

Employee Was Properly Limited To Just One Theory of Age Discrimination at Trial

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***Rosenfeld v. Abraham Joshua Heschel Day School, Inc.*, 226 Cal. App. 4th 886 (2014)**

Ruth Rosenfeld sued the day school where she had worked as a teacher for 35 years after her hours were reduced and she was allegedly forced to resign. Rosenfeld asserted that age discrimination was a motivating factor in the reduction of her hours, though the school asserted that Rosenfeld's hours were reduced because of a decline in student enrollment. Shortly after her resignation, Rosenfeld was replaced by another teacher who was in her mid-50's (slightly younger than Rosenfeld). A jury returned a verdict in favor of the school, and Rosenfeld filed this appeal, asserting that the trial court erred in not permitting her to put on a case of disparate impact in addition to disparate treatment – though all of her pleadings leading up to the trial only mentioned disparate treatment as her theory of discrimination. The Court of Appeal affirmed the trial court, holding that Rosenfeld had failed to provide timely notice to the school (i.e., before the close of discovery) that she would be pursuing a different theory of discrimination at trial. The appellate court found no error in various other rulings of the trial court, including permitting the school to put on evidence of Rosenfeld's failure to pursue its internal grievance procedure before filing suit.

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National Law Review, Volume IV, Number 195

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