

California Workplace Law Blog

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The Elimination of the Fair Employment and Housing Commission Provides Far Greater Authority to the Department of Fair Employment and Housing

Written by Matthew D'Abusco

In a move intended to reduce spending and increase efficiency amid continuing budget difficulties, Governor Brown recently signed [Senate Bill 1038](#) which will, among other things, eliminate the Fair Employment and Housing Commission effective January 1, 2013. The duties of the Commission, primarily rulemaking and the administrative adjudication of discrimination claims, will be assumed in large part by the [Department of Fair Employment and Housing](#) (“DFEH”). Starting in 2013, the DFEH will include a newly created Fair Employment and Housing Council. The Council, which will be comprised of seven (7) members appointed by the Governor and confirmed by the Senate, will be responsible for the rulemaking and establishment of regulations formerly performed by the Commission.

The most notable change made by Senate Bill 1038 is the manner in which charges of discrimination can be pursued by the DFEH. Under the current system, when the DFEH moves forward on a charge of discrimination against an employer, the matter is referred to the Commission and determinations are made following an administrative hearing. Following the adoption of Senate Bill 1038, the DFEH is now authorized to file a case on behalf of a claimant directly in civil court and provide representation throughout the civil proceeding. Prior to doing so, the DFEH will require both parties to participate in mandatory dispute resolution. If the parties are not able to resolve the dispute, the DFEH will commence civil proceedings and, if successful, will be able to collect reasonable attorneys’ fees (at the Attorney General rate of \$170.00 per hour) and costs.

In effect, the transfer of rulemaking responsibility from the Commission to the DFEH will not represent a noticeable change for California employers. On the other hand, the ability of the DFEH to directly file claims in civil court, provide representation, and collect attorneys’ fees and costs could have a significant impact particularly with respect to how claims are investigated and resolved during the initial charge process. While this will remain a developing issue, we will continue to monitor the situation and provide additional information when available.

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