

To: Our Clients and Friends

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California Supreme Court Limits Relief Available to Employees in Mixed Motive Cases

On February 7, 2013, the California Supreme Court in *Harris v. City of Santa Monica* ruled employees cannot recover damages, backpay or an order of reinstatement when their terminations are based on both discriminatory and legitimate reasons if the employer can prove it would have made the same decision absent such discrimination. In those instances, employees may only be awarded declaratory relief, injunctive relief and reasonable attorneys' fees and costs.

What's This All About?

Wynona Harris, a former City of Santa Monica bus driver trainee, sued the City of Santa Monica ("the City") alleging it terminated her employment because she was pregnant. Harris alleged after telling her supervisor about her pregnancy, he reacted with "seeming displeasure" and asked for a doctor's note clearing her to work. Four days later, Harris provided the note. On that same day, managers included Harris on a list of probationary drivers who weren't meeting standards. Two days later, Harris was terminated.

In its defense, the City asserted Harris's termination was based on legitimate, non-discriminatory reasons. The City offered evidence that during her probationary period Harris was involved in two non-injury accidents causing damage to a bus and a parked car. Harris also incurred two "miss-outs" for failing to notify her supervisor that she was going to miss a shift start. A transit services manager concluded Harris's file showed she was not meeting the city's standards for continued employment because of her two miss-outs and two preventable accidents.

The City asked the trial court to instruct the jury that, if it finds the City was actually motivated by discriminatory and non-discriminatory reasons, the City would not be liable if it can establish that its legitimate reason, standing alone, would have induced it to make the same decision at the time of the decision. The trial court instead instructed the jury that Harris had to prove that her pregnancy was a "motivating factor/reason for the discharge." The jury found Harris's pregnancy was a motivating

reason for the City to discharge her and awarded her \$177,905 in damages and \$401,187 in attorneys' fees. The City appealed the verdict and the Court of Appeal overturned the verdict, holding that the trial court should have instructed the jury that if it found a mix of discriminatory and legitimate motives behind Harris's firing, the City could escape liability by demonstrating that the legitimate reason alone would have led the driver's supervisors to terminate her.

In partially affirming the Court of Appeal's judgment, the California Supreme Court held that when a plaintiff has shown by a preponderance of the evidence that discrimination was a substantial factor motivating his/her termination, the employer is entitled to demonstrate by a preponderance of the evidence that legitimate, non-discriminatory reasons would have led it to make the same decision at the time. If the employer satisfies its burden of demonstrating that it would have made the same decision for lawful reasons, the plaintiff cannot be awarded damages, backpay or an order of reinstatement. However, where appropriate, the plaintiff may be entitled to declaratory or injunctive relief. The plaintiff may also be eligible for an award of reasonable attorneys' fees and costs.

What Should Employers Do?

Harris is an important ruling for employers. It provides employers with a means of defeating damages claims in situations where a legitimate and lawful decision to terminate an employee's employment is clouded by the misguided or inappropriate remarks of a supervisor or manager. *Harris* underscores the importance of carefully and timely documenting performance problems and other legitimate reasons for adverse employment decisions. To take advantage of the mixed-motive defense, an employer cannot rely on after-the-fact rationalizations to show that the same decision would have been justified or might have been made. Instead, the employer must demonstrate that, in the absence of discrimination, it would have in fact made the same decision *at the time it made its actual decision*.

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