

EMPLOYMENT LAW UPDATE

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California and Federal Law

Two-Tiered Pay Scale Held Not Discriminatory Where No Barriers Exist For Female Applicants Seeking Higher Pay Scale Jobs.

Hall v. The County of Los Angeles (Cal.App., Second District, February 22, 2007)

By David P. Borovsky and Jason A. Geller

Defendant County of Los Angeles was faced with a budget shortfall and insufficient resources to hire enough lawyers. In response, the County approved formation of ALS, an entity formed to hire lawyers and supplement those employed by the County (“County Counsel”), at lower cost to the County, on an as-needed basis.

One such ALS lawyer, Danna Hall, sued the County in a class-action lawsuit alleging violations of the Federal Equal Pay Act and California’s FEHA. She essentially alleged that the majority of the ALS lawyers were women, and were paid less than County Counsel, who were predominantly men.

The County prevailed on summary judgment, and the appellate court affirmed, based on the following evidence: (1) essentially the same percentage of men and women worked for ALS as for County Counsel; (2) although County Counsel were paid more than employees of ALS, similarly situated male and female lawyers employed by each were paid the same salary and benefits; (3) all applications

for available positions as County Counsel were made available to both men and women; and (4) the County Counsel lawyers were paid more than ALS lawyers for legitimate, budget-related reasons.

To prevail on her Equal Pay Act claim, Hall had to prove that she was paid less than a comparable male employee for equal work. Hall’s argument was that she was paid less than male employees who worked as County Counsel—not her male counterparts who worked for ALS. The appellate court rejected this argument, concluding that the correct “comparator” was a male employee of ALS, since there was no evidence of barriers to women becoming County Counsel (as opposed to working for ALS). Because Hall was paid the same wages as comparable men working for ALS, this claim failed as a matter of law.

The appellate court also rejected Hall’s claims of disparate treatment and disparate impact under California’s FEHA. Hall failed to establish her prima facie case because she failed to present any evidence that the County had created

ALS because of its effect on female lawyers, or that ALS had a disproportionate adverse effect on women. Moreover, the County produced evidence of a legitimate, non-discriminatory reason for creating ALS—budget constraints. As such, Hall’s FEHA claims likewise failed as a matter of law.

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