

Can Employers Shorten Discrimination Claim Deadlines by Contract?

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Every legal claim has a time limit within which a person must file a lawsuit—or a complaint with a government agency—or give up the claim. This deadline is known as the “statute of limitations,” as it is often a time limit written in the statute that creates the legal claim. There are a variety of reasons legislators have for putting limits on when a person can file a complaint in court or with an agency. For example, the more time passes, the harder it becomes to find witnesses who remember what happened and the evidence that proves it, therefore making it less likely that the court or agency will be able to discern the truth of the case. There is also an argument that potential defendants should not have the threat of litigation hanging over them forever, and that statutes of limitations provide “repose” from that threat. On the other hand, a person who has been wronged may not realize it immediately, or may not know whether the wrongdoing was a legal violation without doing some research or consulting a lawyer. Once someone knows that they might have a legal claim, it takes time to decide whether to act on it, to collect evidence, and to put together a complaint to file in court or with an agency. Employees who sue their employers face the risk of being fired or otherwise retaliated against, and therefore may want to find a new job before filing a lawsuit, which takes additional time. Legislators must balance these interests in determining the appropriate statute of limitations for each law.

Statutes of Limitations for Employment Discrimination

Employment non-discrimination statutes tend to have relatively short statutes of limitations. For example, the federal laws which prohibit [employment discrimination](#) on the basis of race, color, national origin, religion, sex, age, disability, and genetic information all require an employee to file a charge with the Equal Employment Opportunity Commission (EEOC) [within 180 days of the discriminatory action](#), or within 300 days if it occurs in an area where a state or local law also prohibits the same discrimination. Employees are required to file a charge with the EEOC or an analogous state or local agency before they can file a lawsuit in court under these laws, so if they miss the 180 or 300 day deadline, they cannot enforce their rights under [Title VII](#), the [Americans with Disabilities Act \(ADA\)](#), the [Age Discrimination in Employment Act \(ADEA\)](#), or the [Genetic Information Nondiscrimination Act \(GINA\)](#). [1]

The state laws prohibiting employment discrimination also have strict time limits for filing charges with the state or local enforcement agencies to preserve rights under these statutes. Most state laws have 180- or 300-day limitation periods, and only [eight state non-discrimination](#) laws have filing deadlines over 300 days (one year in California, Florida, Idaho, Minnesota, New York, Oregon, Rhode Island and West Virginia). The District of Columbia has a one year limitations period for filing a lawsuit or administrative charge, and does not require that an employee file with the administrative agency first. Some states have recently expanded deadlines for sexual harassment claims only, as explained below.

These short statutes of limitations can be especially difficult for employees who face [sexual](#)

harassment—a type of sex discrimination—at work. First, the threat of retaliation is high: over seventy percent of individuals who filed sexual harassment charges with the EEOC in 2016 and 2017 also filed charges claiming retaliation based on the fact that they reported the harassment either internally or to the EEOC and then suffered further discriminatory treatment. A [slightly earlier study](#) similarly found that sixty-five percent of EEOC charges of sexual harassment included retaliatory termination claims. [Another study](#) found that participants were thirty-seven percent less likely to recommend a hypothetical candidate for a promotion if she had reported sexual harassment in the workplace, a trend which may influence hiring decisions as well when prospective employers learn of a candidate's prior report. These heightened risks of retaliation increase the need for individuals to secure a new job or upcoming promotion before filing sexual harassment claims, and those processes frequently take months or even years to complete. Additionally, there are various [psychological barriers](#) to reporting sexual harassment, including feelings of shame or guilt, the desire to minimize or deny what happened, lack of knowledge as to what qualifies as sexual harassment, and not wanting one's story to become public. Furthermore, the standard for establishing actionable harassment requires that an employee prove they were subjected to [severe or pervasive harassment](#) because of a protected characteristic such as sex, so employees often are hesitant to complain about harassing conduct because they are not sure it rises to that level. When they finally do complain, [courts may say](#) they waited too long and did not avail themselves of opportunities to stop the harassment sooner by complaining to their employers, thus giving their employers a defense to liability. Figuring out the optimum time to complain about harassment in the workplace is therefore challenging in many ways, but the statute of limitations and the availability of an affirmative defense premised on delayed use of internal procedures for complaining about harassment, require that employees not wait too long or they will lose their ability to obtain relief in court.

With increasing awareness about the prevalence of sexual harassment and the barriers to reporting in recent years, some legislatures have increased statutes of limitations for filing sexual harassment claims. [California](#) and [New York](#) were already two of the few states which provided over 300 days to file employment discrimination claims, with a one-year statute of limitations in both states. In 2019 both passed bills to extend the statutes of limitations for sexual harassment claims only, from one to three years. That same year in Congress, Representative Katherine Clark and Senator Patty Murray introduced the [BE HEARD Act](#), which would have expanded the statute of limitations for Title VII, the ADA, the ADEA, and GINA from 180 or 300 days to 4 years or 4 years and 120 days (depending upon whether an analogous state law exists). The bill never made it to a vote in either house of Congress.

Can Employers Shorten an Employee's Deadlines to File Discrimination Suits?

Despite the already-short deadlines on employment discrimination claims, employers sometimes attempt to shorten employees' statutes of limitations by including provisions in employment contracts that say the employee cannot file a claim against the employer after a certain amount of time, such as six months. Employers sometimes include similar provisions in job applications, which may become a binding contract for employees who do not sign a separate employment contract after accepting a job offer. Unfortunately, there is no uniform answer to whether such a provision is legally enforceable—it depends on what state the employee works in (or what state's law governs their employment contract) and what law they are trying to file a claim under.

Imagine a worker who was denied a promotion because she is a Black person. She would have claims against her employer for race discrimination under both Title VII and a federal law that prohibits race discrimination in contracting, referred to as [Section 1981](#). Imagine she works in a state that enforces its own non-discrimination law, so her deadline to file her Title VII claim with the EEOC is 300 days after she learned she was not being promoted. The Section 1981 claim has a much longer deadline of four years, and can be filed in court without first filing an agency complaint. But what if her

employment contract says that she can only bring claims against her employer within six months of any discriminatory event?

There is no uniform answer, but multiple federal courts have said that the six month provision in the contract is enforceable for the Section 1981 claim, but not for the Title VII claim. For example, a [federal court in Washington D.C. said in 2016](#) that shortening the statute of limitations on a Title VII claim to six months was unreasonable because the employee must go through the process of filing a claim with the EEOC before she can file in court. When someone files a complaint with the EEOC, the agency investigates the claims, and the employee cannot sue the employer in court until the EEOC issues a “right to sue” notice, which typically happens well after 180 days (i.e. 6 months), although the employee can ask for the “right to sue notice” after 180 days. This means that even if our hypothetical employee filed her EEOC charge the day after she was not promoted, and even if the EEOC issued her a right to sue notice promptly on the 180th day or she asked for the notice as early as she could, her contractual 6-month deadline would pass before she was able to sue in court. The six-month limitations period is therefore unreasonable and courts have said it is not enforceable. The Sixth Circuit Court of Appeals [has similarly held](#) that a six-month limitations period on a Title VII claim is not reasonable due to the lengthy filing process with the EEOC. That court also emphasized that Congress included the statute of limitations directly in Title VII and it is specific to the rights created by Title VII, so it cannot be waived by an employment contract. Finally, allowing employers to shorten the statute of limitations would impede uniform national enforcement of Title VII to eliminate workplace discrimination.

The same two cases stated that a contractual six-month limit on filing a Section 1981 claim is both reasonable and enforceable. This is because Section 1981 and Title VII differ in two relevant ways. First, there is no requirement to file a Section 1981 claim with an agency—it can be filed immediately in court. Second, the four-year statute of limitations for Section 1981 is not written into the text of Section 1981, it comes from [a separate provision](#) of federal law which says generally that any cause of action created by federal law after 1990 and without its own statute of limitations has a four-year limitation period. Although Section 1981 and Title VII have very similar goals of eliminating discrimination nationwide, courts are more comfortable enforcing contractual limits on Section 1981’s filing deadline because Congress did not create a statute of limitations specifically for that law like it did for Title VII.

Whether an employment contract can shorten a state non-discrimination law’s statute of limitations differs state-by-state. For example, courts in [Ohio](#) and [Michigan](#) have said that provisions in employment contracts shortening the statute of limitations on potential discrimination claims are enforceable as long as the provisions allow a reasonable amount of time for filing, such as six months. But the New Jersey Supreme Court [refused to enforce a contract](#) that shortened the two-year statute of limitations for its Law Against Discrimination, because allowing such provisions would frustrate “the public’s strong interest in a discrimination-free workplace,” which is protected by the law. In 2018, Vermont strengthened its legal prohibition on sexual harassment in the workplace, and included a statement that employees cannot contractually waive any procedural rights or remedies in the law—meaning a provision in an employment contract that shortened the statute of limitations would not be enforceable in a sexual harassment case.

In sum, whether an employer can shorten an employee’s time to sue depends on numerous factors, including what state’s law governs the contract, which law the employee is attempting to sue under, and the length of the time period stated in the employment contract. Even under federal laws like Title VII, different federal courts may interpret the same law in different ways until the Supreme Court rules on the issue. Anyone who is considering [signing an employment contract](#) or wondering whether a provision in their current contract is valid, or who is concerned about when to file a discrimination charge, should contact a lawyer to find out about the laws in their area.

[1] The federal [Equal Pay Act](#) has a two year statute of limitations and does not require filing with the EEOC before filing in court.