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Statute of Limitations for Discrimination Claims Begins to Run on Date Right-to-Sue Notice Is Issued

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The California Court of Appeal has clarified that the one-year limitations period for claims for wrongful termination and retaliation under California’s Fair Employment and Housing Act (FEHA) begins to run on the date a right-to-sue notice is issued by the Department of Fair Employment and Housing (DFEH)—not the date the notice is received by the employee. *See Hall v. Goodwill Industries of Southern California*, ___ Cal. App. 4th ___ (March 16, 2011).

Before a complainant can bring a civil action against an employer for claims under FEHA (such as wrongful termination or retaliation), the complainant must obtain a “right-to-sue” notice from the DFEH. Once the right-to-sue notice is issued, the complainant “may bring a civil action . . . within one year from the date of that notice.” Cal. Gov’t. Code § 12965(b).

After Goodwill terminated Hall’s employment, Hall filed a complaint with the DFEH alleging wrongful termination and retaliation. The DFEH issued a right-to-sue notice on December 24, 2004. Hall’s attorney received the notice on December 31, 2004. Hall filed suit against Goodwill on December 30, 2005—within one year of receiving the notice, but more than one year after the notice was issued.

The question ultimately decided by the Court of Appeal was whether the one-year limitations period begins to run on the date the right-to-sue notice is issued by the DFEH or the date it is received by the complainant. The Court had no difficulty concluding that the limitations period begins to run on the date of issuance.

The Court first pointed to the statutory language, “may bring a civil action . . . within one year from the date of that notice,” Cal. Gov’t. Code § 12965(b), which the Court found to be unambiguous. The Court also noted that other provisions of the statute are even more specific about the trigger date. *See, e.g.*, Cal. Gov’t. Code §§ 12965(d)(1) and (e)(1) (describing the one-year limitations period as “commencing from the date of the right-to-sue notice”).

The history of Government Code Section 12965(b) supports this plain reading. The original version of a predecessor statute provided for a one-year limitations period that began to run “[w]ithin one year of receipt of such [right-to-sue] notice.” The provision was amended the following year to contain the current statutory language. The Court found this to be powerful evidence that the trigger date is the date of the notice. As the Court noted, “[h]ad the Legislature intended the opposite, it would have kept the word ‘receipt’ in the provision. It did not.”

The Court rejected Hall’s attempt to analogize the one-year limitations period under the state statute to the 90-day limitations period under the federal Title VII—which courts have interpreted to begin to run on the date of receipt of the federal right-to-sue notice—because the language of the two provisions is significantly different. It also reasoned that the longer, one-year limitations period allows for mail delivery delays, whereas the shorter, 90-day period does not.

The opinion is significant because it clarifies that the date a complainant receives a right-to-sue letter is irrelevant in determining when the statute of

limitations begins to run. It also presents a potential trap for attorneys filing civil actions against employers—and a potential opportunity for the attorneys defending them.

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