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## **Disparate Impact Claims Can Be Based on a Subgroup within a Protected Class**

Not even the California court system is exempt from age discrimination claims. Plaintiffs, retired superior court judges who have participated in the Temporary Assigned Judges Program, challenged changes to the program made by the Chief Justice. These changes included placing limits on the duration of service in the program but provided for some exceptions. Plaintiffs claimed these changes discriminated against “older” retired judges and filed a lawsuit alleging disparate impact age discrimination under the Fair Employment and Housing Act (“FEHA”). Defendants filed a motion to dismiss the case on the ground that plaintiffs’ allegations failed to state a viable disparate impact age discrimination claim and it was granted by the trial court.

The Court of Appeal reversed and held that plaintiffs should be granted leave to amend their complaint. Among other things, plaintiffs failed to allege the total number of participants; the number of participants allegedly adversely impacted by the challenged changes to the program; the age group allegedly adversely impacted; “basic allegations” of statistical methods and comparison; or “even any anecdotal information of a significant age-based disparity.” The Court further held that a disparate impact age discrimination claim under the Fair Employment and Housing Act is not barred solely because it is based on alleged discriminatory impact on a sub-group within the protected age class as was alleged in this case.

### **What This Means for Employers:**

California employers would be wise to evaluate any length of service restrictions as well as policies concerning retirement incentives. These programs may run afoul of the anti-age discrimination laws. Please contact Barsamian & Moody regarding any questions you may have related to the ruling in this case.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*

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