

First Wednesday

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A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management

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Prevailing Employee Loses \$870,000 in Attorneys' Fees

In employment disputes, employers in a defensive posture know, or find out very quickly, that they may end up on the losing end of a battle over attorneys' fees. Because the laws in California heavily favor employees and can include statutory provisions instructing courts to award attorneys' fees to prevailing employees, in many instances a successful plaintiff-employee will get attorneys' fees paid by the employer. This is on top of the fees the employer pays its own legal counsel and any monetary award, received through settlement or litigation, paid to the employee for the alleged harm.

Often, employers are convinced by their legal counsel and business advisors that it makes economic sense to settle an employment dispute quickly, for a low dollar amount, rather than pay a high attorneys' fees award (which will be paid even if the employee proves just a single dollar was owed.) A recent unanimous decision from the California State Supreme Court turns this notion on its head.

In the case of *Chavez v. City of Los Angeles*, the employee was ultimately awarded \$11,500 in damages by the trial court, but his attorneys' request for a fee of \$870,000 was denied. The trial court, backed up by the Supreme Court after the Court of Appeal reversed the trial court's decision, held that even though the court *could* award the fees under the applicable Fair Employment and Housing Act ("FEHA") statute, an unreasonable request for attorneys' fees could be denied entirely. The decision was a major victory for employers.

The Facts

In 1989, Chavez was hired by the city as a Police Officer. In 1996, Chavez was accused of stealing payroll checks, but after an investigation, was exonerated. The accusation and investigation set off a series of confrontations between Chavez and his employer, which resulted in several lawsuits, accusations of harassment and retaliation, and reassignments to other departments.

Chavez first sued the City in State court in 1998 for defamation, emotional distress, invasion of privacy, and civil rights violations, all related to the payroll check-stealing incident. During this time he also complained several times to the City about being harassed for filing the lawsuit and said that Department helicopters were regularly hovering over his house. In December 1999, the court dismissed the lawsuit.

In January 2000, Chavez and his wife submitted a claim for damages to the City, which they claimed were suffered as a result of the helicopter surveillance. The City investigated the claim, but found the claim to be unfounded. Interestingly, three of Chavez's neighbors provided sworn statements that there *were* times when Department helicopters hovered over Chavez's house.

During this same time period, Chavez was accused of neglect of duty for an on-the-job incident. He went out on stress leave in May 1999 and returned to work in March 2000. When he returned, he was placed on a five-day suspension, worked three days on patrol, and was assigned to administrative tasks until he could be cleared to work patrol by a staff psychologist.

In March, 2000 Chavez filed a complaint with the California Department of Fair Employment and Housing ("DFEH") alleging discrimination, harassment, and retaliation in violation of the FEHA. His claims now related to the "pattern of incidents" at work which resulted in a hostile environment, the internal affairs investigation, and a change of his medical leave to personnel leave. The DFEH gave Chavez a Right to Sue notice, and in May 2000 he filed another State lawsuit.

Chavez also asked to be transferred to another unit. Two weeks after he filed the May 2000 lawsuit, his transfer order was rescinded. This led to another DFEH complaint and a second Right to Sue notice. Chavez then filed a third lawsuit in federal court alleging civil rights violations. All of Chavez's cases were taken over by the federal court.

In May 2002, the federal court granted summary judgment to the City. Chavez appealed, and the Ninth Circuit court remanded the matter for the lower court to decide the only remaining issues – was the rescission of the transfer request in 2000 an adverse employment action, and what factual issues were related to the reassignment from patrol duty to administrative duty, and could they support a FEHA discrimination claim? The court also provided that neither party would recover costs from the other.

Consider: How much has Chavez incurred in attorneys' fees up to this point? Could he possibly be paying the fees out of pocket, or was his attorney working on a contingency basis?

On remand, the federal court dismissed Chavez's FEHA claims without prejudice so he could re-file them in State court. The new State court suit was filed in November 2004 and heard by a jury in October 2005. The jury returned a verdict in Chavez's favor, finding that the rescission of the transfer order in 2000 *was* improper, and as a result Chavez

had suffered \$1,500 in economic damages and \$10,000 in mental suffering and emotional distress damages.

Chavez's attorney then filed a motion to recover over \$13,000 in costs, and \$436,602 in attorneys' fees. The attorney later filed an amended motion using a 2X multiplier, and the requested fees increased to \$870,935.

The Law

California law says that a prevailing party may get attorneys' fees when authorized by statute. (California Code of Civil Procedure ("CCP") § 1033.5(a)(10)(B)). In any action brought under the FEHA, the trial court has the discretion to award attorneys' fees to a prevailing party. (Govt. Code § 12965(b)). That law has been interpreted to mean that the court *should* ordinarily award attorneys' fees unless special circumstances make an award of those fees unjust.

In State court parties can bring a limited jurisdiction case, where the estimated award is less than \$25,000, or an unlimited case, where the estimate exceeds \$25,000. In a limited case, the litigation process is streamlined and discovery is narrowed, to save court time and attorneys' fees.

The question in Chavez's case was, if a party recovers less than \$25,000 on a FEHA claim, and could have brought a limited case but didn't, can the trial court deny the party's request for attorneys' fees? The answer from the Supreme Court was a resounding "Yes."

After weighing the evidence, the trial court held that Chavez could have brought his case as a limited case and presented very little evidence proving damages to justify the time and money spent pursuing his claims. Chavez appealed, and the trial court's decision was overturned.

The Court of Appeals held that there was a complex interplay between the laws permitting parties to recover attorneys' fees. It ultimately ruled that CCP § 1033.5(a)(10)(B) didn't apply in FEHA cases, the trial court misconstrued Government Code section 12965(b), and in statutory discrimination cases or civil rights actions "even a modest recovery can serve to vindicate a substantial legal right." Thus, the trial court *should* have awarded attorneys' fees to Chavez, the FEHA plaintiff, even though he only proved \$11,500 in damages. The Court of Appeals noted that the City had refused all settlement attempts, never made a real offer to Chavez, and forced him to engage in extensive discovery and litigate the action for five years.

The Supreme Court overruled the Court of Appeals and explained the interplay between the two attorneys' fees statutes. The Court encouraged litigants to resist attempts to characterize underlying claims as significant or insignificant, or major or minor. Instead, parties must realistically appraise the amount of *damages* at issue and decide whether the case may fairly be litigated as a limited case. When a case is a limited case, even if it's a FEHA case, it should not be litigated to death.

The Takeaway

Consider the result here – Chavez spent five years pursuing a claim that totaled \$11,500. His attorneys fought long and hard, and were awarded nothing. Perhaps they assumed they would get all of their fees if they were able to help Chavez recover any amount of damages, simply because it was a FEHA claim.

From the employer's perspective at the outset, it may not have been a battle worth litigating for five years. Even if the City knew Chavez had only minimal damages at best, it had to know it would potentially have to pay all of Chavez's attorneys' fees, no matter how high or out of proportion in relation to his damages. This was a reasonable assumption – before this case.

Both plaintiff and defense attorneys should take note of the *Chavez* case and seriously consider the damages aspect of a potential lawsuit before filing a Complaint as an unlimited jurisdiction case and engaging in protracted litigation.

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