

Kimball, Tirey & St. John LLP

Legal Alert

Does the Supreme Court Ruling on Disparate Impact Affect Your Business?

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By now, you've probably heard that the U.S. Supreme Court, on June 25, 2015, upheld disparate impact as a valid theory for discrimination claims at the federal level. You may be wondering how this impacts your business.

The case heard by the Supreme Court, *Texas Department of Housing and Community Affairs, et al v. Inclusive Communities Project, Inc., et al.*, involved the question of whether disparate impact claims of discrimination were cognizable under the Federal Fair Housing Act ("FHA"). Disparate impact, or discriminatory effect, occurs when a housing provider's policy appears neutral on its face, but when applied, has a disproportionate impact on one or more protected classes. In concluding that disparate impact claims were cognizable under the FHA, the Court stated Congress intended to allow disparate impact claims based on FHA language which focused on the consequences of actions and not just on the mindset (or intent) of actors.

While this ruling clarified a perceived ambiguity under federal law, the impact of this case in California is minimal. California's Fair Employment and Housing Act expressly states that liability may result from a violation which has "the effect, regardless of intent, of unlawfully discriminating" on basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or genetic information." (*California Government Code §12955.8(b)*) Accordingly, even if the Supreme Court's ruling had invalidated the theory at the federal level, the only potential effect in California would have been on claims filed with HUD or in federal court alleging violations solely under the FHA.

Nationally, HUD is expected to use the Court's determination for the purpose of Affirmatively Furthering Fair Housing (AFFH) in their effort to increase diversity in cities and areas which continue to have segregated populations.

California housing providers should regularly review their practices to determine if they have potential discriminatory effect on any recognized protected classes. The KTS Fair Housing Practice Group provides reviews of leasing documents and policies and procedures to assist clients in avoiding potential fair housing liability.

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