

## *KD Alert: California Appeals Court Rules Employers May Recover Litigation Costs*

*By Sarah K. Goldstein and Rina Spiewak  
(July 30, 2013)*

*As most California employers know, the “Golden State” is often a difficult place to do business. California’s Fair Employment & Housing Act (“FEHA”), which prohibits harassment and discrimination in the employment arena, historically has limited awards of attorney’s fees and costs to prevailing plaintiffs only – it has a one way fee-shifting provision that benefits employees. Under a plain reading of the statute, the prevailing party in any FEHA-based litigation may be entitled, at the court’s discretion, to recover its attorney’s fees and costs. While employees who prevail in such lawsuits have generally been awarded attorney’s fees and costs, prevailing employers have been awarded attorney’s fees and costs only where the underlying case is found to be frivolous, unreasonable, or without foundation. Thus, an employer had a significantly higher burden to meet in order to claim fees and costs. As such, the very real possibility of an employee being awarded his attorney’s fees on a FEHA claim, without the same form of relief being as readily available to an employer, is often used by an employee to extract an unreasonably high settlement from his employer even if the employee’s claim has little merit.*

*On July 23, 2013, the California Court of Appeals nudged the employer-employee playing field toward a somewhat more even level when it issued a holding that a prevailing defendant in a FEHA action need not show that the action is frivolous, unreasonable, or without foundation in order to recover ordinary costs. Williams v. Chino Valley Independent Fire District, No. E055755 (Cal. Ct. App. July 23, 2013). In this matter, Plaintiff Loring Winn Williams (“Williams”) sued the Chino Valley Independent Fire District (“District”) for employment-related disability discrimination under FEHA. The District’s Motion for Summary Judgment was granted, and as the prevailing party in the litigation, it filed to recover its costs. Williams argued – to no avail - that no costs should be awarded to the District because his claim was not frivolous, unreasonable, or groundless.*

*In awarding the employer costs, the Williams case clarified that where a defendant seeks an award of ordinary costs only (i.e., exclusive of attorney fees, which may be considered an element of costs in California), the defendant may recover such costs. The law relied upon is California Code of Civil Procedure Section 1032, which provides that “a prevailing party is entitled as a matter of right to recover costs in any action or proceeding” and pursuant to California Government Code Section 12965, which provides that a court may award a prevailing party in a FEHA action its reasonable attorney’s fees and costs, including expert witness fees, except where the action was filed by a public agency or a public official acting in an official capacity.*

*This decision is good news for California employers, as the Court of Appeals has relieved an employer who prevails in a FEHA action of the burden of proving that the claim was frivolous, unreasonable, or groundless in order to recover its ordinary costs.*

*For more information on this decision, please contact the attorneys in KD’s Employment Law practice.*