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Sixth Circuit: No Way To Agree To Shorten FLSA Statute Of Limitations

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In 2004, a Sixth Circuit decision, *Thurman v. DaimlerChrysler*, drew much attention by upholding in the context of a Title VII and state law discrimination claim a provision on the employer's employment application that read:

> I agree that any claim or lawsuit relating to my service with [DaimlerChrysler] or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary.

That's right, that case held that an employer can reduce employee-related liability by shortening the period of time in which employees could file claims against it. Surprisingly, few employers seem to have implemented this clever measure.

Just last week, though, in a decision that did not reference the *Thurman* decision, the Sixth Circuit held in *Boaz v. FedEx Customer Information Services, Inc.* that an employer and employee cannot shorten the statute of limitations period for Fair Labor Standards Act claims – two years, or three years for willful violations. Among other things, the court wrote, FLSA claims are different than Title VII claims, for example, because they cannot be privately released and waived.

The decision is not shocking as employees generally cannot contract out of any rights under the FLSA. Employers who have such shortening provisions in their applications or other documents should review those provisions with counsel in light of this new decision. And employers who have never explored this strategy should consider it with counsel, at least for discrimination and other non-FLSA claims.

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