

RESOLUTION 04-08-2018

DIGEST

Employment: Department of Fair Employment and Housing Complaint and Right-to-Sue Notice Amends Government Code section 12962 to allow an employee to avoid serving the verified complaint alleging employment discrimination if the Department of Fair Employment and Housing issues an immediate right to sue notice.

STATEMENT OF REASONS

The Problem: For employment discrimination claims, an employee must exhaust his administrative remedies before proceeding to court. This is done by filing a complaint with the Department of Fair Employment and Housing (DFEH) and obtaining a “right-to-sue” notice. Employees often request an immediate right-to-sue notice, without having the DFEH investigate their claims and the DFEH routinely issues the right-to-sue notices. However, Section 12962 still requires service of the complaint (which is filed to obtain the right-to-sue notice) on all parties, either personally or by certified mail. This step is unnecessary when an immediate right-to-sue notice is issued.

The Solution: This eliminates the need to serve the filed complaint on the employee or employer when an immediate right-to-sue notice is issued by the DFEH.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 12962 to read as follows:

- 1 § 12962
- 2 (a) The department shall cause any verified complaint filed for investigation under the
- 3 provisions of this part to be served, either personally or by certified mail with return receipt
- 4 requested, upon the person, employer, labor organization, or employment agency alleged to have
- 5 committed the unlawful practice complained of.
- 6 (b) Notwithstanding subdivision (a), where a person claiming to be aggrieved by an
- 7 alleged unlawful practice hires or retains private counsel for purposes of representation of the
- 8 claim, the private counsel, and not the department, shall cause the verified complaint filed under
- 9 the provisions of this part to be served, either personally or by certified mail with return receipt
- 10 requested, upon the person, employer, labor organization, or employment agency alleged to have
- 11 committed the unlawful practice.
- 12 (c) Service shall be made at the time of initial contact with the person, employer, labor
- 13 organization, or employment agency or the agents thereof, or within 60 days, whichever first
- 14 occurs. At the discretion of the director, the complaint may not contain the name of the
- 15 complaining party unless the complaint is filed by the director or the director’s authorized
- 16 representative.
- 17 (d) The foregoing service requirements shall not apply if the person claiming to be
- 18 aggrieved files, in conjunction with his or her verified complaint, an immediate right-to-sue
- 19 notice pursuant to Government Code §12965 and a right-to-sue notice is issued to the person
- 20 claiming to be aggrieved.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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