

[Discretion to Deny Costs and Attorney Fees to FEHA Plaintiffs Rests with the Trial Courts](#)

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In a recent California Supreme Court decision, the court determined that trial courts have the discretion to deny costs and attorney fees to a plaintiff alleging violations of the FEHA who recovers damages that could have been recovered in a limited civil case

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In [Chavez v. City of Los Angeles](#), 47 Cal. 4th 970 (2010), the California Supreme Court was presented with yet another claim brought under the [Fair Employment and Housing Act](#) (FEHA) in which the plaintiff's attorney requested fees far in excess of the minimal damages recovered by the plaintiff. The issue before the court was whether [C.C.P. section 1033\(a\)](#) gives courts the discretion to award attorney fees to a prevailing party under the FEHA when the judgment is less than the jurisdictional amount of limited civil cases (\$25,000 or less).

In *Chavez*, the plaintiff was a police officer who sued the city of Los Angeles alleging claims of employment discrimination, harassment and unlawful retaliation in violation of the FEHA; defamation; intentional infliction of emotional distress; invasion of privacy; civil rights violations; trespass, inverse condemnation; nuisance and intentional infliction of emotional distress.

After seven years of convoluted litigation in state and federal court, the plaintiff prevailed on one claim, retaliation, and received a judgment in the amount of \$11,500. Plaintiff's other causes of action were all dismissed or found without merit.

After the jury returned its verdict, the plaintiff's attorney filed a motion for attorney fees under [Government Code section 12965\(b\)](#) for \$436,602.75. Two months later, the attorney filed an amended motion for attorney fees, adding a "2x" multiplier to the lodestar calculation, increasing the amount of fees requested to a total of \$870,935.50.

Defendants opposed the motion asserting that the plaintiff's attorney had overreached and outrageously inflated the fee request.

The superior court denied the motion for attorney fees stating it was exercising its discretion under section 1033(a) due to the lack of damages recovered by the plaintiff. The court of appeals reversed. It stated the section 1033(a) did not apply to actions brought under the FEHA because section 1033(a) is designed

to encourage pursuit of minor grievances in courts of limited jurisdiction where simple disputes may be expeditiously and less expensively resolved.... However, that factor alone cannot convert a bona fide civil rights claim into an insignificant grievance. Even a modest financial recovery can serve to vindicate a substantial legal right.

Further, denying attorney fees under section 1033(a) "would discourage attorneys from taking meritorious cases."

The California Supreme Court issued a unanimous decision reversing the appellate court. It noted that section 1033(a) applies when a plaintiff has obtained a monetary judgment in an amount that could have been recovered in a limited civil case, but the plaintiff did not bring the action as a limited civil case and thus did not take advantage of the cost and time saving advantages of limited civil case procedures. In this situation, section 1033(a) gives the trial court discretion to deny, in whole or in part, the plaintiff's recovery of litigation costs.

The general rule in California was, and is, that a prevailing party should ordinarily recover attorney fees for claims brought under the FEHA unless special circumstances render the award unjust. Now, however, section 1033(a) applies to FEHA cases where the judgment is less than the jurisdictional amount of limited civil cases. In determining whether a FEHA action should have been brought as a limited civil case, the trial court should consider FEHA's underlying policy of encouraging the assertion of meritorious claims, and it should evaluate the entire case in light of the information that was known, or should have been known, by the plaintiff's attorney when the action was initially filed and as it developed thereafter.

The court cautioned trial courts to avoid "hindsight bias" when making this determination. It stated that a trial court should not deny an award of attorney fees simply because the trier of fact did not award the plaintiff a large judgment if the plaintiff's attorney could have reasonably expected to be able to present substantial evidence supporting a FEHA claim with damages in excess of the limited jurisdictional limit or if the plaintiff's attorney could have reasonably concluded that the action could not be fairly and effectively litigated as a limited civil case. Conversely, if the trial court is "firmly persuaded" that the opposite is true, it may deny, in whole or in part, the plaintiff's claim for attorney fees and other litigation costs.

The court rejected the appellate court's characterization of major or minor, significant or insignificant grievances. It stated that Section 1033(a) does not require a characterization of the underlying claim as major or minor, significant or insignificant; rather, it requires a realistic appraisal of the amount of damages at issue and whether the action might fairly be litigated using the streamlined procedures of limited civil actions.

The court added that the results obtained are a crucial factor in awarding attorney fees. Under California law, a reduced fee is appropriate when a claimant achieves only limited success. Thus, if a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims not closely related or factually intertwined with the successful claims. Finally, a fee request that appears unreasonably inflated is a special circumstance permitting a trial court to reduce the award or deny one altogether.

Accordingly, the trial court properly denied plaintiff's motion for attorney fees.