

Jumaane v. City of Los Angeles: **\$1 Million Judgment Reversed In a Racial Discrimination Case**

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Firefighter's Employment History

Plaintiff Jabari Jumaane ("plaintiff"), an African American firefighter, began working for the Los Angeles Fire Department (LAFD) in 1986. Throughout the 1990s, plaintiff complained about racism in the fire department. For example, in 1991, plaintiff wrote a letter to the City Council protesting racism on behalf of an organization of African American firefighters. Plaintiff gave an interview in 1994 regarding racial issues in the Department. Plaintiff also testified to racism in the Department at a hearing of the City Council. In 1997, plaintiff gave deposition testimony about race discrimination in the Department as a result of a lawsuit brought by a Department employee.

Plaintiff was suspended for 10 days in 1999 and for 15 days in 2001 as discipline for intentionally violating employer

directives. Plaintiff later complained the disciplinary actions taken against him were retaliatory and racially motivated, constituting adverse employer actions.

Los Angeles Trial

On April 18, 2003, plaintiff sued the City of Los Angeles ("the City"), alleging racial discrimination, racial harassment, and retaliation under the California Fair Employment and Housing Act ("FEHA"). At the close of trial, the jury rendered a verdict in favor of the City. Plaintiff subsequently won a motion for new trial based on juror misconduct. The Court of Appeal affirmed the decision for new trial. In defense, the City argued it was entitled to judgment as a matter of law because plaintiff failed to file a complaint with the Department of Fair Employment and Housing ("DFEH") within one year of the adverse employment action. (Gov. Code § 12960(d).) The City claimed plaintiff was barred from bringing his lawsuit.

The Court of Appeal found plaintiff timely filed his DFEH complaint. The court also found plaintiff suffered an adverse employment action when he was suspended from April 16 to April 30, 2001. Plaintiff subsequently filed his DFEH complaint on April 16, 2002.

Plaintiff's case was retried between September and November 2013. The jury found

in favor of plaintiff for the following causes of action: 1) race discrimination based on disparate impact theory; 2) race harassment; 3) retaliation for complaining about discrimination and harassment; 4) and failure to prevent discrimination, harassment, or retaliation. The jury ruled in favor of the City for disparate *treatment* race discrimination. The jury found plaintiff's race was not a substantial motivating reason for the City's treatment toward plaintiff. The jury awarded plaintiff over one million dollars in damages. The City appealed.

The City's Appeal

On appeal plaintiff argued he may recover damages for every act of race harassment and retaliation due to his complaints about discrimination and harassment he suffered during his employment with the City. This is not the law.

Continuing Violation Doctrine

Generally, an employee suing for violations of FEHA cannot recover for acts occurring more than one year prior to filing the DFEH complaint. (Gov. Code § 12960(d).) The continuing violation doctrine, however, is an exception to this rule. The continuing violation doctrine allows a plaintiff to recover for unlawful practices which occur outside the limitations period *if the practices continued into that period.* (*Dominguez v. Washington Mutual Bank* (2008) 168 Cal.App.4th 714,

720-721.) When a defendant asserts the statute of limitations defense, plaintiff has the burden of proof to show his claims are timely under the continuing violation doctrine.

Under the continuing violation doctrine, plaintiff must prove conduct occurring outside the limitations period was: 1) similar or related to the conduct which occurred earlier; 2) reasonably frequent; and 3) had not yet become permanent. The Court defined “permanent” as the following: an employer’s statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile. The statute of limitations begins to run either when the course of conduct ends (i.e. the employer ceases his conduct or the employee resigns), or when the employee is on notice that further efforts to end the unlawful conduct will be in vain. (See *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 822-823.)

In this case, there was substantial evidence to support the first two prongs of the continuing violation doctrine. There was evidence plaintiff suffered harassment and retaliation in the 1990s, some incidents were similar or related, and the similar or related events were reasonably frequent at various times. However, the Court found no evidence to infer the harassment and retaliation which occurred in the 1990s had not become permanent by the time plaintiff served his 1999 suspension. The

harassment and retaliation culminated in the 1999 suspension, and plaintiff knew future efforts to make changes would be futile. Thus, plaintiff’s claims related to conduct which occurred before June 1999 were barred by the statute of limitations.

Plaintiff’s Remaining Claims

The Court found there was not substantial evidence to support the following during the limitations period: 1) a finding of disparate impact race discrimination; 2) harassment based on race; and 3) retaliation.

With respect to disparate impact race discrimination, the jury found the City subjected plaintiff to an adverse employment action. Plaintiff’s race, however, was *not* a substantial motivating reason for the City’s treatment of plaintiff. To prove disparate impact discrimination, plaintiff needed to show a facially neutral policy *caused* a protected *group* to suffer adverse effects. While plaintiff introduced evidence showing there “appeared” to be a disproportionate amount of discipline against African Americans in the 1990s, the evidence did not show disparate treatment during the relevant time period. Further, plaintiff’s argument appeared to rest on racial discrimination *against him*, which is irrelevant to a disparate impact claim.

Plaintiff did not produce substantial evidence to support his harassment claim during the limitations period. The events plaintiff described as harassment

took place before 2000. The only alleged harassment during the limitations period was plaintiff’s suspension in April 2001. However, a disciplinary suspension does not constitute harassment under FEHA as a matter of law. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63-65.)

Plaintiff also failed to provide evidence of retaliation within the limitations period. The Court found there was no evidence which undermined the City’s proof it had a legitimate, non-retaliatory reason for plaintiff’s 2001 suspension.

Judgment Reversed

Plaintiff’s claims for failure to prevent discrimination, harassment, and retaliation were also denied. Thus, the Court reversed the lower court’s ruling awarding plaintiff over \$1 million dollars and remanded for entry of judgment in favor of the City. The appellate decision is another useful tool for employers when defending discrimination claims. Courts have held plaintiffs to strict requirements in order to successfully circumvent FEHA’s statute of limitations under the continuing violation doctrine. Statute of limitations stands as a strong affirmative defense to potential “ongoing” discrimination and harassment claims.

ABOUT THE AUTHOR

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