ASSEMBLY BILL No. 159

Introduced by Assembly Member Jerome Horton

January 22, 2003

An act to add Section 19636 to the Government Code, relating to state employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 159, as introduced, Jerome Horton. State employees: discrimination action.

The California Civil Service Act authorizes an appointing power to take adverse action against an employee for specified causes for discipline and establishes administrative procedures for review of an adverse action by the State Personnel Board. Existing law provides for a party in an administrative proceeding under these provisions to seek court review of any final administrative order or decision.

Existing law permits individuals, including public employees, to file with the Department of Fair Employment and Housing complaints alleging discrimination in employment based on various grounds, and to bring judicial actions regarding these complaints under specified circumstances.

This bill would provide that, under the California Civil Service Act, a person's failure to exhaust his or her judicial remedies in an appeal from an adverse action before the State Personnel Board, or its authorized representative, may not preclude a separate or subsequent discrimination action, between the individual and the appointing power brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, unless the issue of

discrimination was expressly raised by the person appealing the adverse action, and was addressed and decided by the adjudicator, in the prior proceeding. This section would further declare that such a discrimination action may not be barred on grounds that the aggrieved person failed to exhaust his or her state civil service administrative remedies. The bill would declare the intent of the Legislature that its provisions overrule specified decisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 19636 is added to the Government Code, to read:

19636. (a) A person's failure to exhaust his or her judicial remedies in an appeal from an adverse action before the State Personnel Board, or its authorized representative, may not preclude a separate or subsequent discrimination action between that individual and the appointing power brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, unless the issue of discrimination was expressly raised by the person appealing the adverse action, and was addressed and decided by the adjudicator, in the prior proceeding.

(b) A discrimination action may not be barred on grounds that the aggrieved person failed to exhaust his or her state civil service administrative remedies.

(c) It is the intent of subdivision (a) to abrogate Johnson v. City of Loma Linda (2000) 24 Cal.4th 61, to the extent that it held that a person's failure to seek a writ of mandate or other judicial remedy, after exhausting his or her administrative remedies in appealing from an adverse action before the State Personnel Board, barred a separate or subsequent discrimination action. It is not the intent of subdivision (a) to affect the applicability, in a discrimination action, of the doctrines of res judicata or collateral estoppel to any findings of fact or law made in a prior proceeding.

(d) It is the intent of subdivision (b) to abrogate Schifando v. City of Los Angeles (2002) 97 Cal.App.4th 312, which held that a person must exhaust not only the administrative remedies

provided by the California Fair Employment and Housing Act (FEHA), but also his or her internal or civil service administrative remedies, prior to bringing a discrimination action under FEHA.

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