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## **Employers May Only Have to Pay Proportional Fees If They Lose**

In *Chavez v. City of Los Angeles*, the California Supreme Court held that a court has the discretion to award a plaintiff seeking attorneys' fees for the underlying litigation only a fair portion of the amount sought.

In November 1989, Defendant City of Los Angeles ("City") hired Plaintiff Robert Chavez as a police officer in the Los Angeles Police Department ("Department"). In 1996, he was accused of stealing payroll checks. The Department concluded that Chavez was not responsible for the stolen checks after investigating the issue. A few years later, in 1999, the Department began an investigation of Chavez's conduct in an incident during which Chavez had responded to a silent alarm at a laundromat. Chavez left work on stress leave a little over a month later and was absent for almost a year before he returned to work. When he returned on March 10, 2000, he was served with a written notice that the Department intended to suspend him for five days for neglect of duty during the laundromat incident. A couple of weeks later, Chavez requested a transfer. One of his supervisors approved his request, but the approval was later rescinded. Nevertheless, in October 2000, Chavez was transferred from the Department's 77th Street Division to its Southwest Division, where he resumed patrol duties.

In various litigation proceedings beginning in 1998, Chavez sued the City and others, asserting claims of employment discrimination, harassment, and retaliation in violation of California's Fair Employment and Housing Act ("FEHA"); violation of civil rights; nuisance; trespass; inverse condemnation; invasion of privacy; and loss of consortium (as to his wife). He also claimed employment discrimination on the bases of race and perceived mental disability. After a tortured litigation history—including two cases in Los Angeles County Superior Court, one case in federal District Court, and time spent on an appeal to the Ninth Circuit—that spanned five years, Chavez succeeded on only one claim: He was awarded \$11,500.00 when a jury found that the temporary rescission of Chavez's transfer order was in retaliation for his assertion of "his other, ultimately unsuccessful FEHA claims. All of the other claims were dismissed or found to be lacking in merit." In litigating all of the claims, Chavez's lawyers calculated that they had provided services for Chavez worth \$870,935.50.

Under California law, a party who wins a statutory discrimination or retaliation case (the "prevailing" party) can make the other party pay for some of its litigation costs, which can include attorneys' fees. However, for cases that plaintiffs could have reasonably classified as "limited civil actions"—that is, actions where the plaintiff may be awarded under \$25,000.00—but did not, courts have the discretion to deny an award of costs to the prevailing plaintiff.

Limited civil actions, in accordance with the small dollar amounts at stake, apply more limited procedures than other actions and are thus more cost-effective for the parties. By allowing courts to deny attorneys' fees to a wrongly classified action even where the plaintiff prevails, the law encourages plaintiffs to correctly classify their lawsuits at the beginning of a case.

Chavez's case is a perfect example of this situation. Although Chavez was awarded only \$11,500.00 in damages—well within the “limited civil action” rubric—Chavez's lawyers had not classified his lawsuits as “limited.” With the full panoply of litigation procedures available to them, they went all out in pursuing Chavez's claims and in so doing incurred fees allegedly worth over 75 times (\$870,935.50) what the lawsuit was ultimately worth (\$11,500.00). They sought to recover all of these fees from the City, claiming that Chavez was entitled to them as the prevailing party.

The Supreme Court rejected these claims. It held that the rule regarding the court's discretion in awarding fees applied to FEHA cases and, “in light of plaintiff's minimal success and grossly inflated attorney fee request [in this particular case], the trial court did not abuse its discretion in denying attorney fees.” It further elaborated, “If a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims unrelated to the successful claims, and the trial court should award only that amount of fees that is reasonable in relation to the results obtained.” In other words, courts have the power to rule that a current or former employee cannot pursue exaggerated and overreaching FEHA lawsuits and then make the employer pay for all of the costs the employee racked up just because there was merit to a relatively small number of the claims. This ruling does not relieve employers of liability for their mistakes, but it encourages courts to make employers pay no more than an amount that is commensurate with those mistakes and discourages plaintiff's attorneys from prolonging cases simply to inflate their request for fees.