

**RESOLUTION 06-01-06**

**DIGEST**

Employment Discrimination: Extension of Time to File Complaint

Amends Government Code section 12960 to extend time limits for filing a discrimination complaint with the Department of Fair Employment & Housing.

**RESOLUTIONS COMMITTEE RECOMMENDATION  
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 12960 to extend time limits for filing a discrimination complaint with the Department of Fair Employment & Housing. This resolution should be disapproved because no legitimate reason exists for granting a longer period of time to file discrimination lawsuits than lawsuits for other employment tort claims, including wrongful termination claims based on discriminatory conduct.

The primary reason given in support of this resolution is that the time limit for filing a discrimination claim with the DFEH is one year shorter than the time period for filing a common law claim for wrongful termination in violation of public policy. However, a plaintiff has an additional year after a DFEH right-to-sue notice is issued in which to file a civil lawsuit. (Gov. Code, § 12965, subd. (b).) Accordingly, under the current law, a discrimination plaintiff actually has two years to file a civil lawsuit, the same as a plaintiff filing a claim for common law wrongful termination. Under the proposed resolution, a discrimination plaintiff would have three years to file a civil lawsuit (two years to file with the DFEH and one additional year to file the civil lawsuit), one year more than the statute of limitations to file wrongful termination lawsuits and most other tort claims. No reason is given for treating discrimination claims differently than other employment law claims, including those for wrongful termination based on discriminatory conduct.

**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 of
- 7 the person, employer, labor organization, or employment agency alleged to have committed

8 the unlawful practice complained of, and that shall set forth the particulars thereof and  
9 contain other information as may be required by the department. The director or his or her  
10 authorized representative may in like manner, on his or her own motion, make, sign, and file  
11 a complaint.

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

15 (d) No complaint may be filed after the expiration of ~~one~~ two years from the date  
16 upon 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 two  
19 year period, if a person allegedly aggrieved by an unlawful practice first obtained  
20 knowledge of the facts of the alleged unlawful practice after the expiration of ~~one~~ two years  
21 from the date of their occurrence.

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

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

31 (4) For a period of time not to exceed ~~one~~ two years from the date 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: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: Existing Law requires that a person file a complaint with the California Department of Fair Employment and Housing within one-year of the last discriminatory act.

This Resolution: Would extend the time within which a person could file a complaint with the California Department of Fair Employment and Housing (DFEH) from the current one year time period to two years.

The Problem: Currently, there is a difference between the time within which a person may file a complaint with the DFEH and the time a person may file a common law claim for Wrongful Termination in Violation of Public Policy. Making the proposed changes to Government Code section 12960 would permit California Workers to bring claims against their employers for a longer period thereby expanding workers' rights. This resolution would also extend the time period within which aggrieved workers could try to resolve their differences informally. Currently, if negotiations between a worker and an employer cannot be resolved within the

period of one year, the aggrieved worker must file his or her complaint with the DFEH. This resolution would permit the parties to work out their differences over a longer period of time and may actually foster informal resolution of potential claims. Finally, the proposed change would expand the time period within which a worker could claim damages. Currently, a prevailing plaintiff is limited to claiming damages for a period one year before the complaint is filed with the DFEH. This proposed change would extend that period to two years where a jury determines that an employer has violated the Fair Employment Housing Act.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### **IMPACT STATEMENT**

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

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#### **COUNTERARGUMENT**

##### **SAN DIEGO COUNTY BAR ASSOCIATION**

Extension of the time period to file an administrative claim with the DFEH will not foster prompt complaints and investigation into the underlying facts of such complaints. By extending the time period, employers will have difficulty gathering facts in support of their investigation while the employees who are percipient witnesses are still employed or while the facts are still fresh in their memory. Employees may leave, evidence may be destroyed. Furthermore, by seeking to extend the time to file the *administrative* claim, not the lawsuit, the resolution would allow employment claims to drag out for years. An individual knows if he or she is being harassed. Extending the claims deadline merely encourages non-meritorious litigation from an individual who has become dissatisfied with his or her employer and is looking for a mechanism to strike back. Two years is a very long claim filing deadline. Many government claims require filing with a year or less for one clear reason – the claim should be filed to begin the investigation, which investigation will determine whether a lawsuit may/should be filed. While two years may be reasonable as a litigation *statute of limitations*, it is inappropriate for a *government claims filing deadline*.