

Employment Law Update

Limit Your Employment Liability: Two New Cost-Saving Trends

With employment laws expanding and jury awards increasing, healthcare providers need to think creatively for strategies to manage the risks of employment lawsuits. While healthcare employers have required employees to sign arbitration agreements for many years (which is still a popular and effective risk management tool), employers are now beginning to implement other types of employment agreements – ones that shorten the time an employee has to sue for employment-related claims, and that waive an employee's right to try their case to a jury.

To the Point.

- *Consider requiring a jury trial waiver in the hiring process.*
- *Consider requiring job applicants to sign agreements to shorten statutes of limitations.*

1. Jury Trial Waivers

A cost-saving new trend among employers is requiring employees to sign jury trial waivers as part of the employment application. Jury trial waivers require employees to waive their right to have a jury decide their employment-related lawsuit. Instead, the employees agree to have their case decided by a judge.

There are significant advantages of jury trial waivers for employers. First, jury trial waivers alleviate the concern of runaway jury awards. The waivers place the verdict at trial in the hands of a judge, who is less likely to be persuaded by emotions and more inclined follow the law and legal precedent. Second, presenting a case to a judge (as opposed to a jury) results in lower defense costs, by eliminating the need to prepare and present jury instructions, to prepare for juror questioning, and to conduct the jury selection process.

Courts in Ohio and federal Sixth Circuit (Ohio, Kentucky, Michigan & Tennessee) have upheld jury trial waivers in employment applications where the language is conspicuous and clearly drafted. The employee must be given sufficient time to review and sign the agreement, and the waiver should be mutual – meaning the employer likewise agrees that to waive a jury trial for any dispute it may have against the employee.

Employers who are interested in this option will want to compare and contrast waivers of jury trials to arbitration agreements, which both avoid the risk of runaway juries. Arbitration agreements require employees to agree to arbitrate a dispute outside of the court system altogether, before a neutral arbitrator who renders a final and binding decision. Arbitration generally is conducted more quickly and resolved for less cost than court litigation. Its downsides include undefined rules of evidence, limited rights of appeal, and an arbitrator's fees. Waivers of jury trials, on the other hand, leave the case in the court system, which is a slower process that could take two years to resolve, but offers clear cut rules of evidence and discovery, opportunities for early dismissal through the filing of motions, and established rights of appeal. Either option can be advantageous for your bottom line.

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2. Shortened Statutes of Limitation

Employers are also implementing agreements to shorten statutes of limitation with their employees, which can be another savvy and effective risk management tool. In these types of agreements, employees agree to a shortened time period for filing a lawsuit against their employer, for example, a time limit of only *six months*. This can significantly reduce exposure, where statutes of limitations can be anywhere from 2 to 15 years. Obviously, the ability to get a claim dismissed as untimely is a tremendous advantage for an employer. It can result in resolution of the lawsuit at an early stage, before the court even considers the substantive facts of the case, thereby saving time, cost, and human resources.

The federal Sixth Circuit Court of Appeals recently upheld an agreement for a shortened, six-month statute of limitations period for employment-related claims. The court relied upon the fact that agreement (which was in an employment application) was clearly drafted and stated in all bold and capitalized letters that the provision should be read carefully. Courts will also be more inclined to uphold these types of agreements if the shortened limitations period is mutual, and the agreement does not impose additional restrictions that are onerous or manifestly unfair.

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