



ALERTS

California Supreme Court Holds Third Parties Liable For Worker Bias Under FEHA

August 23, 2023

Highlights

A recent California Supreme Court ruling clarifies that some third-party entities can be held directly liable for California Fair Employment and Housing Act violations, broadening accountability under California's anti-discrimination laws

Employers must ensure compliance within their own operations and with third-party entities in the hiring process, including algorithmic hiring

The decision opens the door to direct liability for third-party agents, possibly leading to more class-action lawsuits

The California Supreme Court's recent decision in [Raines v. U.S. Healthworks Medical Group](#) creates new avenues of liability and responsibility for third-party entities involved in the employment hiring process and potentially for the employers who engage such entities. For employers and third-party agents involved in the hiring process, the ruling acts as a firm reminder of the need to ensure compliance with the California Fair Employment and Housing Act (FEHA) at every stage of the hiring process, regardless of whether certain functions are outsourced to third parties.

RELATED PEOPLE



John F. Kuenstler

Partner

Chicago, Los Angeles

P 312-338-5924

F 312-759-5646

john.kuenstler@btlaw.com



Rochelle Lynn Calderon

Associate

Los Angeles

P 424-239-3746

F 310-284-3894

rcalderon@btlaw.com

RELATED PRACTICE AREAS

Labor and Employment

The case originated from a class action filed by employees alleging they were asked inappropriate medical questions during job screenings conducted by third-party medical providers. The court concluded that a business with at least five employees and working on behalf of an employer can be held responsible for violating anti-discrimination laws under FEHA, provided they engage in FEHA-regulated activities on behalf of the employer.

Notably, this ruling does not allow employers to insulate themselves by delegating their obligations under FEHA to these agents or otherwise exempt employers from liability. Instead, it expands the potential list of parties liable under FEHA. California employers now face the task of not only ensuring compliance with FEHA within their in-house practices, but also being mindful of the practices of the entities they engage with during the hiring process.

The court's ruling carries significant implications for California employers and third-party entities involved in hiring processes.

Expanded Direct Liability and Monitoring

The direct liability of third-party agents means employers must carefully select and monitor those entities to ensure they adhere to FEHA standards. While the ruling does not establish a blanket requirement for employers to monitor their third-party agents, it does introduce the possibility that plaintiffs' lawyers may argue for a heightened duty of oversight. As such, the ruling underscores the growing significance of thorough vetting and monitoring of third-party agents to safeguard against potential legal disputes and to maintain FEHA compliance. This ruling also places a higher burden on third-party agents to ensure compliance with anti-discrimination laws.

Outsourcing and Algorithmic Hiring

Employers outsourcing hiring processes or relying on algorithmic hiring methods must be vigilant about FEHA compliance. Third-party agents must adhere to FEHA standards, even when tasked with routine functions like candidate screening.

Class Action Landscape

The ruling opens the door to increased class action lawsuits against third-party agents and employers who use such third-party agents. Employees from multiple companies could unite to challenge the actions of a single agent. With that in mind, employers must be prepared for potential legal ramifications that may affect them indirectly due to their relationships with those third-party agents.

As the legal landscape evolves, California employers are urged to review their existing contracts and relationships with third-party agents involved in the recruitment and hiring process, and confirm that their practices align with the court's ruling and the broader implications for employment law enforcement in California.

For more information, please contact the Barnes & Thornburg attorney with whom you work or John Kuenstler at 312-338-5924 or

john.kuenstler@btlaw.com or Rochelle Calderon at 424-239-3746 or rcalderon@btlaw.com.

© 2023 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.