



## **One Year Statute of Limitations in Labor Law 740 Trumps the One-Year-Ninety-Days Statute of Limitations in General Municipal Law 50-e(5) (Incorporated Into the Health & Hospitals Corporation Act)**

The First Department, over a dissent, determined plaintiff's action was time-barred pursuant to Labor Law 740 and was not covered by Labor Law 741. Plaintiff sued the NYC Health & Hospitals Corp (HHC) after she was terminated. She alleged her termination was in retaliation for her objecting to the documentation submitted concerning human-subject research programs. Plaintiff's job entailed reviewing the documentation and did not involve caring for patients:

We turn first to the claim under Labor Law § 740. That cause of action is time-barred under the terms of the statute itself because ...HHC terminated petitioner's employment on April 6, 2009, and petitioner filed her petition for leave to file a late notice of claim on July 2, 2010, after the expiration of the one-year statute of limitations incorporated into the statute (see Labor Law § 740[4][a]). General Municipal Law § 50-e(5), made applicable to HHC by HHC Act § 20(2), permits a court to entertain a motion for leave to serve a late notice of claim only within the applicable limitations period, not, as here, after the limitations period has expired. Contrary to Supreme Court's view, the one-year statute of limitations that is part of section 740 takes precedence over the one-year and 90-day limitations period set forth in the HHC Act ... .

Although not time-barred, the claim under Labor Law § 741 is also without merit as a matter of law. Section 741 affords to a health care "employee," as defined in the statute, a cause of action against the employer for "retaliatory action" (§ 741[2]) taken "because the employee does any of the following:

"(a) discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; or

"(b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care."

Section 741 defines the term "employee," as used in that statute, as "any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration" (§ 741[1][a] [emphasis added]). The Court of Appeals, describing this definition as "exactly specific" ... . [Matter of Moynihan v New York City Health & Hosps Corp, 2014 NY Slip Op 06038, 1st Dept 9-4-14](#)