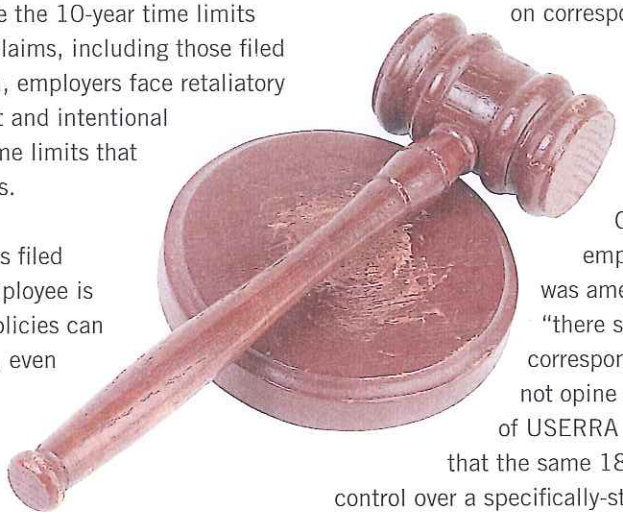
Can a Lawsuit Filed Years After the Termination of an Employee Be Timely?

In a word, yes. Can an employer do something about it? In many cases, yes.

Employee claims are subject to a variety of time limits (i.e., "statutes of limitations") depending on the type of claim. At the short end, a 180-day time limit controls. The Human Rights Acts enacted by Illinois and Missouri use this time limit, as does the federal National Labor Relations Act and the federal Occupational Safety & Health Act.

At the other end of the spectrum are the 10-year time limits that control many written contract claims, including those filed in Illinois and Missouri. In between, employers face retaliatory discharge, defamation, oral contract and intentional interference claims controlled by time limits that typically range from one to five years.



The task of defending against claims filed years after the termination of an employee is daunting. While record retention policies can be geared to address the possibility, even modest rates of employee turnover in the ranks of management complicate defense efforts.

A recent decision by the U.S. Court of Appeals for the Sixth Circuit (Cincinnati, Ohio) underscores a technique used by employers to limit the time in which an employee can sue his/her employer. In Oswald v. BAE Industries, No. 11-1119, unpublished opinion 5/16/12, a terminated employee sued his former employer under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). At the time the terminated employee filed his lawsuit, USERRA did not specify the time limit in which claims had to be filed, meaning that a "general" four-year time limit controlled his claim. However, the ex-employee's original employment agreement contained a term which provided:

> *I . . . agree that any action, claim or suit against (BAE Industries) arising out of my application for employment, employment, or termination including, but not limited to, claims arising under State or Federal civil rights statutes must be brought within one hundred and eighty (180) days of the event giving rise to the claim or be forever barred. I waive any and all limitation periods to the contrary.*

Enforcing the 180-day time limit (and dismissing the ex-employee's USERRA claim as untimely), the Court observed that "there is nothing inherently unreasonable about a six-month limitations period contained in an employment agreement." One would expect as much, given the fact that a number of state and federal statutes impose the same time limit on corresponding employee claims.

It should be noted, however, that not all employee claims can be controlled by a contractual time limit. In the Oswald case itself, the Court noted that after the terminated employee filed his lawsuit, USERRA was amended to specifically provide that "there shall be no time limit" for filing corresponding claims. While the Court did not opine as to how it might rule if this version of USERRA was at issue, there is serious doubt that the same 180-day contractual limitation would control over a specifically-stated statutory right.

The 300-day time limit controlling claims filed with the U.S. Equal Employment Opportunity Commission (EEOC) and the two-year time limit tied to most state and federal wage claims serve as additional examples of specifically-stated statutes of limitations. While a 180-day contract limitation should not be expected to control every statute-specific time limit, an extensive list of other employee claims, some mentioned at the beginning of this article, are governed by "general" time limits. Case law makes clear that the "general" time limits controlling these claims can be contractually restricted, and any help mitigating against the risk of claims that can be filed years after an employee's termination is worth considering.

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Davis & Campbell law firm, located in Peoria, Illinois, exclusively serves business clients in employment, labor, employee benefits, corporate and tax matters.