

CLIENT NEWS BRIEF

Complainants Now Have 3 Years To File Charge Of Employment Discrimination

Effective January 1, 2020, employees complaining of discrimination in the workplace will have three years to file a charge of discrimination with the California Department of Fair Employment and Housing (DFEH).

On October 10, 2019, Governor Gavin Newsom signed Assembly Bill 9 into law, which extends the deadline under the Fair Employment and Housing Act (FEHA) for employees to file a charge from one year to three years—*tripling* the amount of time employees previously had to do so.

According to the bill's author, extending the deadline was prompted by the #MeToo movement, which "has brought attention to many of the dynamics related to sexual harassment." Many victims needed "ample time to fully grasp what happened to them before they felt comfortable coming forward," and "the fear of retaliation often prevented victims from being able to report incidents of sexual harassment." The same is true for other types of discrimination as well, where victims "may be initially unclear about what happened, unaware of their rights, or reluctant to report misconduct to their boss."

FEHA prohibits employer discrimination, harassment, and retaliation against employees based on certain protected classes, such as race, religion, sex, gender, sexual orientation, marital status, disability, and age. Employees must first file a charge with the DFEH, which entails filling out and filing an intake form provided by the DFEH. The DFEH then reviews the information provided by the complainant supporting his or her claim. If the DFEH declines to investigate the case, the complainant receives a "right-to-sue" letter, allowing him or her to file a complaint in superior court within one year from receiving the letter.

AB 9 defines "filing a complaint" as filing the DFEH intake form. So, under the new law, employees must file the intake form with the DFEH within three years of the alleged unlawful practice. This deadline may be extended by 90 days if, within 90 days of the deadline, the complainant first learns of the unlawful conduct. This situation commonly arises when employers conceal their unlawful conduct and the employee has no reasonable means to discover it.

The new law will not apply retroactively—that is, it will not revive claims that have already lapsed under the former one-year limitations period. And it only applies to claims under the California-specific FEHA; for most employers, federal claims of discrimination under Title VII must still be filed with the EEOC within 300 days of the alleged discriminatory conduct.

Takeaways

This new law will have a significant impact on all employers, including public agencies. Employees will now have up to four years to file an employment discrimination complaint in state court—three years from the misconduct, plus one year to file in court. This places employers in the difficult position not only to maintain documentation and other evidence for longer, but to rely on fading memories and to locate witnesses who may have since relocated. In

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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light of these new realities, employers should revisit and update their internal document retention policies, implement effective anti-discrimination trainings and policies, and promptly address any inappropriate conduct in the workplace.

For more information about AB 9, including Lozano Smith training opportunities, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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