

California Employment Law – DFEH Claim, or Immediate Right to Sue Notice?

Individuals who have been wrongfully terminated often ask why they should file a claim with the California Department of Fair Employment and Housing *prior* to bringing a lawsuit. The answer given by most attorneys, though incorrect, is that you have to. Contrary to this widespread misinformation, the California Department of Fair Employment and Housing provides a process whereby an individual can request the required “Right to Sue Notice” without first having DFEH investigate the claim. This begs two questions. First, why are so many employment attorneys misinformed? And second, if it is possible to obtain an immediate right to sue, why would anyone proceed with a DFEH claim before doing so?

Well-meaning employment lawyers often incorrectly inform clients that if they do not first file a claim with the DFEH, they will lose their right to sue. The genesis of this misinformation is known as the doctrine of exhaustion. Exhaustion in the employment context means that an individual must exhaust all administrative remedies prior to seeking redress through the court system. This is generally true. And it is an absolute requirement when dealing with employment disputes under federal statutes such as Title VII, the ADA, etc. However, when an individual seeks to pursue, say, a wrongful termination claim against a former employer under State Law theories alone, exhaustion has a different meaning. So long as a “Right to Sue” notice has been obtained from the DFEH, it is not a requirement that DFEH investigate the claim. The Department’s website provides potential litigants a procedure for obtaining the right to sue a former employer without going through the DFEH’s investigation process first.

http://www.dfeh.ca.gov/Complaints_RTSNotice.htm

So why would anyone file a DFEH claim in advance of employment litigation if they can go directly to the courthouse? There are a number of advantages to filing such a claim and allowing DFEH to investigate it. Of primary importance is the valuable case vetting that the DFEH process provides. By filing a claim for, say, discrimination, harassment, wrongful termination, retaliation, or any other employment issue, you have the benefit of obtaining pre-litigation discovery and of locking the defendants into their positions in advance of filing in state court. In other words, DFEH does most of the work for you. Another advantage is that you can make use of the DFEH’s free mediation program. This gives you an opportunity to settle your lawsuit before your attorney has put in lengthy hours in discovery, deposition, and drafting a complaint. Perhaps the only time this isn’t of value is if your employment issue is extremely complex. In that case, it may be advisable to proceed directly to filing a complaint in state court. This is something only a qualified attorney can advise you on.

So what should you do if you believe you have a lawsuit against a former employee? To protect your rights from the start, whether you decide to file a DFEH claim or proceed directly to litigation, you should hire a local attorney familiar with these procedures. Even if you decide to file a DFEH claim first, be aware that whatever you contend during your administrative review is something that you will be stuck with if the matter proceeds to litigation. The last thing you want to do is go it alone, only to hire an attorney down the road and find out that you could have presented your case in a better light from the start.

About the Author:

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