

One Minute Memo®



Plaintiffs, Beware: The Pecuniary Pitfalls of Pointless Proceedings

Trial courts have discretion to award attorney's fees to parties who prevail in actions under the California Fair Employment and Housing Act ("FEHA"). But the deck is stacked against *defendants* seeking to recover fees, in that they must not only prevail but also prove that the plaintiff's lawsuit was unreasonable, frivolous, meritless, or vexatious. What's more, prior case law suggested that a trial court must make express written findings in support of a fee award to the defendant. On February 25, 2014, in *Robert v. Stanford University*, the California Court of Appeal gave a welcome bit of relief on this score, affirming an award of \$100,000 in attorney's fees to a prevailing employer even though the trial court had not made written findings in support of the award.

The Facts

Stanford University discharged Francis Robert for harassing a female Stanford employee. Stanford had warned Robert about his behavior, but he persisted. His harassment was subject to a restraining order, which the California Court of Appeal affirmed.

When Robert sued Stanford for "native ancestry" discrimination, he conceded he had no evidence of discrimination, other than his personal belief that Stanford had acted wrongfully.

The trial court, after granting Stanford's motion for nonsuit, awarded Stanford \$100,000 of its requested \$235,000 in attorney's fees. In doing so, the trial court made oral findings on the record that Robert's FEHA claim "was without merit and was frivolous and vexatious. It was a legal theory in search of facts. There were none that were presented." Similarly, the trial court orally addressed Robert's argument that his financial circumstances rendered him incapable of paying such an award. The court did not, however, issue these findings in writing.

The Appellate Court Decision

The Court of Appeal affirmed the trial court's award. It expressly rejected prior case law that required automatic reversal of an award of attorney's fees if the trial court did not make an express written ruling. Because the express oral findings here demonstrated that the trial court had applied the correct legal standard when it awarded fees, the failure to make written findings did not result in a "miscarriage of justice," such as would be required to justify a reversal of the award.

What *Robert* Means For Employers

Employers continue to face an uphill battle when they seek to recover attorney's fees after they defeat bogus discrimination suits. The decision, however, demonstrates that the right set of facts will support an award of fees, and that the award will withstand appeal where the correct legal standard is applied, even if the trial court neglects a ministerial obligation in rendering the award.

Employers should continue to document investigations and disciplinary decisions for employees. Such documentation will help to defeat liability in the first instance, and may provide the evidence necessary to establish that a claim is meritless, thereby justifying an award of attorney's fees.

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Seyfarth Shaw LLP One Minute Memo® | March 6, 2014

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