



# N.J. Supreme Court Limits Broad Extension of Statute of Limitations for Employment Retaliation Claims

## Articles

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In an important decision issued in January 2010, the New Jersey Supreme Court in *Roa v. LAFE* reinforced prior rulings that, under New Jersey's Law Against Discrimination ("NJLAD"), the two-year time clock to file an employment retaliation lawsuit begins to run on the date that a discrete retaliatory act, such as a discharge, took place. The Court took a significant step by refusing to allow the discharged employee to use a retaliatory action that happened after discharge - in this case, benefits cancellation - to sweep prior events, such as the actual discharge, back into the case if they occurred more than two years prior to filing of the suit.

Sound a bit technical? Well, it is, but it is also a good decision for employers in New Jersey. The NJLAD's statute of limitations bars a claim that is filed more than two years after the allegedly discriminatory act. However, our courts created an exception known as the "continuing violation theory." That doctrine provides that when an individual experiences a continual, cumulative pattern of wrongful conduct, the statute of limitations does not begin to run until the last wrongful act takes place. So, even decades of supposedly discriminatory acts can be sued upon as long as some act fitting the pattern occurred within the past two years.

The specific question the *Roa* decision dealt with was: What if an employee files suit within two years of a post-discharge discriminatory act, but the discharge itself is outside the two-year limit - does that mean the employee can now sue for everything, including the discharge? The *Roa* decision says: "No."

In *Roa*, the employee was discharged more than two years before filing of the complaint of discrimination. However, after termination, the employer canceled his health insurance; yet, the employee did not find out about this cancellation until later, at a date that, critically, was within two years of filing the lawsuit. The employee sued, not just for canceling the health insurance but also for the discharge itself, despite the fact that the discharge was more than two years earlier. The employee tried to argue the continuing violation theory, and asserted that all of the acts should be considered in the suit, even ones that occurred more than two years ago (i.e., the discharge), as a pattern of continuing conduct.

The New Jersey Supreme Court disagreed. While the Court held that the employee could sue for having the health insurance canceled, the Court also held that the suit could not include the discharge claim. Specifically, the Court held that his retaliatory discharge claim was a discrete act barred by the two-year statute of limitations. As such, this later discrete act, of canceling health insurance, could not revive a time-barred claim of retaliatory discharge.

Why is this good for New Jersey employers? Indeed, at first blush, this case seems to have some “bad news”, as the Court ruled that a post-discharge act of retaliation, such as canceling health insurance, is a valid claim. But, that ruling was not a surprise and is consistent with earlier opinions. Yet, in what was a favorable ruling for employers, the Court refused to extend the continuing violation doctrine any further -- the Court made it clear that an employee can not use that theory to boot-strap older claims based on earlier discrete acts. The Court reaffirmed that employees must sue within two years of each discrete act of discrimination, and that the continuing violation doctrine is limited to cases of continual harassment or mistreatment that do not rise to the level of discrete acts. (Examples of discrete acts include demotion, suspension and denied promotion, as well as discharge).

One cautionary note: the Court did hold that evidence of time-barred claims may be used to support claims that are not time-barred. In *Roa*, that means that while the employee may not recover any money damages for the discharge, there still can be testimony at the health insurance cancellation trial about his wrongful termination, to show the employer acts in a discriminatory manner.

If you have any questions about this decision, or would like our assistance in providing advice or guidance with respect to the NJLAD and other employment laws, please contact a member of Archer’s Labor and Employment Department at (856) 795-2121.

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