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California Supreme Court Holds That Employees Who Use Internal Grievance Procedures Have Extra Time To File FEHA Claims

Justin Carter Johnson
Esra Hudson

On Monday, October 27, 2008, the California Supreme Court unanimously ruled that the statute of limitations to file a complaint under the California Fair Employment and Housing Act (the "FEHA") is extended for employees who voluntarily pursue internal administrative remedies prior to filing the complaint. *McDonald et al. v. Antelope Valley Comm. College Dist.*
You can access the opinion here.

The *McDonald* Case Impact on FEHA Claims

Under the FEHA, an employee who believes he/she was discriminated against is required to file an administrative complaint with the Department of Fair Employment and Housing ("DFEH") prior to bringing suit in court. The FEHA establishes a one-year statute of limitations period, meaning that the administrative complaint must be filed within one year from the date upon which the alleged discriminatory practice occurred.

The *McDonald* opinion effectively stops this one-year period while an employee is pursuing a claim through internal grievance procedures established by the employer. In other words, the statute of limitations period does not run during the internal grievance process – effectively extending the statute of limitations.

The *McDonald* Case Background

NEWSLETTER EDITORS

Andrew Satenberg
Partner
asatenberg@manatt.com
310.312.4312

Esra Acikalin Hudson
Partner
ehudson@manatt.com
310.312.4381

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In *McDonald*, the plaintiff alleged that in January 2001 her employer discriminated against her based on her race by not considering her for a job opening, despite the fact that she met the minimum qualifications. Pursuant to internal grievance procedures, the plaintiff filed a formal complaint of discrimination with her employer in October 2001. In May 2003, after numerous internal appeals, the internal grievance process ended with a determination that there was no discriminatory conduct.

In October 2002 – prior to the internal grievance process ending, but *more than one year* after the alleged discriminatory conduct occurred – the plaintiff filed an administrative complaint with the DFEH. After being issued a "right to sue letter" by the DFEH, an administrative prerequisite to filing a lawsuit, the plaintiff filed suit in superior court against her employer in October 2003.

The trial court dismissed plaintiff's claim, finding that it was barred by the statute of limitations, a decision later overruled by a California Court of Appeal. Following the reasoning of the appellate court, the California Supreme Court held that the doctrine of "equitable tolling" applies to the pursuit of internal administrative remedies prior to filing a FEHA claim. Equitable tolling is a judicially created doctrine that extends a statute of limitations when necessary to ensure practicality and fairness. Generally, it applies when an injured person has several legal remedies, and reasonably and in good faith, pursues one. In the *McDonald* case, the Court applied the doctrine, effectively "freezing" the statute of limitations clock during the entire time the plaintiff was pursuing the internal grievance procedures of her employer. Thus, the Court ruled that her claim was timely, despite the fact that she did not file a complaint with the DFEH until more than a year and a half after the alleged conduct occurred.

What the *McDonald* Case Means for Employers

FEHA claims that are initiated more than one year after the discriminatory conduct occurred – previously thought to be time barred – may still yet be ripe for a lawsuit if the employee pursued internal grievance procedures. If you have internal grievance procedures and are concerned about the impact the *McDonald* case may have on your company, we recommend that you contact counsel for guidance.

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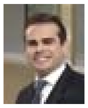
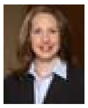


Justin Carter Johnson Mr. Johnson's practice focuses on general litigation as well as all areas of labor and employment law. Prior to joining Manatt, Mr. Johnson was a law clerk for two distinguished federal panel attorneys. In this role, he worked defense on the largest capital RICO indictment ever brought in the federal courts.



Esra Acikalin Hudson Ms. Hudson’s practice focuses on all aspects of employment law and related litigation. She represents companies in state and federal court in claims of discrimination, harassment, wrongful discharge and related tort claims, breach of contract, trade secrets, and unfair competition, and all other employment-related matters. Ms. Hudson also defends companies against employment-based class actions. She regularly represents employers in proceedings before state and federal agencies, including the California Department of Fair Employment and Housing, the California Division of Labor Standards Enforcement and the federal Equal Employment Opportunity Commission.