

## RESOLUTION 11-02-04

### DIGEST

#### FEHA: Tolling of Time to File Claim or Action by Minors

Amends Government Code section 12960 to provide for the tolling of the statute of limitations in employment discrimination cases until one year from the time a person reaches majority.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Government Code section 12960 to provide for the tolling of the statute of limitations in employment discrimination cases until one year from the time a person reaches majority. This resolution should be approved in principle because this tolling provision is consistent with tolling provisions in other statutes.

There are numerous cases involving employed minors as young as 14 years of age being subjected to employment discrimination, particularly sexual harassment. Many minors do not realize they have a claim until they reach the age of majority. At that time, they may file claims under the Fair Employment and Housing Act (FEHA) (Govt. Code, § 12900 et seq.). However, once they receive a letter to sue from DFEH and file an action, their case is dismissed because there is no tolling statute of limitations for minors under FEHA. A 1995 court decision, *Balloon v. Superior Court* (1995) 39 Cal.App.4th 1116, held that a case under FEHA does not come within Code of Civil Procedure section 352, which addresses the tolling of the statute of limitations for minors.

Recent case law discusses the difficulties that minors face when suing under FEHA. However, these cases suggest that the Legislature must address the tolling of the statute of limitations for minors in FEHA cases to avoid the injustice that the lack of a tolling statute creates. This resolution responds to that suggestion.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code section 12960 to read as follows:

- 1     §12960
- 2             (a) The provisions of this article govern the procedure for the prevention and
- 3     elimination of practices made unlawful pursuant to Article 1 (commencing with Section
- 4     12940) of Chapter 6.
- 5             (b) Any person claiming to be aggrieved by an alleged unlawful practice may file

6 with the department a verified complaint, in writing, that shall state the name and address  
7 of the person, employer, labor organization, or employment agency alleged to have  
8 committed the unlawful practice complained of, and that shall set forth the particulars  
9 thereof and contain other information as may be required by the department. The director  
10 or his or her authorized representative may in like manner, on his or her own motion,  
11 make, sign, and file a complaint.

12 (c) Any employer whose employees, or some of them, refuse or threaten to refuse  
13 to cooperate with the provisions of this part may file with the department a verified  
14 complaint asking for assistance by conciliation or other remedial action.

15 (d) No complaint may be filed after the expiration of one year from the date upon  
16 which the alleged unlawful practice or refusal to cooperate occurred, except that this  
17 period may be extended as follows:

18 (1) For a period of time not to exceed 90 days following the expiration of that year,  
19 if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the  
20 facts of the alleged unlawful practice after the expiration of one year from the date of their  
21 occurrence.

22 (2) For a period of time not to exceed one year following a rebutted presumption of  
23 the identity of the person's employer under Section 12928, in order to allow a person  
24 allegedly aggrieved by an unlawful practice to make a substitute identification of the actual  
25 employer.

26 (3) For a period of time, not to exceed one year from the date the person aggrieved  
27 by an alleged violation of Section 51.7 of the Civil Code becomes aware of the identity of  
28 a person liable for the alleged violation, but in no case exceeding three years from the date  
29 of the alleged violation if during that period the aggrieved person is unaware of the identity  
30 of any person liable for the alleged violation.

31 (4) For a period of time not to exceed one year from the time that a person  
32 allegedly aggrieved by an unlawful practice attains the age of majority.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

#### STATEMENT OF REASONS

Existing Law: Under existing case law, a minor's time to file a claim or action under the Fair Employment and Housing Act (FEHA) is not tolled until the age of majority.

This Resolution: Would extend the claim and action-filing requirement for one year after a minor attains the age of majority.

The Problem: Generally, the time to file a lawsuit for an injury suffered by a minor is tolled, under Code of Civil Procedure section 352, until the minor reaches the age of majority, currently 18 in California. In 1995, the Court of Appeal determined that section 352 did not apply to any causes of action except those that arose under Part 2, Title 2, Chapter 3 of the Code of Civil

Procedure. (*Balloon v. Superior Court* (1995) 39 Cal. App.4<sup>th</sup> 1116.) Since a FEHA cause of action arises under the Government Code, it was not included and tolling did not occur.

This places minor employees at a distinct disadvantage in relation to other victims of sexual abuse. For instance, a Boy Scout camper has the tolling advantage whereas a minor Boy Scout employee does not. This distinction would also apply to customers, students, childcare participants, etc. of any business entity. The problem is compounded by the reticence of a molested minor to speak about his or her experiences until months or years after the last molestation incident. (See generally, *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App.4<sup>th</sup> 377.)

In most cases, once the truth comes out, the actual molester is incarcerated and judgment proof, leaving the employer as the only responsible party. Employers have a special relationship with minor employees and a special duty to protect their interests. (*Doe v. City of Murrieta* (2002) 102 Cal. App.4<sup>th</sup> 899.) If a minor is too psychologically disabled to speak within a year, that special relationship becomes meaningless.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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