

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Frohm v. City and County of San Francisco

No. 22-cv-06002-JST (N.D. Cal. May 14, 2025) · No. 22-cv-06002-JST · Decided May 14, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied the City and County of San Francisco’s motion for summary judgment in Darlene Frohm’s employment discrimination, retaliation, and Equal Pay Act action. The court granted summary judgment on Frohm’s discrimination claims and most asserted retaliation theories, but denied it as to retaliation based on the denial of a request to upgrade her position and as to the merits of her Equal Pay Act claim. The court applied a two-year statute of limitations to the Equal Pay Act claim.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 14, 2025
DOCKET	22-cv-06002-JST
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for summary judgment on Plaintiff's discrimination and Equal Pay Act claims and partial summary judgment on her FEHA retaliation claims. The court granted the motion in part and denied it in part.
STANDARD OF REVIEW	Summary judgment is proper when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court must draw all justifiable inferences in favor of the nonmoving party and may not weigh evidence or make credibility determinations.
PRECEDENTIAL VALUE	Unpublished federal district court order; metadata lists precedential status as Unknown.

TOPICS

- summary judgment
- retaliation
- employment discrimination
- wage and hour
- civil rights

PRACTICE AREAS

employment law

civil rights

civil procedure

municipal law

QUESTIONS PRESENTED

1. Whether the City was entitled to summary judgment on Frohm's FEHA and Title VII race-discrimination claims based on alleged failures to promote or reclassify her.
2. Whether Frohm's Title VII equal-pay claim could proceed under a failure-to-promote framework.
3. Whether newly asserted discrimination theories raised for the first time in opposition to summary judgment could be considered and, if considered, whether they survived summary judgment.
4. Whether the City was entitled to summary judgment on Frohm's FEHA retaliation claim concerning the denial of a request to upgrade her position from 0932 to 0941.
5. Whether the City was entitled to summary judgment on Frohm's retaliation theory concerning a CAT 18 temporary placement.
6. Whether the City was entitled to summary judgment on the merits of Frohm's Equal Pay Act claim based on the City's classification and compensation system.
7. Whether Frohm's Equal Pay Act claim was subject to a two-year or three-year limitations period.

HOLDINGS

1. The City was entitled to summary judgment because Frohm did not establish that she was qualified for the permanent 0932, 0941, or 0954 positions at issue; she failed the required management test battery.
2. The Title VII equal-pay claim failed because Frohm could not show that she was qualified for a 0941 position and did not present evidence giving rise to an inference of racial discrimination.
3. The court declined to consider newly asserted bases for liability that were not adequately disclosed in the operative complaint or discovery responses. In any event, the theories would fail on the merits for lack of evidence supporting an inference of race discrimination.
4. The City was not entitled to summary judgment on Frohm's retaliation claim based on the denial of the request to upgrade her position from 0932 to 0941.
5. The court granted summary judgment on, or declined to consider, the CAT 18 retaliation theory because Frohm's vague deposition testimony did not put the City on notice of that specific claim. The court also held that the theory would fail because Frohm did not show that the identified decisionmaker knew of her protected activity.
6. The City was not entitled to summary judgment on the merits of Frohm's Equal Pay Act claim because it did not establish the absence of disputed facts concerning whether the pay differential was based on a factor other than sex.
7. The court applied a two-year limitations period because Frohm did not present evidence creating a disputed fact concerning whether the City's alleged violation was willful.

KEY QUOTATIONS

“Summary judgment is proper when a “movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 2)

“It is not the court’s duty “to scour the record in search of a genuine issue of triable fact”; instead, the nonmoving party must “identify with reasonable particularity the evidence that precludes summary judgment.”” (at 2)

“The ultimate burden of persuasion on the issue of actual discrimination remains with the plaintiff.” (at 3)

““[S]ummary judgment is not a procedural second chance to flesh out inadequate pleadings.”” (at 6)

“adverse treatment that is reasonably likely to impair a reasonable employee’s . . . prospects for advancement or promotion” (at 10)

“employers cannot meet their burden of proving that a factor-other-than-sex is responsible for a wage differential by asserting use of a gender-neutral classification system without more.” (at 11)

FACTUAL BACKGROUND

Darlene Frohm, a Black woman, worked for the City and County of San Francisco and was appointed in 2018 to a temporary CAT 17 position classified as 0932 Manager IV. She contended that she performed work associated with the higher 0941 Manager VI classification but was not promoted or paid at that level. Frohm asserted race-discrimination and FEHA retaliation claims, a Title VII equal-pay claim based on race, and an Equal Pay Act claim based on sex. She received a score of 52.6 on the City's management test battery, below the required passing score of 55.8 for positions requiring that test.

PROCEDURAL HISTORY

The City moved to dismiss the original and amended complaints. The court allowed certain discrimination claims to proceed but dismissed retaliation and Equal Pay Act claims in part. After the court permitted a supplemental complaint concerning Plaintiff's termination, Plaintiff filed the operative supplemental complaint. The City then moved for summary judgment, and the court considered Plaintiff's untimely opposition.

DISPOSITION

other

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 255 (1986)
- C.A.R. Transportation Brokerage Co. v. Darden Restaurants, Inc., 213 F.3d 474, 480 (9th Cir. 2000)
- Nissan Fire & Marine Insurance Co. v. Fritz Companies, 210 F.3d 1099, 1102-03 (9th Cir. 2000)
- Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)
- Ambat v. City and County of San Francisco, 757 F.3d 1017, 1023 n.2 (9th Cir. 2014)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)

- *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004)
- *Guz v. Bechtel National, Inc.*, 24 Cal. 4th 317, 354-56 (2000)
- *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994)
- *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981)
- *Jaburek v. Foxx*, 813 F.3d 626, 631 (7th Cir. 2016)
- *Wasco Products, Inc. v. Southwall Technologies, Inc.*, 435 F.3d 989, 992 (9th Cir. 2006)
- *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 24 (1st Cir. 1990)
- *Barrilleaux v. Mendocino County*, No. 14-cv-01373-DMR, 2018 WL 3585133, at *9 (N.D. Cal. July 26, 2018)
- *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968-69 (9th Cir. 2006)
- *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-94 (9th Cir. 2000)
- *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042, 1052 (2005)
- *Adams v. Kmart Corp.*, No. C 00-03885 WHA, 2001 WL 969049, at *4 (N.D. Cal. Aug. 10, 2001)
- *Morgan v. Regents of the University of California*, 88 Cal. App. 4th 52, 69-70 (2000)
- *Rizo v. Yovino*, 950 F.3d 1217, 1222-25 (9th Cir. 2020)
- *Maxwell v. City of Tucson*, 803 F.2d 444, 446 (9th Cir. 1986)
- *Corning Glass Works v. Brennan*, 417 U.S. 188, 196, 201 (1974)
- *Aldrich v. Randolph Central School District*, 963 F.2d 520, 525 (2d Cir. 1992)
- *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988)
- *Alvarez v. IBP, Inc.*, 339 F.3d 894, 909 (9th Cir. 2003)