

For most California age discrimination lawyers and labor attorneys, the choice of government agencies to contact to file an age discrimination complaint, much less for their clients, is a maze of confusing acronyms. The time limits to file such complaints are also hazardous to both the clients and their California labor lawyers.

If you've been the victim of age discrimination in California visit our law firm website at <http://www.sebastiangibsonlaw.com> for more information and call us at any of the numbers easily found on our website.

Congress passed the Age Discrimination in Employment Act (ADEA) of 1967 to address the practice of employment discrimination against older workers, and especially to redress the difficulty such workers face in obtaining new employment after being displaced from their jobs. It applies to employers with 20 or more full-time or regular part-time employees for each working day, in each of 20 or more calendar weeks, in either the current or preceding calendar year.

The ADEA prohibits discrimination in employment against workers age 40 or older and makes it unlawful for an employer to discharge any individual or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment.

The Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC), can and are willing to investigate such matters jointly, though one agency will usually take the lead.

The Supreme Court has made it significantly easier for the elderly client of a California labor attorney to prove age discrimination. Disparate treatment may be proved by circumstantial evidence. Where an employer has already hired significantly younger women to replace a person over 40 that they have fired, this evidence may be persuasive.

Where the employer has obtained any waiver of rights from the fired person, even a valid ADEA waiver does not affect the EEOC's rights and responsibilities to enforce the law.

With the DFEH, the fired worker need only make an appointment to begin the process. The statute starts to run when the employee files a claim. With the EEOC, once the employee or the employee, with or without the assistance of a California labor lawyer, files an intake questionnaire and an affidavit describing the discrimination, the filing requirement will be met with the EEOC, after which the EEOC will notify the employer of the filed charge. Any further disparate actions taken against the fired worker after the ex-employee begins the process will be considered retaliatory by both agencies.

The ADEA incorporates the enforcement and remedial provisions of the Fair Labor Standards Act (FLSA). FLSA remedies include awards for backpay, reinstatement or front pay. The amount of front pay may be affected by the lack of availability of employment opportunities open to the fired employee. In addition, the employee may be entitled to an additional amount in

liquidated damages upon establishing that the employer's actions were willful. Indeed such an award is mandatory upon a finding of willfulness.

If the ex-employee is successful in his or her ADEA case, she may also recover attorney fees. Employers who think they can prevail and obtain attorney fees themselves are incorrect, as a California labor attorney might tell them, as that is not the case. The ADEA does not authorize fee awards to a prevailing defendant.

The California Fair Employment and Housing Act also prohibits age discrimination in employment and its remedies are in addition to those with the EEOC. With the FEHA, the fired employee is also eligible to receive damages for emotional distress as well as punitive damages. The FEHA applies to all employers with five or more employees. And as with the federal rules, discrimination based on age over 40 is prohibited.

Should the employer take any retaliatory actions against the ex-employee for filing a claim with the EEOC, the DFEH, or the Department of Industrial Relations, each agency prohibits such actions and will consider them to be further violations of the law.

So where should a California Labor Lawyer file his or her client's claim if they have been the victim of age discrimination, harassment or retaliation? And how long do they have to file it?

Age discrimination complaints can be filed with the DFEH, with the EEOC and with the Department of Labor Standards Enforcement (DLSE) but are most commonly filed with the DFEH and the EEOC.

With the DFEH, the interviewing consultant drafts a formal complaint. If the complaint is accepted for investigation, the complaint is also filed with the EEOC. After the DFEH issues an accusation, the DFEH may litigate the case in a public hearing before the Fair Employment and Housing Commission. If emotional distress damages or administrative fines are sought, the employee can have the case moved to a civil court. If the case is moved to court, the DFEH prosecutes, but the complainant is the real party in interest.

Government codes section 12965(b) requires that individuals, with or without their California labor attorneys, must exhaust their administrative remedies with the DFEH by filing a complaint and obtaining a "right-to-sue notice" from the Department before filing a lawsuit. The DFEH, however, will accept requests for an immediate "right-to-sue-notice" from persons who have decided to proceed in court. A DFEH complaint must be filed within one year from the last act of discrimination or you may lose your right to file a lawsuit.

Once a "right-to-sue-notice" is received from the DFEH, the employee and his or her California labor lawyer, has one year to file a civil lawsuit. Failure to do so may again cause you to lose your right to sue.

Common mistakes by harassment victims are not telling the person doing the harassment to stop, not documenting the harassment by that person, not reporting the harassment to your superiors, not making sure the employer is taking action to end the harassment, not obtaining

medical or psychological help when needed, not realizing that retaliation is illegal, accepting the word of your employer that you do not have a case for harassment or discrimination, not filing a DFEH, EEOC or DLSE/DIR complaint within the time allowed, not having an attorney assess whether any arbitration agreement is binding, and not consulting with an attorney.

A complaint to the EEOC under Title VII of the Civil Rights Act of 1964 must be made within 180 days from the date of the incident. This period, however, is extended to 300 days if the employee also files a complaint with the DFEH. Complaints of discrimination commonly include discrimination based on race, color, religion, sex, national origin, age, handicap, sexual orientation and retaliation or reprisal. That time period, however, can be reduced to as little as 30 days after a complainant receives notice that a state agency such as the DFEH has terminated its processing of a charge. It is thus best to contact the EEOC immediately whenever discrimination is suspected because of its short statutes of limitations.

In addition, many governmental agencies require that for an employee or applicant for employment to preserve their rights under EEO laws, they must contact an EEO Counselor within 45 calendar days of the alleged discriminatory action. There are exceptions and grounds for extending this period, but a complainant does not want to be in a position to be having to argue those grounds as the complaint may be deemed too late to be accepted.

Once a complaint is filed with the EEOC, if the EEOC finds substantial evidence of discrimination, it will file a lawsuit. If the EEOC does not find sufficient facts to support the complaint, it dismisses the complaint and issues a “right to sue” letter to the complaining party. A lawsuit must then be brought by the complaining party within 90 days of receiving the Right to Sue letter from the EEOC.

A much less publicized and less known agency in the State of California at which complaints for retaliation and discrimination can be filed is with the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations (DIR). An employee or job applicant alleging violation of any law under the jurisdiction of the Labor Commissioner must file a complaint with the DLSE within six months of the adverse action. Adverse actions include unlawful discharge, demotion, suspension, reduction in pay or hours, refusal to hire or promote and other actions. There are, however, some exceptions to the 6-month deadline, but again, it is best to file a complaint as soon as possible to ensure that it is timely.

Filing a complaint with the Labor Commissioner does not prevent a person from filing a private lawsuit. While it can be costly to hire a California labor lawyer on an hourly rate to file such a lawsuit, some California labor attorneys will handle the case on contingency.

Finally, an employee or job applicant who alleges retaliation for having complained about a workplace health or safety issue has the right to file a concurrent complaint with the federal OSHA within 30 days of the occurrence of the adverse action.

Having said all of that, it is clearly within the jurisdiction of the EEOC to enforce the Age Discrimination Act of 1967 which protects against discrimination against people who are 40 years or older. The shorter time limits one has to file a complaint with the EEOC, however,

causes many to file complaints with the DFEH instead. And for the most part, most people don't even know about their rights to file complaints with the DLSE.

An advantage of filing with the EEOC, is that some applicants find that they also have a valid complaint under the Equal Pay Act of 1963, the laws of which are also enforced by the EEOC (although California also has an Equal Pay Law). The EEOC also enforces the Americans with Disabilities Act of 1990 as amended in 2008 and the Rehabilitation Act of 1973.

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