Sixth Circuit Extends Ban of Contractually Shortened Limitations Periods to ADA and ADEA Claims

By Ogletree Deakins

The U.S. Court of Appeals for the Sixth Circuit, the appellate court responsible for the federal district courts of Michigan, Ohio, Kentucky, and Tennessee, recently made clear that claims asserted under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) cannot be subject to contractually shortened limitation periods. In Thompson v. Fresh Products, LLC, No. 20-3060 (January 15, 2021), the Sixth Circuit held that the statute of limitations for claims arising under the ADA and ADEA is a substantive right that cannot be waived by agreement of the parties. This decision was an extension of the Sixth Circuit’s 2019 decision in Logan v. MGM Grand Detroit Casino, which held that the statute of limitations for claims under Title VII of the Civil Rights Act of 1964 could not be shortened by agreement of the parties.

Background

In 2018, plaintiff Cassandra Thompson filed a lawsuit in the U.S. District Court for the Northern District of Ohio alleging that her employer, Fresh Products, LLC, had discriminated against her because of her disability, age, and race, in violation of the ADA, ADEA, and Title VII, respectively, when terminating her employment during a layoff. She also brought claims of disability and race discrimination under analogous Ohio state law. The district court granted summary judgment in favor of Fresh Products on Thompson’s ADA claims, state law discrimination claims (both race and disability), and ADEA claims on the basis that they were untimely and that “Thompson had failed to establish a prima facie case of discrimination on any of her claims.”

Thompson had previously signed a handbook acknowledgement agreeing to be bound by a six-month contractually shortened limitations period for bringing “any claim or lawsuit arising out of [her] employment with Fresh Products,” but she did not bring her claims in court until approximately 16 months after the termination of her employment. Thompson, however, did file a charge of discrimination with Ohio’s Civil Rights Commission and the U.S. Equal Employment Opportunity Commission days after the termination of her employment. Nonetheless, the district court enforced the

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Tech Tip: NEW! Butler County Jail video conference system

By Julie Koehne, Systems Librarian

In the past, when scheduling an inmate video conference with Butler County Jail you had to contact both Butler County and the Law Library to schedule a visit. Now you only need to call the Law Library. We will schedule the appointment. When you contact us we will need the following information.

- Subscriber Name
- Inmate Name
- Date
- Time

It is important to know, when scheduling an appointment, you agree to the below Butler County Jail Inmate Visitation Policy.

Inmate Visitation Policy

Inmate visitation is a privilege. Inmates who become disciplinary problems or security risks will not be allowed to receive visitors. In emergency situations, visitation can be cancelled without advance notification.

Visitation Procedures

1. Each inmate is allowed only one visit per day.
2. Proper attire is required. No low-cut blouses, tank tops, short skirts or dresses, tight shorts, hats or any other form of provocative dress will be allowed. Shirt and shoes must be worn.
3. All visitors must provide proper state or government issued photo identification (i.e. driver’s license, foreign id or passports) for inmate visitation. Visitation is limited to one adult and one child only.
4. On Site video visitation is available at no cost. A video visit lasts 30 minutes, once a day, once a week. Visitors may only use this system on the inmates assigned visitation day, whenever the inmates have free time.
5. All rules set forth for non-contact visitation shall be adhered to when using the video visitation system. Any lewd, profane or inappropriate behavior shall result in loss of video visitation privileges for the visitor and/or inmate.
6. Visitors can see an inmate only once per visitation day.
7. Visitation sign-up is limited and on a first-come first serve basis. Visitors are encouraged to go online and reserve to reserve a visitation time.
8. An adult must accompany all visitors who are under 17 years of age. Children must be monitored at all times.
9. Visitors are not allowed to bring any personal belongings with them into the visitation area other than their picture ID and/or a set of keys.
10. Visitors are subject to a pat-down search prior to entering the visitation area.
11. Any visitor who refuses this search will be denied entry to visit.
12. Smoking, food, or drinks are NOT allowed in the visitation areas. No personal contact visits are allowed with inmates.
13. Any disruptive or inappropriate behavior by a visitor can result in termination of visitation privileges.
14. All Visitations On-Site and Off-Site are recorded and are subject to being monitored. By engaging in a Visitation, you consent to the recording. Service provider shall not be liable for the unauthorized use or disclosure of recorded Visitations.
Upon arrival for your video conference, please see a staff member. We will direct you to the new conference room for your connection with Butler County.

Don’t worry if this conference room is booked. We now have the ability to checkout a laptop to you and you can choose another conference room to connect with your client.
contractually shortened limitations period as to Thompson’s ADA, ADEA, and state law discrimination claims, but not as to her Title VII claims.

**The Sixth Circuit’s Decision**

The Sixth Circuit, relying in large part on its 2019 *Logan* decision analyzing Title VII, held that Thompson’s ADA and ADEA claims were timely because the applicable limitations periods could not be contractually shortened. The court held that Thompson was permitted the full 300-day limitations period in which to assert her claims through a charge of discrimination, which she satisfied. Because her lawsuit was then filed before the expiration of the time period provided in her notice of dismissal and right-to-sue letter (90 days), the court found that her lawsuit was timely—despite the contractually shortened six-month limitations period.

The court made clear that the ADA’s and ADEA’s limitations periods were “substantive, non-waivable rights” and refused to displace the 300-day and subsequent 90-day limitations periods applicable to the statutes. The court’s decision relied on both the express language of the ADA and ADEA and the court’s previous decision in which it held that “where statutes that create rights and remedies contain their own limitations periods, the limitation period should be treated as a substantive right,” which may not be waived. Despite finding that Thompson’s claims were timely in the face of the contractually shortened limitations period, the court still affirmed dismissal of her ADA and ADEA claims based on the evidence presented.

**Key Takeaways**

While this decision removes two more federal employment laws from being subject to contractually shortened limitations periods, it does not—on its face—affect analogous state laws. In each of the states that comprise the Sixth Circuit, the limitations periods for certain state law employment discrimination claims may be shortened by agreement of the parties. Michigan, Ohio, and Tennessee, have all enforced contractually shortened limitations periods, with six months being a common time frame.

In Michigan, for example, it has become an oft-used practice to include a shortened limitations period in many employment agreements and handbook acknowledgements, after a 2005 Michigan Court of Appeals decision. There have, however, been recent developments with respect to Ohio’s limitations period for employment discrimination claims. Kentucky, while not as permissive as the other states, may enforce parties’ agreements to shorten limitations periods, but only if the plaintiff is still permitted a limitations period equal to half the length of the statutorily provided limitations period. By statute, more restrictive limitations periods are unenforceable. Accordingly, even in the face of the *Thompson* decision, agreements to shorten limitations periods in which applicants or employees may assert claims may still be advantageous.

*This article was drafted by the attorneys of Ogletree Deakins, a labor and employment law firm representing management, and is reprinted with permission. This information should not be relied upon as legal advice.*

Additional Law Library Hours

Beginning the week of March 8, the Law Library will be open on site more hours and days! Our physical facility will now be open Monday-Thursday and we will continue to serve you remotely on Fridays. To start, on Mondays we will be open 7am-3pm and on Tuesdays, Wednesdays and Thursdays we will be open 7am-4pm. We will add the additional hour on Mondays soon and then hope to expand to a full 5-day reopening in the coming weeks. We appreciate your continued patience and flexibility until then. On site access will still be limited to our subscriber, government and attorney patrons for now. We’re excited to serve you more hours and days soon!

CBA Bundle Renewals

Please remember to renew your Law Library subscription when you renew your CBA membership if you participated in the HCLL/CBA bundle last year. You should be receiving renewal information from the CBA soon if you haven’t already. Library subscribers who selected the bundle last year will have until the close of the CBA renewal cycle to renew the bundle for the period of May 2021-May 2022. Please contact Lauren with any questions.

Copy Cards

Beginning March 1 we will resume charges for prints and copies at the Law Library. Your existing copy cards will still work in the machines. Please don’t hesitate to ask at the desk if you need a new one.

Computer Lab Renovations

A revamped computer lab is on its way! In the next month we should be installing new work stations with dividers and new chairs in the Law Library computer lab. This is one of the last pieces of our ongoing renovations project and we’re excited to debut it for you! We plan to have most of the work done during days we are not open on site to minimize disruption to patrons. We are also upgrading our chairs in the Boardroom to make your experience in the space more comfortable. We hope to have everything completed before the end of March. Stay tuned for more details!

April Board Meeting

The Hamilton County Law Library Resources Board will hold its regular April quarterly board meeting on Friday, April 16, 2021 at 10:30am via Zoom. Meetings of the Hamilton County Law Library Resources Board are open to the public. Call in information for the meeting is below. Should you wish to attend, please email Imorrisson@cms.hamilton-co.org for the password.

Dial by your location
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+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)

Meeting ID: 863 0269 3595
Subscriber Benefits

All subscribers have access to the following valuable resources and services:

- Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time
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- Wireless network throughout the Law Library
- Polycom videoconferencing
- Eight meeting rooms with speaker phones
- Professional reference service by our law librarians, available via e-mail, telephone, and in person
- Free document delivery by fax or e-mail of print and electronic materials
- CLE seminars throughout the year, on legal research and substantive topics
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In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer Cheetah™

Upcoming CLEs—Live Interactive Webinars

Friday, April 23, 2021, 12 PM–1 PM
The Law of Boxing
Presenter: Attorney Carl Lewis
1.0 general credit applied in OH and KY.

Topical Updates

We are excited to announce the new design of the Topical Updates for 2021. If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- The Supreme Court & Con Law
- Torts

If you have any questions about this please feel free to contact our Reference Librarian, Amy Kurlansky.
Disability Law Resources

Law Library subscribers have access to a variety of Disability Law Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

Accessibility under the Americans with Disabilities Act and other laws: a guide to enforcement and compliance
KF5709.3.H.5 A924

Advising the elder or disabled client: legal, health care, financial, and estate planning
KF390.A4 F7513

Americans with Disabilities Act: employee rights and employer obligations
KF 3469 .A96

Americans with Disabilities Act: public accommodations & commercial facilities
KF3469 .A961

Americans with disabilities cases
KF3469 .A5 A45

Americans with disabilities decisions. Compiled by the publisher’s editorial staff
KF3469 .A513

Americans with disabilities digest
KF3469 .A513 A45

Civil mental disability law, evidence and testimony: a comprehensive reference manual for lawyers, judges and mental disability professionals
KF3828 .P37 2010

Consent to treatment: a practical guide
KF3827 .I5 R68

Disability handbook
KF3649 .B35

Handling a social security disability case
KF0344 .H36 2013

Mental disability law: civil and criminal
KF480 .P4783

Ohio special education law
KF0395.9.H3 A5 2015

Social security disability advocate’s handbook
KF3646.5 .W552

Social Security disability: from start to finish
KF0344.A75 S634 2014

Understanding disability law
KF480.Z9 W43 2007

EBSCO
Complete IEP Guide
Nolo’s guide to social security disability: getting and keeping your benefits
Nolo’s IEP guide: learning disabilities

Fastcase
Americans with Disabilities Act (ADA) Handbook

Overdrive E-Books
Americans with Disabilities Act: Employee rights and employer obligations, vols. 1 & 2
Mental Disability Law, vols. 1-5
Representing People with Mental Disabilities

Westlaw
Disability Discrimination in Employment
Disability Law Compliance Manual
Disability Law Compliance Report
March 2021 Law Library Newsletter

Upcoming Events:
Friday, April 23, 2021, 12-1 PM: The Law of Boxing (Interactive Webinar via ZOOM)