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California Bill Proposes Three Year Statute of Limitations for Employment Claims

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California Assembly Bill 9 (AB 9), sponsored by Assembly Members Eloise Reyes, Laura Friedman, and Marie Waldron, would expand employee protections related to harassment and discrimination in the workplace.

The California Fair Employment and Housing Act makes specified employment and housing practices unlawful, including discrimination against or harassment of employees based on race, sex, age, physical or mental disability, medical condition, sexual orientation, veteran status, and other protected characteristics.

Under existing law, a person making a claim of discrimination or harassment must “file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the last unlawful practice occurred.” In many cases, this is the date upon which an employee is discharged or resigns from employment.

Proposed AB 9 would extend the statute of limitations period to three years for employment complaints, as specified. The bill “would make conforming changes in provisions that grant a person allegedly aggrieved by an unlawful practice who first obtains knowledge of the facts of the alleged unlawful practice after the expiration of the limitations period, as specified.” The bill would not allow this statute of limitations extension to revive previously lapsed claims.

Tripling the California statute of limitations for these claims could cause administrative problems for employers. Many companies have records retention policies that do not contemplate such a lengthy amount of time for a claim to be brought. For those companies with seasonal workers or a transitory workforce, this statute of limitations extension, if passed, would mean a reevaluation of electronic communications retention time frames and require more rigorous recordkeeping. Under existing law, many employment-related claims stretch back two or more years at the time of filing a civil lawsuit, at which point many witnesses have a vague memory of events. Extending the statute of limitations would make it even more challenging to find reliable witnesses. The proposed law, if passed, would require employers to be more thorough when documenting efforts to resolve employee complaints.

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Article By [Paul M. Smith](#)
[Karen Tynan](#)
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)
[Our Insights](#) [Labor & Employment](#)
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[California](#)