

California Workplace Law Blog

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We'll always have Harris

In *Harris v. City of Santa Monica*, 56 Cal. 4th 203 (Cal. 2013), the California Supreme Court ruled that, to prevail in a mixed motive employment discrimination action, the employee must show that unlawful discrimination was a substantial factor motivating the adverse employment decision. Further, in mixed motive cases, if the employer proves that it would have made the same decision absent such discrimination, a court may not award damages, back pay, or order reinstatement, leaving only declaratory and injunctive relief, as well as attorney's fees and costs as possible remedies. (For additional information regarding Harris, please see our article, [California Supreme Court Requires Discrimination as Substantial Motivating Factor in Mixed Motive Cases, Limits Damages Available to Employees](#). One of the first post-Harris decisions teaches that Harris is a double-edged sword. In *Alamo v. Practice Management Information Corp.*, the Court of Appeal followed Harris and held that the plaintiff was required to prove her pregnancy was a "substantial motivating reason" for her termination, not merely a "motivating reason." *Alamo v. Practice Management Information Corp.*, No. B230909 (Cal. Ct. App. Sept. 5, 2013). The Court thus reversed a verdict in favor of the plaintiff. However, the Court also ruled that the employer had waived its right to a Harris mixed motive instruction (i.e. that it would have taken the same employment action regardless of the employee's pregnancy) because it failed to plead that defense in its answer. Thus, while Harris heightens the standard for discriminatory intent, employers must insure their answers affirmatively plead the mixed motive defense to make use of it at trial. [Click here](#) for more information.

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Jackson Lewis LLP

|
One North Broadway, 15th Floor

| White Plains, NY 10601 |

Phone:

914-328-0404

| Fax:

914-328-1882