

California Supreme Court Holds Statute of Limitations on Failure to Promote Claims Runs When Employee Knows or Reasonably Should Know They Were Denied Promotion

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When does the statute of limitations period begin to run on a harassment claim? The California Supreme Court has ruled in [*Pollock v. Tri-Modal Distribution Services, Inc.*](#) that the time to file a cause of action for failure to promote brought under the harassment provision of the Fair Employment and Housing Act (“FEHA”) starts to run when the employee *knows or reasonably should know* of the employer’s allegedly unlawful refusal to promote the employee.

Plaintiff, Pamela Pollock (“Pollock”) is a customer service representative for the defendant, Tri-Modal Distribution Services, Inc. (“Tri-Modal”). She alleges that her employer passed her over for several promotions in part because she refused a sexual relationship with Michael Kelso, the executive vice-president of Tri-Modal. Pollock’s administrative complaint challenged the promotion of several individuals, but the appeal to the California Supreme Court concerned the promotion of an individual named Leticia Gonzalez (“Gonzalez”) in particular. Gonzalez was offered the promotion in March 2017, and it became effective May 2017.

The record on appeal did not disclose when Pollock became aware of Gonzalez’s promotion.

The dates are critical. Pollock filed her administrative complaint in April 2018, when the Government Code required litigants seeking relief under FEHA to file an administrative complaint within one year “from the date upon which the alleged unlawful practice...occurred.” Pollock contended that the statute of limitations began to run in May 2017, when the promotion took effect, while Defendant argued that the statute of limitations began to run in March 2017, when Pollock was denied the promotion. The trial court and Court of Appeal held that Pollock’s claim was filed late, based upon the date the promotion was offered to Gonzalez, instead of Pollock. The California Supreme Court disagreed, and found that neither party was correct.

The Court noted that the purpose of the FEHA statute of limitations is “to promote the resolution of potentially meritorious claims on the merits.” The Court found the limitations period to file an administrative complaint based on failure to promote does not begin to run until an aggrieved employee knows or reasonably should know of the employer’s decision not to promote them,

indicating “what starts the clock is the employee’s actual or constructive knowledge of the employer’s decision.” This approach, the Court stated, “protect[s] defendants from the necessity of defending stale claims and require[s] plaintiffs to pursue their claims diligently.”

No decision was made on whether Pollock’s claim was time-barred. It was sent back to the superior court for further proceedings.

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