Filed 2/10/10 (reposted same date with clerical correction)

IN THE SUPREME COURT OF CALIFORNIA

CHARLENE J. ROBY, Plaintiff and Respondent, v. MCKESSON CORPORATION et al., Defendants and Appellants.	)	S149752 Ct.App. 3 C047617/C048799 Yolo County Super. Ct. No. CV01573

MODIFICATION OF OPINION

THE COURT:

The opinion filed November 30, 2009, and published at 47 Cal.4th 686, advance report, is modified as follows:

At page 714, delete the two sentences of text in footnote 11, and substitute the following text in the footnote: "We do not mean to suggest that in all FEHA discrimination cases involving attendance policies like the one here at issue, an award of punitive damages will always be supportable based on the employer's mere adoption of such a policy. It was the *application* of McKesson's rigid attendance policy to terminate Roby that ultimately gave rise to McKesson's *liability* for her wrongful discharge and the related punitive damages, not the mere adoption of the policy itself. But with regard to the further assessment, under *State Farm*, of the *degree of reprehensibility* of McKesson's conduct for the specific purpose of determining the maximum constitutionally-allowable award of punitive damages in this case, a broader focus is appropriate. Because the midlevel managers who applied the strict attendance policy to terminate Roby lacked discretion to deviate from it under

its very terms, we find the adoption of the policy itself most relevant to an assessment of the overall degree of reprehensibility of McKesson's misconduct."

The modification does not affect the judgment.