

EMPLOYMENT LAW UPDATE

February 22, 2010

Issue No. 225

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CALIFORNIA LAW

Employers may not be liable for attorneys' fees in FEHA cases if the employee recovers less than \$25,000 in damages

Chavez v. City of Los Angeles (January 14, 2010)

By Helen M. McFarland

Under the Fair Employment and Housing Act ("FEHA"), an employee plaintiff who prevails against her employer in a suit alleging discrimination, harassment, or retaliation is normally entitled to receive the attorneys' fees incurred in her lawsuit. This FEHA fee provision is intended to allow plaintiffs of limited means to pursue meritorious claims and to encourage litigation of claims that may benefit the public. Accordingly, plaintiff Robert Chavez expected to recover his attorneys' fees when he received a judgment in his favor against his former employer, the City of Los Angeles.

However, Mr. Chavez recovered damages of only \$11,500 and sought attorneys' fees of \$870,935.50. Despite a finding that the City had retaliated against him under FEHA, the trial court denied Mr. Chavez's request for any of his attorneys' fees, even though his attorneys had worked on his case for almost five years, through several motions, a jury trial and appeal.

The trial court relied on Code of Civil Procedure §1033(a), which gives a court discretion to award costs, in whole or in part, if the prevailing party recovers a judgment that is less than \$25,000. This code section applies if the plaintiff filed suit in "Unlimited Jurisdiction," which means the plaintiff indicated that she believed she would recover more than \$25,000 in damages.

Reversing the Court of Appeals, the Supreme Court upheld the trial court's decision to deny Mr. Chavez's request for attorneys' fees. It found no irreconcilable conflict between section 1033(a) and the attorneys' fee provision in FEHA. The Court explained that the purpose of section 1033(a) is to encourage plaintiffs to bring their actions as limited civil actions whenever it is reasonably practicable to do so. There is no reason that FEHA claims with limited damages should not similarly be prosecuted under the rules set forth in limited jurisdiction.

In evaluating whether attorneys' fees should be awarded, the *Chavez* Court instructed courts to give due consideration to the policies and objectives of FEHA and to consider the extent of a plaintiff's success, including whether a plaintiff has prevailed on some claims but not others, and whether there was any broad public impact or significant benefit to anyone other than the plaintiff.

This case is a victory for California employers, which, in the past, faced the prospect of substantial attorneys' fees awards even when the plaintiff's recovery was relatively modest. This risk impacted even employers who settled before trial as plaintiffs argued that their likely fee award increased the settlement value of the case. While the potential for a fee award to the plaintiff will remain an important consideration in evaluating the risk presented by an employee's FEHA lawsuit, the *Chavez* case injects some welcome common sense into the analysis.

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