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Labor & Employment Law Alert - California Supreme Court Sends Mixed Signals In Long-Awaited Mixed-Motive Discrimination Decision

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Yesterday, the California Supreme Court finally ruled on a case that had been pending before it for three years, thus providing some guidance in cases where both legitimate and unlawful factors affect an employment decision.

In *Harris v. City of Santa Monica*, the California Supreme Court issued a decision affecting employment discrimination cases where unlawful discrimination is alleged to have been one factor in an employee's termination. Unsurprisingly, the Court's ruling on "mixed motive" cases is a mixed bag for employers.

The Supreme Court in *Harris* considered a jury instruction that said if the jury found a mix of discriminatory and legitimate motives, the City could avoid liability by proving that a legitimate motive alone would have led it to make the same decision. In *Harris*, the trial court had refused to provide that instruction and instead instructed the jury that they could find liability if the discriminatory motive was merely a substantial motivating factor in the decision to terminate. The Court of Appeals reversed, finding that the requested instruction was legally correct and the trial court's refusal to provide that instruction was improper.

The Supreme Court concluded that the Court of Appeals was only partially correct. First, the Court found that where an employer proves it would have made the questioned decision absent discrimination, a court may not award damages, backpay, or an order of reinstatement. In so ruling, the Court found that "[c]urtailing employers' prerogatives in this way — that is, forcing an employer to retain someone when it had sufficient and legitimate reasons not to do so — would cause inefficiency and . . . tend to 'deprive[] the state of the fullest utilization of its capacities for development and advancement,' contrary to the FEHA's purposes. (§ 12920.)" The Court further found that economic damages, including backpay, would be an "unjustified windfall" for such a plaintiff. This part of the opinion is most helpful to California employers.

The Court also found, however, that because California's Fair Employment and Housing Act (FEHA) seeks to prevent and deter unlawful discrimination in the workplace, not just redress such claims, a plaintiff in a mixed motive case could still be awarded declaratory relief or injunctive relief to stop discriminatory practices, in addition to reasonable attorney's fees and costs. In making this decision, the Supreme Court stated that in not fully absolving an employer of liability where unlawful discrimination was a "substantial factor," by allowing recovery of some attorney's fees and costs along with injunctive and declaratory relief, it allows the "compensat[ion of] a plaintiff and her counsel for bringing a

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meritorious claim of unlawful discrimination,” (attorneys’ fees) the reaffirming of “plaintiff’s equal standing among her coworkers and community...” the “condemn[ing of] discriminatory employment policies or practices,” (declaratory relief) and the stopping of discriminatory practices (injunctive relief).

While the *Harris* decision provides some good news in that it does not permit an employee that was legitimately terminated to recover economic damages or to be reinstated, it still leaves employers on the hook for attorneys’ fees and costs where a plaintiff’s attorney can show that unlawful discrimination was a substantially motivating factor in the termination. Employers should remain mindful of this when making employment decisions in California.

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