

STATUTES OF LIMITATIONS**Clear-cut rule for statutes of limitations: right-to-sue notices**

by Nicole C. Baldwin and Jing Li

California employment law is becoming increasingly complex. Without clear lines in the sand, employers constantly struggle to stay apprised of the ever-shifting legal framework. Employee rights are abundant while employer protections are highly limited. However, the California Legislature has given you the important protection of the statute-of-limitations defense.

That protection has now become a hard-and-fast rule on which you can rely with confidence following a recent case. Specifically, the case provides much-needed clarification regarding the one-year statute of limitations for employment discrimination claims filed under the California Fair Employment and Housing Act (FEHA).

Statutes of limitations

The term “statute of limitations” refers to the legal rules that set forth the deadline in which parties are required to file a lawsuit. Different claims may have different statutes of limitations; therefore, if a party fails to file suit within the required time period, it waives the right to file some or even all of its claims. Only under very limited circumstances will a court grant an exception to that rule and extend the statute of limitations.

California’s public policy favors the ability of individuals or companies to operate without fear of litigation haunting them indefinitely. Therefore, statutes of limitations protect potential defendants from being forced to dig up evidence or find witnesses from events occurring a long time ago. Parties are further protected by statute-of-limitation requirements because they are less likely to face the risk of “diminishing value of evidence,” which occurs when the memories of parties and/or witnesses fade following an event. Important facts or evidence may also be lost as time passes. Therefore, California’s public policy encourages a potential plaintiff to file his lawsuit as soon as possible to avoid those risks.

DFEH administrative requirements for FEHA claims

Statutes of limitations must be clear so that individuals can determine when they must execute their right to file suit and employers are made fully aware of any potential liability. In California, a one-year limit is imposed on individuals who wish to file litigation following the issuance of a right-to-sue letter by the California Department of Fair Employment and Housing (DFEH).

The FEHA prohibits discrimination in employment and housing and sets forth a procedural structure to assist the DFEH with reviewing discrimination claims. Before filing a civil lawsuit against an employer based on FEHA violations, individuals are required to file an

administrative claim with the DFEH, which investigates the merits of the claim. Following the investigation, a right-to-sue letter may be issued, giving the individual permission to file a lawsuit. Requesting a right-to-sue notice is an important decision for any would-be plaintiff because once notice is provided, the DFEH will no longer investigate his claim.

Under federal law, the one-year statute of limitations begins when an individual *receives* a right-to-sue letter (i.e., the date the right-to-sue notice arrives in his mailbox). However, California law explicitly states that the clock for the one-year time limit begins ticking “from the date of that notice.”

When does clock begin?

In this case, Michael Hall claimed he was terminated for helping a coworker who allegedly was being sexually harassed by a company supervisor. On December 2, 2004, he filed a complaint with the DFEH, and with support from his attorney, he requested an immediate right-to-sue notice. The notice was issued on December 24, and Hall’s attorney received it December 31. Because Hall became homeless and had a drug-related relapse, he didn’t file his lawsuit until December 30, 2005, six days after the legal deadline.

Hall claimed that “receiving” or “obtaining” a right-to-sue notice should be considered a “critical” requirement for the time limit. His employer, Goodwill Industries of Southern California, urged the court to follow the clear meaning of the statute and argued that the statute could solely be read to require a one-year limit beginning on the date the DFEH issues the right-to-sue notice.

The court agreed with Goodwill Industries and held that the time limit begins from the date the DFEH *issues* the right-to-sue notice (which is the date on the notice) and stated, “If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.” The court noted that although California statutes governing conditions of employment must be considered generally in favor of employees, a proper reading of the statute wouldn’t result in “absurd consequences.” To reach any other conclusion would render the court’s decision a statutory revision rather than a statutory interpretation. *Michael Hall v. Goodwill Industries of Southern California* (California Court of Appeal, Second Appellate District, 3/16/11).

Bottom line

This ruling is a small but important victory for employers in the ever-changing landscape of employment law. It provides more certainty to both employees and employers regarding the statute of limitations for litigating FEHA claims.

The authors can be reached at Carlton DiSante & Freudenberger LLP in San Diego, nbaldwin@cdflaborlaw.com and jli@cdflaborlaw.com. ❖