



FACT SHEET: AB 2773 (Swanson)

Equal Access to the Legal System

SUMMARY

This bill would help ensure that California workers have fair and equitable access to the civil justice system for claims brought under the Fair Employment and Housing Act (FEHA).

By prohibiting the application of Civil Procedure Code 1033(a) as a penalty for bringing a FEHA claim as an unlimited jurisdiction case when the recovery is less than the jurisdictional limit, this bill would remove a significant barrier to securing private counsel for lower wage workers.

BACKGROUND

On January 14, 2010, the California Supreme Court held in *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, that a trial court has discretion in a FEHA case to deny a *successful* plaintiff his attorney fees when the plaintiff chooses to proceed in an unlimited civil jurisdiction, but recovers less than the \$25,000 jurisdictional minimum. This decision reversed the Court of Appeal's ruling, which reasoned that the rationale for denying attorney fees under section 1033(a) of the California Code of Civil Procedure, which was designed to encourage pursuit of minor grievances in courts of limited jurisdiction, is inapposite to statutory discrimination or civil rights actions because "even a modest financial recovery can serve to vindicate a substantial legal right." The Court of Appeal also opined that denying attorney fees under section 1033(a) would discourage attorneys from taking meritorious cases.

The reality is that limited jurisdiction case procedure has significant consequences in terms of the quantity of discovery the parties may conduct and may be inappropriate for FEHA claims given the complexity of the claim and the importance of the civil rights afforded under the FEHA. Furthermore, damages amounts in FEHA claims, which

often involve non-pecuniary damages, are difficult to quantify and hard to predict.

The legislature must step in to help ensure that plaintiffs' attorneys are not discouraged from taking FEHA cases, as these cases are integral to protect and vindicate important civil rights. As the California Supreme Court noted in its decision, attorney fee awards in FEHA actions make it easier for plaintiffs of limited means to pursue meritorious claims (*Cummings v. Benco Building Services* (1992) 11 Cal.App.4th 1383, 1387), are intended to provide fair compensation to the attorneys involved in the litigation at hand, and encourage litigation of claims that are of public interest (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 584.).

The need for plaintiffs of limited means, in particular, to access private counsel to pursue their FEHA claims was highlighted in a recent UCLA-RAND study on the FEHA and its enforcement procedures, which found that lower wage workers have a harder time securing private counsel and consequently recover considerably lower damage awards through the FEHA's administrative enforcement procedures.

According to this study, employees who take their case to trial win about half the time with jury awards averaging \$205,000. Those who stay in the state's administrative system reach settlements, typically less than \$4,000, in 1 case out of 7.

The study also noted that the barrier to private counsel is even higher after *Chavez* because now "any attorney who considers accepting a case that may result in a verdict under the jurisdictional amount risks being paid nothing at all, even if he or she prevails at trial, based on his or her inability to predict a jury verdict" (*G. Blasi & J. Doherty, California Employment and Discrimination Law and Its Enforcement: The Fair Employment and Housing Act at 50, 2009*).

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EXISTING LAW

Under existing law, a prevailing party is generally entitled as a matter of right to recover costs in any action or proceeding. (Code Civ. Proc., § 1032, subd. (b).) The litigation costs that the prevailing party may recover include attorney fees when recovery of such fees is authorized by statute. (*Id.*, § 1033.5, subd. (a)(10)(B).) But when "the prevailing party recovers a judgment that could have been rendered in a limited civil case," and the action was not brought as a limited civil case, Code of Civil Procedure section 1033's subdivision (a) states that "costs or any portion of claimed costs shall be as determined by the court in its discretion"

In any action brought under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), Government Code section 12965's subdivision (b) grants the trial court discretion to award attorney fees to a prevailing party. This statute has been interpreted to mean that in a FEHA action a trial court should ordinarily award attorney fees to a prevailing plaintiff unless special circumstances would render a fee award unjust. (*Young v. Exxon Mobil Corp.* (2008) 168 Cal.App.4th 1467, 1474; *Steele v. Jensen Instrument Co.* (1997) 59 Cal.App.4th 326, 331.)

THIS BILL

This bill would clarify that Civil Procedure Code section 1033(a) does not apply to actions brought under the California Fair Employment and Housing Act.

Such a statutory amendment will ensure that plaintiffs are not penalized for being unable to predict damage awards and are allowed more extensive discovery procedures to address the complex nature of claims brought under the FEHA. This proposal would still leave the trial court with broad authority under Government Code Section 12965 to determine the amount of reasonable attorney fees, and the court may, if appropriate, reduce a fee award if a plaintiff obtains only limited success, so

long as the claims on which the plaintiff prevails are distinct from and unrelated to the unsuccessful claims. (*Harman v. City and County of San Francisco* (2006) 136 Cal. App.4th 1279, 1307, 39 Cal.Rptr.3d 589; *Greene v. Dillingham Construction N.A., Inc.*, *supra*, 101 Cal.App.4th at p. 423, 124 Cal.Rptr.2d 250.)

SUPPORT

California Employment Lawyers Association (sponsor),
Legal Aid Society – Employment Law Center,
California Labor Federation, AFL-CIO,
California Rural Legal Assistance Foundation

OPPOSITION

None on file.

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