

# Waivers Limiting Workers' Time to Sue Draws Fire

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A growing number of employers are adding a controversial element to their job applications: a waiver in tiny print that says employees can sue the company only within six months of a particular incident. That waives their rights to any contrary statute of limitations provided under state and federal laws, a tactic that is stirring yet more workplace controversy and litigation.

Management-side lawyers see the waivers as a good tool to help employers better manage lawsuits in a more predictable fashion, and ward off more claims by giving people less time to sue. But the tactic has employee-rights attorneys reeling.

"Lawyers need to be aware of this practice, and they need to get copies of personnel files right away so they can know right away whether their clients have waived their rights or not," said Ohio employee-rights attorney Denise Knecht, who recently challenged such a waiver on behalf of a DaimlerChrysler Corp. employee, but lost.

Knecht, a sole practitioner in Cleveland, is representing a female Chrysler employee who is suing Chrysler and her union for sexual harassment and discrimination at a Toledo plant. A federal judge recently dismissed some of her claims against Chrysler, in part because of the six-month limit listed on the job application. *Sanders v. DaimlerChrysler Corp.*, No. 3:05 CV 7056 (N.D. Ohio).

Chrysler officials defended the time limit, saying many companies are doing it, and, several courts have upheld it.

"For the most part, the practice has been upheld by the courts, and we think it fairly balances the interest of the corporation and employee," said Chrysler spokesperson Mike Palese. "As you know, we live in a very litigious society, and at the end of the day, it's very important for Chrysler to be managing a legal system that's predictable." Chrysler's statute-of-limitations waiver has been upheld a number of times.

In 2005, the Michigan Court of Appeals ruled that an age discrimination lawsuit against Chrysler was time-barred because of the six-month limitation listed in the job application. The court held that the limitation was allowed under Michigan law. See *Clark v. DaimlerChrysler Corp.* No. 252765 (Mich. Ct. of Appeals).

Palese noted, "This is not a rare or unusual practice in corporations." Job applications downloaded from numerous company Web sites show that several companies are including such waivers on their job applications.

These companies include Spectrum Health in Grand Rapids, Mich.; The Dutchman Hospitality Group in Walnut Creek, Ohio; P.R.S. of Tennessee Inc., of Nashville, Tenn.; and Great Lakes Power of Mentor, Ohio. Great Lakes Power declined comment. Officials from the other companies were unavailable for comment.

Management-side attorneys, meanwhile, defended the efforts of companies that are using time limits as a tool to get workplace litigation under control.

"It's obviously a good thing for employers to do," said Brian LaFratta, of the Chicago office of Atlanta's Fisher and Phillips. He said employers are already bombarded with lawsuits, and burdened by statute of limitations as high as five years. "So you're cutting off the amount of time that employees can sue you." And it's the growth in litigation that's largely driving more employers to impose shorter time limits to sue, said Read Gignilliat, management-side attorney at Atlanta's Elarbee, Thompson, Sapp & Wilson.

"I think that is a big reason for it, if not the primary reason," said Gignilliat, who sees time limits as a "useful tool for risk management. "You have an idea when a certain incident can rise to a potential claim. It forces the employee to decide whether he or she is serious about pursuing the claim."

