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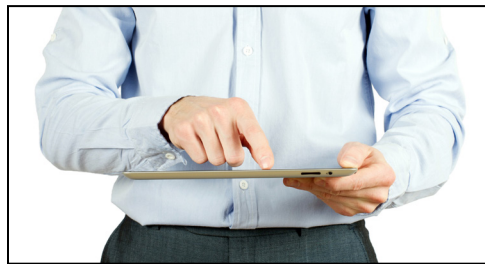
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NEW CALIFORNIA LAWS FOR 2017

AB 2296: Electronic signature rules

By David Harris and Yvette Davis

Assembly Bill 2296 is yet another example of the new reality of the electronic age, and shows that the state is moving closer and closer to a fully paperless system. California's Fair Employment and Housing Act (FEHA) requires plaintiffs to exhaust their administrative remedies with either the Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment & Housing (DFEH) by filing a complaint and obtaining a right-to-sue notice from the DFEH before filing a lawsuit alleging FEHA violations. By statute, a plaintiff's administrative complaint must be: (1) verified; (2) in writing; (3) comprised of facts that would give rise to a violation of FEHA; and (4) filed within one year of the date of the alleged violation. Government Code Section 12960(b). An employer can seek to dismiss the lawsuit if the employee failed to timely exhaust his/her administrative remedies. The purpose of the FEHA regulations (amended as of April 1, 2016) is to permit the DFEH to investigate the alleged employment dis-



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crimination to determine the merits and eliminate frivolous claims.

Under a straightforward reading of Section 12960(b), a plaintiff has to actually sign the claim in order to satisfy the statute's "written and verified" requirement. In practice, this is not the case. FEHA allows a plaintiff to satisfy the administrative exhaustion requirements by completing an online form and submitting it electronically without signature. See *Rickards v. United Parcel Service, Inc.*, 206 Cal. App. 4th 1523 (2012) (unsigned electronically filed FEHA complaint satisfied signature requirements). While the use of an electronic signature was permitted by case law and the California Code of Regulations, it was never codified within the applicable Government Code. California's Legislature finally codified

the employee's ability to electronically sign FEHA complaints last month with the passage of California AB 2296. The bill amended Government Code Section 16.5 and Civil Code Section 1633.2 to state that a verifiable digital signature shall have the same force and effect as a manual signature.

AB2296 also has the incidental and perhaps unintended consequence of relaxing another hurdle employees have to overcome before they can sue their employers for FEHA violations. Employees simply need to "fill in the box" on an electronic form and hit "send" on the computer to receive a right-to-sue letter. The process for filing complaints with the department and obtaining right-to-sue letters has become so streamlined, it appears to be little more than a formality.

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