged him on the basis of age. The employer moved for summary disposition, arguing that the employee's claim was time-barred by a provision in his employment application. *Id.* Trial Court granted the Defendants motion and the Plaintiff appealed. On appeal, the employee claimed that the agreement constituted an unconscionable contract of adhesion. Rejecting the employee's claim the court observed that although Plaintiff's bargaining power may have been unequal to that of the defendant, it cannot be said that Plaintiff lacked any meaningful choice but to accept employment under the terms dictated by defendant. However, the Appellate Court noted the rule that an unambiguous contractual provision providing for a shortened period of limitations was to be enforced as written unless the provision would violate law or public policy. *Id.* The Appellate Court holding in favor of the employer stated that provisions within an employment contract providing for a shortened period of limitations have been held to be reasonable and, therefore, valid and enforceable**.** *Id.* 142.

On applying the reasonableness rule, the Appellate Court stated that a mere judicial assessment of "reasonableness" is an invalid basis upon which to refuse to enforce contractual provisions and that only recognized traditional contract defenses may be used to avoid the enforcement of the contract provision. *Id.* at 141,142. These defenses include duress, waiver, estoppel, fraud, or unconscionability.

Applying the additional standard of reasonableness as laid down in *Clark, Id.,* an employment agreement with a shorter period of limitation than the applicable statute of limitation whether it is 180 days or lesser, can be entered into by our client Rainbow Child Development Centers provided that the prescribed period is reasonable, satisfies the three standards in *Timko,* and the provision does not violate any law or public policy.

Maddock v. H. Fred Campbell, H.F. Campbell Co., 1999 Mich. App. LEXIS 1871 (Mich. Ct. App. 1999), is an **unpublished opinion,** in which there was a 90 days stipulation in the employment agreement which the court found reasonable. The Plaintiff employee brought this action to vacate an arbitration award to recover business expenses, health care expenses, vacation pay, and unpaid commissions from a condemnation proceeding. *Id.* The trial court summarily dismissed some of Plaintiff's claims, and the parties stipulated to dismiss the remaining claims on the ground that the claims were subject to arbitration pursuant to the employment agreement. *Id.* An arbitration decision was rendered on December 26, 1995, denying both Plaintiff's and Defendants' claims. *Id.* at 1872. The Appellate Court found no error on the face of the arbitration award and accordingly held that the trial court did not err by summarily dismissing Plaintiff's complaint. The Plaintiff employee had made a second arbitration demand and the trial court stayed this demand. The Appellate Court affirmed the trial court's decision and

scrutinized the employment agreement between the parties and found that the Plaintiff waived the claim regarding unpaid commissions by failing to demand arbitration of this claim **within 90 days of the occurrence** giving rise to the dispute or claim.

Similarly in the unpublished case of *Singh v. Davenport University* 2004 Mich. App. LEXIS 171, the Court disagreed with Plaintiff that a ninety-day limitation for requesting arbitration was unreasonable. In this case, the Plaintiff heavily relied on the facts that she did not receive her employment records until after the ninety days ran, effectively preventing any reasonable investigation. However, the Court noted, that Plaintiff waited roughly two months after her alleged constructive termination to even request the file.

Although no published cases were found where a 90 days limitation period was expressly found reasonable, it appears that as long as the limitation period is reasonable, and does not violate public policy, that it would be enforceable. Moreover at least two unpublished cases from the Court of Appeals have upheld a 90 day limitation period.

Conclusion

Michigan Courts generally uphold the period of limitation stipulated in an employment contract whether it is 180 days or 90 days, provided the shortened period of limitation is reasonable, and not opposed to public policy or law.