

# California Expands FEHA Liability to Include “Institutional Agents” of Employers

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California’s Fair Employment and Housing Act (FEHA) is already one of the most employee-friendly state civil rights laws in the country. Until now, it was not clear whether employees could sue not only their direct employers for discrimination and harassment, but also other independent businesses that work on behalf on their employers.

In [\*Raines v. U.S. Healthworks Medical Group\*](#), the California Supreme Court ruled that under FEHA, third-party “business entity agents” are employers if they have at least five employees and they perform “FEHA-regulated” activities on an employer’s behalf.

The issue originated in the Ninth Circuit, which certified to the California Supreme Court the question of whether FEHA’s definition of “employer” extended to corporate agents of the employer. *Raines* involves a putative class action in which the named plaintiffs allege that their employment offers were conditioned upon completion of pre-employment medical tests conducted by U.S. Healthworks Medical Group (USHW). The applicants allege that USHW asked intrusive and illegal questions unrelated to their ability to work during these medical screenings, including whether the applicants had cancer, mental illnesses, HIV, or problems with menstrual periods. The applicants asserted FEHA claims against both the companies they applied to that used USHW to conduct the medical screenings and sued USHW itself.

The Court examined FEHA’s definition of “employer,” and concluded that the definition did encompass third-party corporate agents like USHW. The Court referenced similar holdings from federal circuit courts where similarly situated third-parties were found liable under Title VII. California courts often look to Title VII case law to determine how the FEHA should be interpreted. The Court also found that third-party liability aligns with the public policy underlying FEHA. In situations like in *Raines*, extending liability to the company that administered the intrusive medical test, extends liability to the company most directly responsible for a FEHA violation.

Perhaps of even greater import, *Raines* has potential implications for the extension of FEHA's reach beyond third party entities like USHW. For example, artificial intelligence vendors that provide automated employment decision tools to employers to assist with tasks such as recruitment, screening, hiring, and other employment related decisions could potentially fall within FEHA's definition of employer.

We'll continue to closely monitor these developments.

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- **Anthony J. Oncidi**

Partner