



# California Supreme Court Clarifies Standard for "Mixed Motive" Defense to Employment Discrimination Claims

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In a partial victory for employers, the California Supreme Court ruled in *Harris v. City of Santa Monica* that even when an employee proves that a discriminatory motive was a substantial factor in an adverse employment decision, the employee is not entitled to damages, reinstatement, or backpay, if the employer can show that the same employment decision would have resulted from non-discriminatory factors at the time. However, the Court also held that employees under these circumstances may still be entitled to reasonable attorneys' fees, as well as declaratory or injunctive relief requiring employers to halt discriminatory practices.

In *Harris*, the plaintiff, a bus driver, sued the City of Santa Monica for sex discrimination after she disclosed her pregnancy to her supervisor and was later terminated. The City maintained that Harris had been terminated for poor performance.

At trial, the jury was instructed to find the City liable if Harris showed that her pregnancy was a motivating factor/reason for the discharge. The jury found in Harris' favor, awarding \$177,905 in damages. The trial court also awarded Harris \$401,187 in attorneys' fees. The Court of Appeal overturned the verdict, finding that the jury should have been instructed that if both legitimate and discriminatory factors had led to Harris' termination, the City should not have been held liable if the legitimate motive alone would have led to the termination.

The Supreme Court partially affirmed the Court of Appeal's ruling by holding that even if an employee shows that discrimination was a substantial factor, rather than just a motivating factor, in an adverse employment decision, under the mixed motive theory the employee may not recover damages, backpay, or reinstatement where the same adverse decision would have resulted absent any discrimination. However,

elaborating on the legislature's intent to deter and punish workplace discrimination through the Fair Employment and Housing Act, the Court explained that an employer may still be held liable under these circumstances. Specifically, employees, who prove they have been subject to an adverse employment action in which discrimination was a substantial motivating factor, can obtain a court ruling that an employer's discriminatory acts are unlawful and/or must be stopped. The employee can also recover reasonable attorneys' fees and costs.

Significantly, the *Harris* decision clarifies the mixed motive defense standard and remedies available to employees in mixed motive situations. Stay tuned for further updates as we continue to track this evolving issue.