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## **Like a Phoenix, the Ninth Circuit's Salary Consideration Standard Rises from the Ashes**

Pay equity has taken center stage among the wide array of workplace issues receiving news coverage and public prominence in recent years. Companies and courts alike are trying to determine how to ensure that men and women are paid fairly in connection with their work and experience. The question of how to address pay equity has created such clamor and divergence that the United States Supreme Court decided to review the Ninth Circuit's interpretation of the law in *Fresno County Superintendent of Schools v. Rizo*, Case No. 18-272. However, in a shocking twist, the Supreme Court vacated the underlying case from the Ninth Circuit Court of Appeal on February 25, 2019, in light of the death of Ninth Circuit Justice Stephen Reinhardt.

The underlying case was brought by Aileen Rizo, a California math educator employed in the school system of Fresno, California, who alleged, among other claims, violation of the Equal Pay Act. Rizo brought suit after learning that a newly hired male colleague with the same job title (but less experience and education) was making \$13,000 more than she was. The case ultimately was appealed to the Ninth Circuit, which held that employers were prohibited from using the prior salary history of women as a basis for paying them less than men. This decision shifted a long-standing practice that previously allowed such inquiry and reliance in determining pay.

Justice Stephen Reinhardt of the Ninth Circuit helped to author the opinion, concluding that considering a prior salary history would help perpetuate gender-based pay gaps. However, he died before the opinion was issued. The decision did not have majority support without Justice Reinhardt's vote, creating a difficult quandary for the Supreme Court. Given that Justice Reinhardt was not technically a member of the Ninth Circuit panel when the opinion was issued, the Supreme Court found that the decision could not stand.

Although the Supreme Court vacated the Ninth Circuit's opinion, this recent sequence of events demonstrates how hotly contested pay equity considerations are. It will not be long before another case on this issue makes it way to the Supreme Court. Conducting regular audits of your pay practices is essential. To ensure compliance, contact your Stokes Wagner attorney.

Questions? Contact Stokes Wagner.