



CLIENT NEWS BRIEF

October 2011

Number 60

NEW DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING REGULATIONS CHANGE RULES FOR FILING CLAIMS OF DISCRIMINATION

In 2010, the California Department of Fair Employment and Housing (DFEH) proposed procedural regulations for complaints received by the DFEH. After a series of public hearings and comments by the public, the final regulations were approved on September 7, 2011. The new regulations formalize the existing procedural steps for intake, filing, investigation, settlement and prosecution of complaints for discrimination, harassment and retaliation based upon a protected classification in the workplace or in housing. The Regulations took effect October 7, 2011 and are codified in the California Code of Regulations, title 2, sections 10000 through 10066.

The regulations require that complaints submitted to the DFEH: (1) be filed within one year from the date upon which the alleged unlawful practice occurred, unless there is an exception under the law; (2) be in writing; (3) be verified; and (4) outline the facts that give rise to the violation.

The new regulations conform to the above requirements, but also make filing a complaint easier. Some of the changes to the process include:

- *Electronic Filing* - Complaints can now be filed electronically via the DFEH website.
- *Complainant Party Not Required to Sign* - The complaint no longer has to be signed by the complainant, but may be signed by the complainant's attorney or a person designated by the complainant to sign on his or her behalf, unless filed electronically. Complaints filed electronically do not have to be signed. If someone other than the complainant signs the complaint, the complainant must still sign an oath or affidavit that the facts in the complaint are true to the best of his or her knowledge.
- *Liberal Construction* - Complaints will be construed liberally. The DFEH will construe facts to support other claims of harassment, retaliation or discrimination even if such claims are not expressly stated. Consequently, a common defense used by employers to argue that the employee did not comply with the administrative requirement to provide the employer notice of the allegations may no longer be available.
- *Special Consideration for Retaliation* - Retaliation will be given special consideration. If a retaliation complaint is filed after an original complaint of discrimination or harassment, even if it is after the one year statute of limitation, the DFEH will amend the original complaint to include retaliation, thereby precluding any argument that the claim is untimely.

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- *Timeliness Not a Complete Bar*- The DFEH will also accept complaints where the timeliness is questionable and will subsequently determine whether the complaint is timely through the investigation process.
- *Medical Authorization* - The DFEH can require a release of medical records by the complainant in order to analyze a complaint of disability discrimination, but the DFEH will not provide the records to the employer, until such time as an accusation is filed or the documents are subpoenaed.
- *Effect of Prior Waivers* - The DFEH will also accept claims where a prior Waiver Agreement/ Release of All Claims has been signed and will determine if the waiver is valid.
- *Amendments Allowed* - All open complaints may be amended to add, delete or change bases, allegations, facts or wording; correct a name; or add a group or class to an individual complaint.

The regulations also outline the investigation, conciliation, mediation and filing of accusations by the DFEH.

In the past it has been difficult to find and/or interpret DFEH procedures. While the new regulations are helpful in outlining DFEH procedures, the regulations also make it easier for employees to file a complaint and limit or eliminate many of the defenses commonly used by employers.

If you have any questions about these amendments or how they relate to school district operations, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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