

Wrongful Termination	V \$196,760	For the plaintiff: Karl A. Gerber Eric J. Palmer	L.A. Superior Central Hon. Victor E. Chavez
		For the defendant: Matthew L. Kinley Pamela K. Tahim	

RESULT DATE: May 7, 2012

Christina Vasquez v. Del Rio Sanitarium (BC411724) 12-JV_1466

FURTHER DESCRIPTION: Failure to Accommodate

VERDICT: \$196,760

ATTORNEY Plaintiff - Karl A. Gerber, Eric J. Palmer (Employment Lawyers Group, Sherman Oaks).
Defendant - Matthew L. Kinley, Pamela K. Tahim (Tredway, Lumsdaine & Doyle, LLP, Long Beach).

MEDICAL
Defendant - Felice Gersh, M.D., OB/GYN, Irvine.

FACTS: Plaintiff Christina Vasquez is a \$9 an hour CNA for defendant Del Rio Sanitarium. On Jan. 1 2009, early on in Vasquez's pregnancy, Lisa Madison, a supervising nurse, sent Vasquez home, asked that Vasquez go back to her doctor to get her restriction removed after Vasquez explained that she could not lift more than 11 pounds due to her pregnancy. Madison understood Vasquez had a light duty restriction, due to pregnancy, limiting her to lifting no more than 11 pounds. Vasquez came back a few hours later and spoke to Aguilar. Vasquez asked Aguilar, another supervising nurse, why she had been allowed to work with the restrictions on Dec. 29, and Aguilar shrugged her shoulders. Aguilar had read the note on Dec. 29. Vasquez asked if she could have a formal note explaining why she was being sent home, and Aguilar shrugged her shoulders again.

On Jan. 2, Vasquez went into work and spoke to the administrator Gardiner. Gardiner reported directly to a member of the board of directors, Mama Rouse, who was the only employee ranked higher than him, but did not work at the corporation on a daily basis. Gardiner told Vasquez she could not work with the 11-pound restriction because the event causing the 11-pound restriction accommodation was not something that happened at work. Vasquez asked Gardiner for a formal letter stating she could not work because she did not want to be accused of abandoning her job. Gardiner told Vasquez to go to her doctor and get the 11-pound restriction removed.

Vasquez told Gardiner she thought she could do her job, and that when workers were pregnant a non-pregnant worker did the heavy lifting.

Vasquez went back to her doctor on Jan. 5, but he would not remove the restriction.

On Jan. 7, Vasquez sent a certified letter to the assistant administrator Maxwell asking for an opportunity to discuss options so she could work.

Defendant claimed they called Vasquez, but her cellular phone records did not show any calls from defendant.

CONTENTIONS: PLAINTIFF'S CONTENTIONS: Plaintiff claimed that defendant had a discriminatory policy of not allowing pregnant women to work without restrictions, but to allow women with lifting restrictions caused by work injuries to work. Plaintiff claimed she was fired and not allowed to work due to pregnancy-related medical conditions.

DEFENDANTS CONTENTIONS: Defendant claimed that they could not accommodate plaintiffs 11-pound lifting restriction. They also claimed they called plaintiff to offer her unspecified work, possibly watching the parking lot. They contended plaintiffs doctor had no medical reason for the 11-pound restriction and his records did not show plaintiff going back to clarify the restriction as she claimed. They contended plaintiff was "adverse to working" and failed to look for another job. Defendant claimed they did not fire plaintiff, but she failed to speak to them about the unspecified light duty work for an unspecified period of time they alleged called her about.

Defendant claimed the verdict was excessive, including the \$125,000 in emotional distress when plaintiff had not treated for her emotional distress. They claimed the award for lost wages was at least two years into the future and two years past and exceeded what plaintiff earned working for defendant.

JURY TRIAL: Length, four days; Poll, 11-1 (on a 24 question special verdict defendant demanded);
Deliberation, one day

SETTLEMENT DISCUSSIONS: Defendant offered \$20,000 at mediation. Defendant failed to accept a mediators proposal of \$70,000 during the first day of trial.

RESULT: The jury found that Vasquez's job required lifting more than 11 pounds, but they believed that defendant could accommodate her with light duty.

OTHER INFORMATION: Defendant's judgment notwithstanding the verdict and motion for new trial was denied.

EMPLOYMENT LAW
WRONGFUL TERMINATION
Failure to Accommodate

VERDICT \$196,760

CASE/NUMBER: Christina Vasquez v. Del Rio Sanitarium/ Bc411724.

COURT/DATE: Los Angeles Superior Central/ May 7, 2012.

JUDGE: Hon. Victor E. Chavez.

ATTORNEYS:

Plaintiff-Karl A. Gerber, Eric J. Palmer (Employment Lawyers Group, Sherman Oaks).

Defendant - Matthew L. Kinley, Pamela K. Tahim (Tahim Medway, Lumsdaine & Doyle, LLP, Long Beach/.

MEDICAL EXPERTS: Defendant - Felice Gersh, M.D., OB/GYN, Irvine.

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EMPLOYMENT LAW
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OTHER INFORMATION: Defendant's Judgment notwithstanding the verdict and motion for new trial was denied. Defendant lost their appeal and the case was remitted on May 7, 2012. On Jan. 4, 2011, a motion for \$75,000 in attorney fees was granted pursuant to California Government Code Section 12965, and \$8,351 in costs were awarded to Plaintiff.

The parties settled all claims for Interest, attorney fees, costs, and the original judgment for \$365,000 on May 24, 2012. Considerable Interest accrued by the time the cashier's check was tendered.

MEDIATOR: Kimberly Deck.

FILING DATE: April 19, 2009.