

Substantial Motivating Factor Required for Public Policy Wrongful Discharge Claim, California Court Rules

Date: 1.27.2014

Reversing a \$238,328 judgment in favor of an employee who claimed he was terminated in violation of public policy under California law for complaining about alleged sexual harassment, the California Court of Appeal has ruled the jury instruction requiring the employee to prove his complaint was “a motivating reason” for his termination, rather than “a substantial motivating reason,” was erroneous. *Mendoza v. Western Medical Ctr. Santa Ana et al.*, No. G047394 (Cal. Ct. App. Jan. 14, 2014). Finding the jury instruction was inconsistent with California Supreme Court’s decision in *Harris v. City of Santa Monica*, 56 Cal. 4th 203 (2013), the Court ordered a new trial with the proper jury instruction.

Background

Romeo Mendoza, a nurse, was employed by Western Medical Center Santa Ana as an intermediate-level supervisor on the overnight shift. In October 2010, Mendoza complained to the supervising hospital administrator that a per diem House Supervisor to whom Mendoza reported had sexually harassed him. Mendoza alleged the Supervisor made inappropriate sexual comments, blew in his ear and exposed his genitals. Mendoza denied engaging in any lewd conduct and said he told the Supervisor to stop engaging in the inappropriate conduct. The Supervisor disputed Mendoza’s accusations, claiming Mendoza consented to the conduct and engaged in sexually provocative conduct with him.

The Hospital conducted an investigation and terminated both employees for inappropriate and unprofessional conduct. Mendoza sued the Hospital for retaliatory discharge in violation of public policy under California law, claiming he was terminated in retaliation for complaining about the alleged harassment.

At trial, the Hospital requested and received a jury instruction requiring Mendoza to prove that retaliation was “the motivating factor” for his termination. During deliberations, the jury sent a question to the court regarding the instruction, to which the court responded, over the Hospital’s objection, that the instruction was erroneous and that it should have read “a motivating factor.” The jury entered a verdict in favor of Mendoza in the amount of \$238,328. The Hospital appealed.

Applicable Law

Under California law, when an employer’s discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages.

The California Supreme Court ruled in *Harris v. City of Santa Monica*, a mixed motive employment discrimination action under the California Fair Employment and Housing Act (FEHA), that the employee must show unlawful discrimination was a substantial factor motivating the adverse employment decision. (For more on *Harris*, please see our article, *California Supreme Court Requires Discrimination as Substantial Motivating Factor in Mixed Motive Cases, Limits Damages Available to Employees.*) Applying *Harris*, the California Court of Appeal, in *Alamo v. Practice Management Information Corp.*, 219 Cal. App. 4th 466 (Cal. Ct. App. 2013), a case involving pregnancy discrimination and wrongful termination in violation of public policy, ruled that the trial court had erred

by instructing that the employee must prove her pregnancy was a “motivating factor” in her termination, rather than a “substantial motivating factor.”

Substantial Motivating Reason

The Hospital argued that the jury instruction, which predated the Supreme Court’s decision in *Harris*, was erroneous. The appellate court agreed. The Court stated, “It would be nonsensical to provide a different standard of causation in FEHA cases and common law tort cases based on public policies encompassed by FEHA.” Further, the Court said, under the revised California standard jury instruction applicable to wrongful termination (CACI No. 2430), an employee now must prove the alleged violation of “was a substantial motivating reason” for the employee’s discharge. Likewise, the revised corresponding special verdict form (CACI No. VF-2406) also used “a substantial motivating reason.” Accordingly, the Court concluded the trial court should have instructed the jury to determine whether Mendoza’s report of sexual harassment was a substantial motivating reason for his discharge. Finding there was a reasonable probability that the instructional error prejudicially affected the verdict, the Court ordered a new trial.

The Court affirms that *Harris* standard of causation applies not only to discrimination cases, but also to public policy wrongful discharge cases where the public policy involved is found in the FEHA.

Please contact Mark S. Askanas, at AskanasM@jacksonlewis.com or (415) 394-9400, or the Jackson Lewis attorney with whom you regularly work with any questions about this and other workplace developments.

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