

## EMPLOYMENT LAW UPDATE

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### ***Schifando v. City of Los Angeles*** ***(December 2, 2003) 03 CDOS 10290***

#### ***City Employee Is Not Required To Exhaust Both State And Municipal Administrative Remedies Before Suing His Employer For Discrimination Under FEHA.***

*By David P. Borovsky and Jason A. Geller*

Steve Schifando, a city employee who alleged employment discrimination, chose to bypass the City of Los Angeles' internal grievance procedures which provided administrative remedies, and instead filed his charges directly with the Department of Fair Employment and Housing ("DFEH"). After receiving his "right to sue" letter from the DFEH, Schifando filed suit in civil court alleging discrimination under FEHA.

The City argued that Schifando had failed to adequately exhaust his administrative remedies, which precluded him from filing suit. The California Supreme Court found for Schifando, reasoning that there was no logical reason to require employees to navigate two separate administrative processes. Thus, where a **public** employer has internal grievance procedures available to employees, the employees can treat them as optional, and file charges directly with the DFEH. Although the holding in ***Schifando***

appears to be limited to municipal employees, the rationale could extend to private employers who have "mandatory" internal grievance procedures. Thus, the application of the ***Schifando*** case to private employers remains to be seen.

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