

## Sooner is Always Better than Later: Lawsuits

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Although some things in life are worth the wait, lawsuits are not one of them. If your company is going to be sued, it's almost always better for it to happen sooner rather than later. There are several practical reasons for this; I'll list just a couple here. First, it's much easier to defend a claim while evidence (and memory) is still fresh. Early fact investigation will yield more information and a better evaluation of a suit's relative strengths and weaknesses. Second, it increases predictability, especially for smaller companies. For larger companies, litigation expenses may be the cost of doing business, but for others, the cost of litigation can be debilitating – especially when unsuspected. There is nothing worse than a small business getting hit with a difficult lawsuit right after choosing to bear additional market risks. But whether a company is large or small, increased predictability puts it in a better position to create and execute a business plan.

All this begs the question: Is there anything you can do to ensure that claims against your company are brought sooner rather than later?

Ordinarily, an employee must bring his or her claim against your company, if at all, within the applicable statute of limitations period – two years, five years, whatever it may be. In many jurisdictions, however, an employer and employee can contractually agree to a shorter limitations period, under both state and federal law, so long as the shorter period is reasonable.

A quick review of relevant case law shows that courts have approved contractual limitation periods as short as six months. According to these courts, six months gives an employee sufficient opportunity to investigate their claim(s), ascertain their damages, and file their lawsuit, without unreasonably limiting the employee's substantive right to file a claim. Other courts are not so generous, however. They require contractual limitation periods to be at least one year. If these holdings apply in your jurisdiction, don't fret – one year is still sooner (and better) than later.

For the West Virginia employers in the room, the enforceability of a contractual limitations period is a bit of a gray area. Although the Supreme Court of Appeals has generally approved agreements limiting an applicable statute of limitations, the Court has never ruled on such an agreement in the employment context. Given that the Court has never limited the right to shorten a limitations period by contract, West Virginia employers may be wise to include contractual limitation provisions in their employment applications or agreements. Doing so will give them one more tool should a legal dispute arise.

There is also another major benefit to an agreement limiting an applicable statute of limitations: If an employee fails to file their claim(s) within the shortened limitation period, the employee will have forfeited claims against their former employer. This forfeiture won't necessarily prevent the employee from filing a lawsuit against the employer, but it may help drive down a suit's settlement value and provide ammunition for getting the suit dismissed at an early stage.

For all these reasons, I implore you: consider whether you (or your client) could benefit from a shortened limitations period.

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