

# Limiting Statutes of Limitations in Arbitration Agreements

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To mitigate risks associated with employment-related law suits, many employers have relied on arbitration agreements for dispute resolution to ensure confidentiality and avoid a jury trial. Some employers, however, have realized the downside to these agreements: they had to pay most of the arbitration costs and rulings were not necessarily more favorable than those from civil court. Some employers also felt arbitrators were unwilling to dismiss weak cases in lieu of conducting a hearing. Employers began using other types of agreements, including those designed to limit the scope of available remedies (which were largely unsuccessful), bar class action lawsuits, eliminate the right to a jury trial, and contractually limit the statute of limitations.

Recently, increased attention has been paid to the last-mentioned alternative, with good reason. As time goes by, a lawsuit becomes more difficult to defend because evidence is lost, witnesses move away, and memories fade. If a potential plaintiff must file his or her lawsuit within a shortened period, the employer likely will be in a better position to investigate the claims and have more success gathering evidence to build a strong defense.

Case law on an employer's ability to limit the statute of limitations for employment-related lawsuits by contract is developing, but, at this point, agreements are not required to be freestanding. Courts have held that an employer may include a contractual statute of limitations period in an application for employment or an employee handbook, provided there is an acknowledgement of receipt. The agreement must be clear, leave the potential plaintiff reasonable time to file a lawsuit, and cover all claims arising out of employment or termination.

As this area of law is evolving rapidly, employers should work with competent counsel to institute a contractual limitations period for job applicants or employees.

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