

## In California FEHA Discrimination Case, Federal Courts Have Jurisdiction to Determine Whether Obtaining Security Clearance Was a Bona Fide Job Requirement

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The Court in *Zeinali v. Raytheon Company* (No.09-56283, opinion by Judge Milan D. Smith, Jr.) clarified the jurisdiction of the federal court to decide discrimination cases involving security clearance decisions and subsequent adverse employment actions by private employers.

The Court held that where Executive branch security clearance is at issue, jurisdiction is proper where the judiciary is asked to consider questions that do not involve the merits of the security clearance decisions itself, such as whether the security clearance was a requirement for the job.

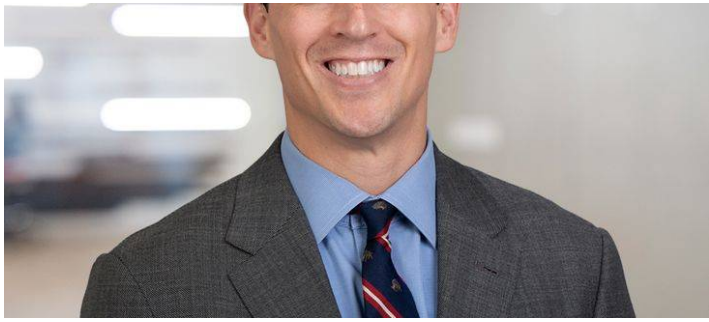
In *Zeinali*, the employer, Raytheon, hired Plaintiff, who is of Iranian descent, in a position that according to Raytheon, required him to obtain "Secret" level security clearance. Plaintiff was informed that his employment was contingent on obtaining such clearance. Although Plaintiff's initial request for interim clearance was denied, Raytheon retained him while the final clearance decision was pending. During the period in which final clearance was pending, Plaintiff was transferred to a different position. Ultimately, Plaintiff's request for clearance was denied, and after conducting internal discussions, Raytheon terminated Plaintiff's employment.

Plaintiff then brought suit claiming Raytheon wrongfully discriminated against him in violation of the California Fair Employment and Housing Act (FEHA) by terminating him on the basis of his race and national origin. In support of his claim, Plaintiff offered evidence that two similarly situated, non-Iranian employees were retained by Raytheon after Plaintiff's termination. This evidence, according to Plaintiff, demonstrated that the security clearance requirement was not a bona fide job requirement.

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