



FISHMAN LARSEN
GOLDRING & ZEITLER
ATTORNEYS AT LAW



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Attorneys' Fees Under the Fair Employment & Housing Act

Should an employee win \$11,500 in a lawsuit alleging unlawful discrimination or retaliation be entitled to \$900,000 in attorneys' fees? Maybe!

Robert Chavez, a police officer, sued the City of Los Angeles for violation of the Fair Employment and Housing Act (FEHA). Chavez alleged he was subjected to discrimination for his perceived disability, and in retaliation for complaining about discrimination.

Chavez sought recovery for five days' lost pay and benefits, emotional distress, and punitive damages. Before trial, the parties participated in five mediation sessions. According to Chavez, the City made no offer to settle except to waive its costs in full satisfaction of Chavez's claims. After five years of litigation in the superior court, federal district court, and Ninth Circuit Court of Appeals, a jury awarded Chavez economic damages of \$1,500 for lost overtime and cash detail, and non-economic damages of \$10,000 for mental suffering and emotional distress.

The attorney for Chavez then asked for \$870,935.50 in attorneys' fees. The fees consisted of \$435,467.75 in hourly fees, enhanced with a multiplier of 2.0. (A multiplier is typically applied to a request for attorneys' fees. It reflects the difficulty of the case, the attorneys' expertise and the risk of losing the case.)

The trial court denied his motion based on Chavez's very modest recovery.

However, under FEHA, a prevailing plaintiff is entitled to recover attorney fees and costs absent circumstances rendering the award unjust. While the court is vested with discretion to deny attorneys' fees to a prevailing plaintiff, its discretion "is

narrow." In contrast, a prevailing defendant recovers fees only if an action is "unreasonable, frivolous, meritless or vexatious."

In the case of Mr. Chavez, the appellate court concluded that trial court used the wrong analysis. Instead of focusing on the amount of the recovery, the court should have determined whether special circumstance made the award unjust.

FEHA actions do not always involve large sums of money and that even a modest financial recovery can serve to vindicate a substantial legal right. Moreover, FEHA litigation is expensive and time consuming requiring substantial discovery and multiple motions.

The attorneys' fee provision of FEHA is designed to ease the financial burden on a plaintiff of limited means. It assures an attorney that (s)he will be paid a reasonable fee if (s)he prevails.

This case reminds employers to be vigilant in protecting employees from discrimination and prompt to respond to employee claims. Even seemingly small claims could result in a substantial award of attorneys' fees.

Please contact our office if you need assistance developing fair employment policies or investigating and responding to claims of unlawful discrimination.

This is not intended as a complete analysis of the subject matter, or legal advice on any specific matter. Contact us if you have specific questions or need further assistance.