

Employee wins record \$21.7 million

Jury's award comes
despite Supreme Court
employment law decision

By Laura Hautala
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In the wake of a recent state Supreme Court employment law decision, workers now have to meet a higher standard of evidence to prove an employer discriminated against them. But in an early test of the decision in Los Angeles County, the high standard appears not to have affected the jury's verdict — a record-setting award of \$21.7 million for a terminated waste company employee.

The case, which weighed whether Valley View Services Inc. fired April Rodriguez because of a mental disability or because she failed to call for three days, was likely the first to apply the Supreme Court's *Harris* decision. The case had progressed for a few weeks, but attorneys for both sides waited to craft their jury instructions until the high court issued the *Harris* ruling in early February. *Rodriguez v. Valley Vista Services Inc. et al.*, BC 473793 (L.A. County Super. Ct., filed Nov. 18, 2011).

Under the previous rules, the court would have told jurors they must find discrimination was simply a factor in the firing, but because of *Harris*, courts will now tell jurors they must find discrimination was a "substantial" factor. The underlying case looked at allegations of pregnancy discrimination from a bus driver let go by the city of Santa Monica. The city claimed it fired her because of accidents and attendance problems, not because of her pregnancy. *Harris v. City of Santa Monica*, 181 Cal. App. 4th 1094.

"It was a classic dual motive case," said Paul W. Cane Jr. of Paul Hastings LLP, who co-argued for a friend of the court aligned with the city before the state Supreme Court in *Harris*.

Attorneys had hoped the decision would clarify questions that arise in similar cases, such as what degree of discrimination a jury must find to support its verdict. The Supreme Court held that employers could still be held accountable for acting on both kinds of motive at once, but raised the bar for plaintiffs' attorneys by saying discrimination must be substantial.

"The standard is slightly harder, but it comes down to the credibility of the parties and the defendants' claim as to why they fired the individual," said Los Angeles attorney Bruce Z. Kokozian, who represented Rodriguez along with Santa Monica lawyer Carney R. Shegerian.

But even with their revised instructions, the jury found that the defendants discriminated against Rodriguez and that the reason it provided for the firing was untrue.

Rodriguez's attorneys said they expect *Harris* to have an equally negligible effect on other discrimination cases in California. Shegerian said he thinks the problem with *Harris* was the case was too weak, which created doubt as to whether discrimination really motivated the firing. But the resulting jury instructions wouldn't affect stronger cases, he said.

"That standard will be fine for 99 percent of cases

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LOS ANGELES

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