

Decision gives a little leverage to employers, Daily Journal

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As most California employers know, the Golden State is often a difficult place to do business. California's Fair Employment and Housing Act (FEHA), which prohibits harassment and discrimination in the employment arena, historically has limited awards of attorney fees and costs to prevailing plaintiffs only, as it has a one way fee-shifting provision that benefits employees. Under a plain reading of the statute, however, the prevailing party in any FEHA-based litigation may be entitled, at the court's discretion, to recover its attorney fees and costs. While employees who prevail in such lawsuits have generally been awarded their attorney fees and costs, prevailing employers have been awarded their attorney fees and costs only where the underlying case was found to be frivolous, unreasonable or without foundation. Thus, an employer had a significantly higher burden to meet in order to recover fees and costs. As such, the very real possibility of an employee being awarded his attorney fees and costs on a FEHA claim, without the same form of relief being as readily available to employers, has often been the tail that wags the dog, or the motivating consideration that can drive settlements.