

News & Types: Employment, Labor & Benefits Update

# California: Employers Can Defend Findings of Discrimination by Proving Separate Legitimate Reasons

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Practices: Employment, Labor & Benefits

In its recent decision in *Harris v. City of Santa Monica*, No. S181004 (Cal. Feb. 7, 2013), the California Supreme Court held that the mixed-motive defense applies under California's employment discrimination statutes. Under the defense, now known as the "same-decision defense" in California, employers can defend against a former employee's claim of discrimination by proving that the employer had non-discriminatory reasons that justified making an adverse employment decision. If the employer is able to prove its same-decision defense, it can avoid monetary damages. The *Harris* case involved a former bus driver who claimed that she was fired for being pregnant. Her employer defended the case by showing that the decision to fire the driver was based upon her poor performance record.

Title VII of the federal Civil Rights Act of 1964 forbids discrimination against workers in businesses that have fifteen or more employees. California's Fair Employment and Housing Act (FEHA) forbids discrimination in businesses of five or more employees. Federal law has allowed employers to avoid paying monetary damages to employees who can prove that discrimination occurred, as long as the employer could prove that it had legitimate reasons for taking an adverse action against an employee. Courts in California disagreed on whether FEHA allowed an employer the same defense.

The *Harris* case will go back to the trial court. If the employer proves a legitimate reason for the firing, the former employee can still prove that sex discrimination was a "substantial factor" in her firing. If she can prove this, the *Harris* decision provides that she may be able to recover attorneys' fees, declaratory relief, or an injunction. However, she cannot recover monetary damages or force her employer to reinstate her.

The *Harris* decision provides some relief for an employer who can prove a same-decision defense by shielding the employer from damages awards. However, plaintiffs' attorneys will likely continue to file discrimination cases in the hope of asking for attorneys' fees if discrimination is shown to be a "substantial factor" in any adverse action taken against the employee. This way of thinking will continue to influence settlement discussions with employers. Businesses with questions regarding these changes to California discrimination law are welcome to consult with a member of the Firm's Employment, Labor and Benefits Practice Group.