



What Employment Litigators in Los Angeles Can Expect in The Age of Coronavirus

Introduction

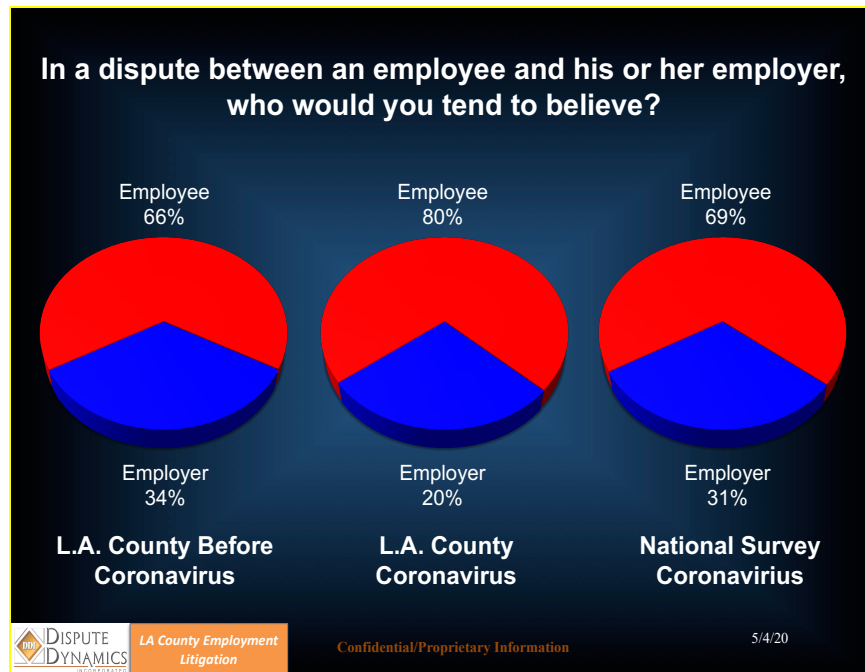
In the best of times, Los Angeles County jurors are a tough audience when it comes to employment litigation. They typically harbor very high expectations of employers' HR departments, adherence to its policies, and meticulous recordkeeping. While many judges have become stricter in not allowing potential jurors with management or professional responsibilities to be excused for hardship, LA County's vastly diverse populace makes it difficult for employers to predict what types of experiences potential jurors bring to jury duty.

With coronavirus upon us, have people in LA County changed their views toward employers? And, how do the attitudes in LA County compare with other areas of the country?

To begin addressing these questions, DDI surveyed people in LA County and across the country on attitudes pertinent to employment litigation. Our preliminary data has two implications: 1) The challenges employers historically faced in LA County have increased; and 2) LA County appears to be more pro-plaintiff in these attitudes when compared to the rest of the nation.

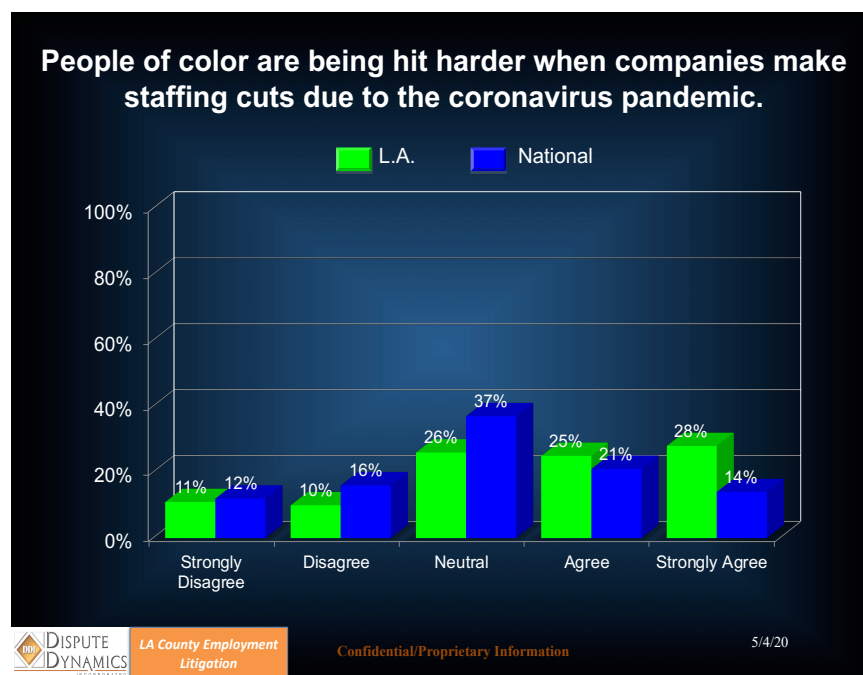
Key Attitudes In LA County Compare with The Rest of The Nation

How has the pandemic impacted views of employment cases? In our survey of 321 nationwide respondents and 95 in LA County we found that 80% of LA County respondents would favor an employee over an employer as compared to 69% nationally.

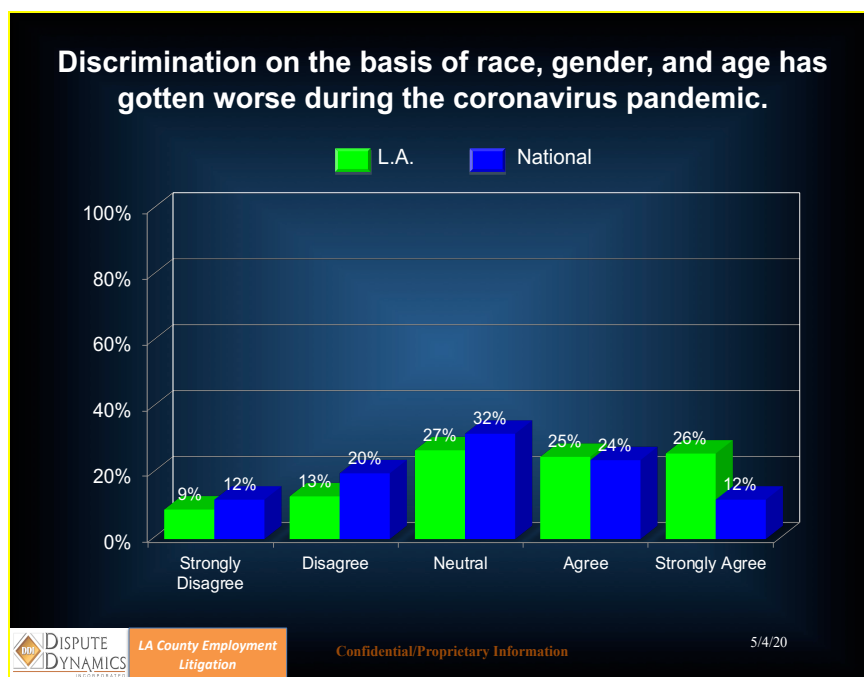


As this chart also demonstrates, LA County respondents are leaning more toward employees than they were before the pandemic.

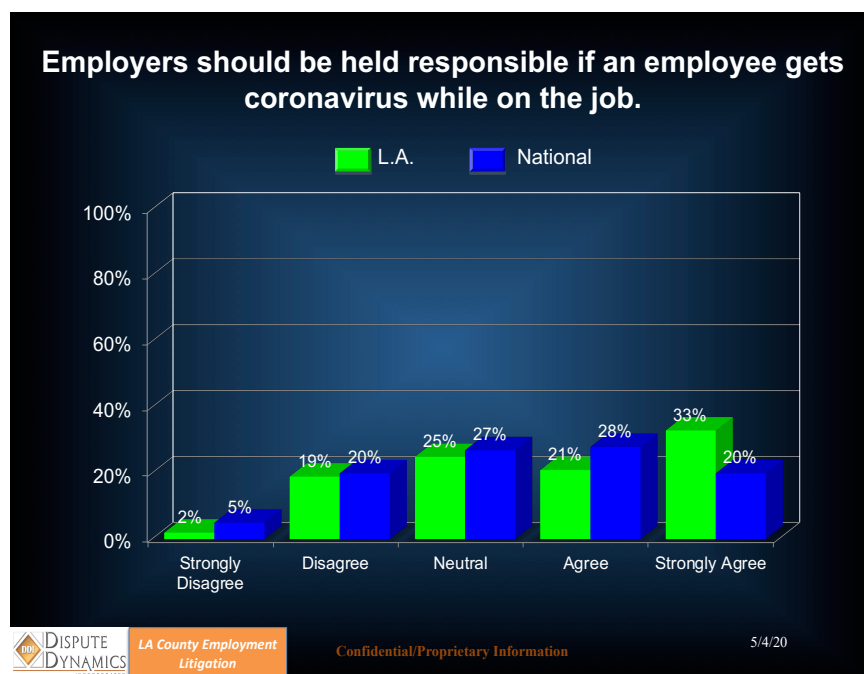
In our pandemic survey, we asked about additional attitudes that bear on juror decision-making in employment litigation. We found that 53% of LA County respondents vs. 35% nationally believe that people of color are being hit harder by staffing cuts due to the pandemic. Of note, 28% of LA County respondents strongly agree with this attitude vs. 14% nationally.



Likewise, 61% of LA County respondents believe that discrimination on the basis of race, gender and age has worsened during the pandemic, whereas 36% of respondents nationwide agree. Moreover, 26% of LA County respondents strongly believe that discrimination has gotten worse during the pandemic vs. 12% nationally.



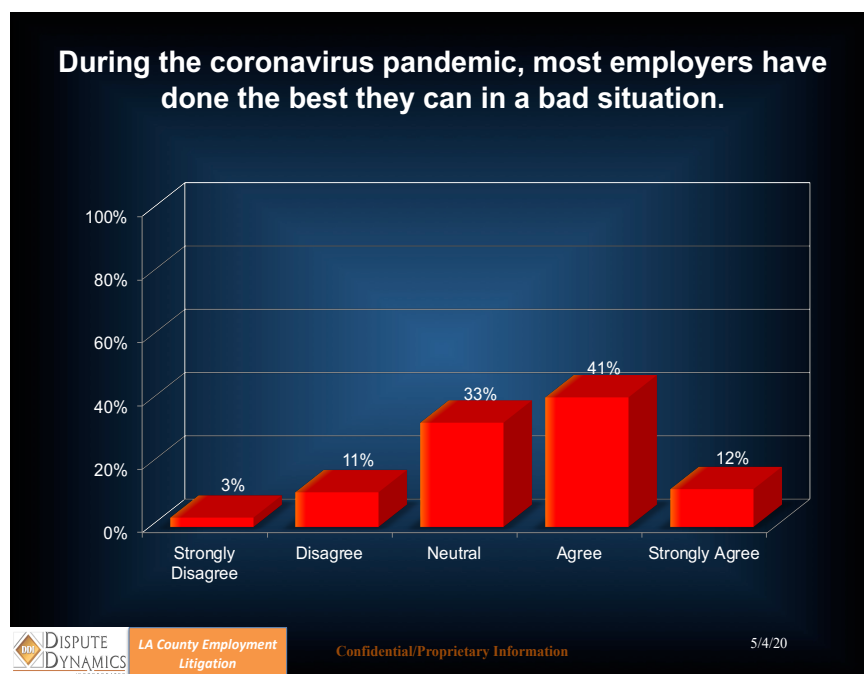
A question unique to the pandemic is whether an employer should be held responsible if its employees contract COVID-19 while on the job. **Consistent with other data, the trend is LA County respondents are more apt to hold employers responsible than respondents nationwide if an employee gets COVID-19 on the job.**



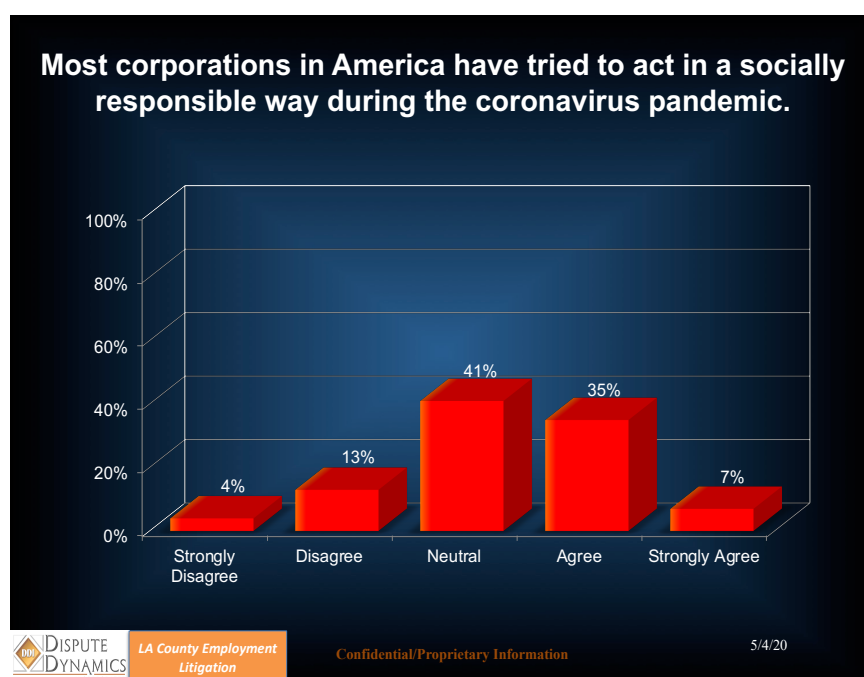
Although the percentage of respondents who agree with this position is not that different, 33% of LA County respondents strongly agree that employers should be held responsible if their employee contracts COVID-19 while on the job vs. 20% nationally who strongly agree.

Potentially Helpful Defense Themes

The picture for employers is not completely bleak. A couple of opportunities emerged from our preliminary data. Respondents throughout the country and in LA County believe that during the coronavirus pandemic, most employers have done the best they can with a bad situation.



Additionally, respondents expressed a willingness to believe that most corporations in America have tried to act in a socially responsible way during the pandemic.



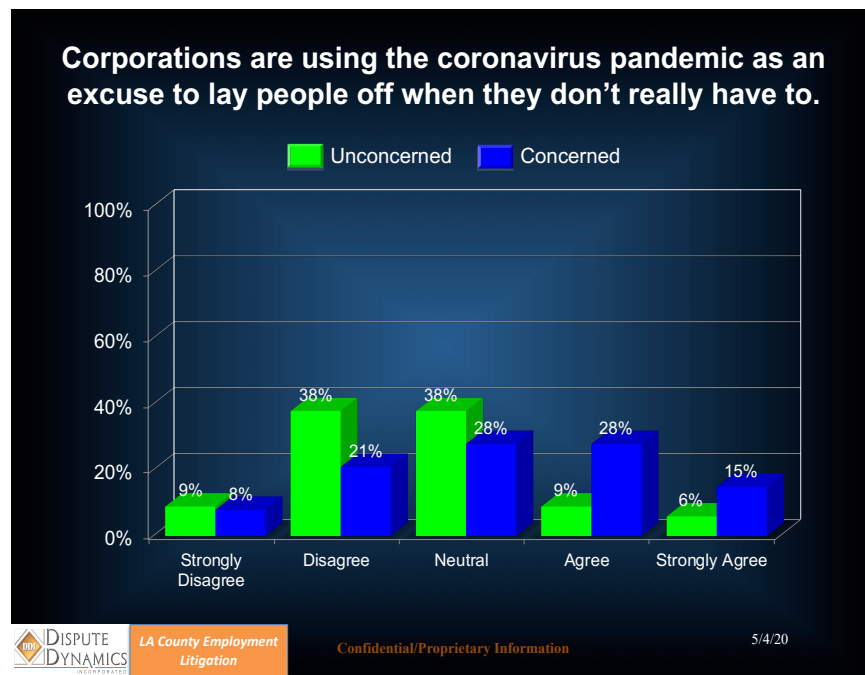
Both of these points can be developed as key defense themes if supported by the evidence. Thus, it will be important to draw out facts that support each of these potential themes during discovery.

Implications for Jury Selection

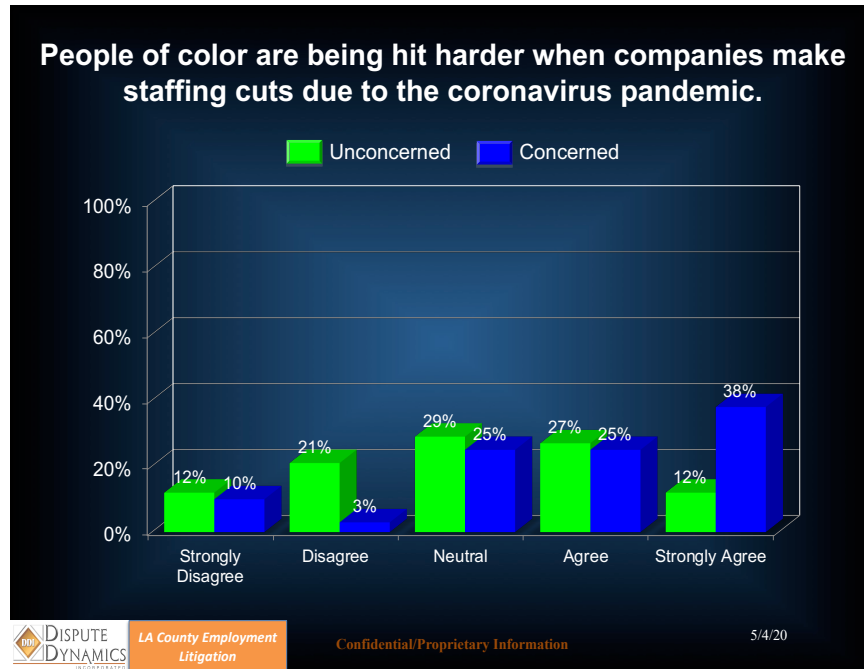
As always, jury selection will play a critical role. There is some indication that potential jurors who hold more hostile attitudes toward employers can be identified during *voir dire* and may be excused for hardship or cause. This is true of respondents nationally as well as in Los Angeles County. The following data includes just respondents from Los Angeles County.

Respondents were asked several questions relating to their experiences with and attitudes toward coronavirus. **Respondents who were concerned or very concerned about catching the virus expressed more pro-plaintiff attitudes than those who were not as concerned, as illustrated in the next several charts.**

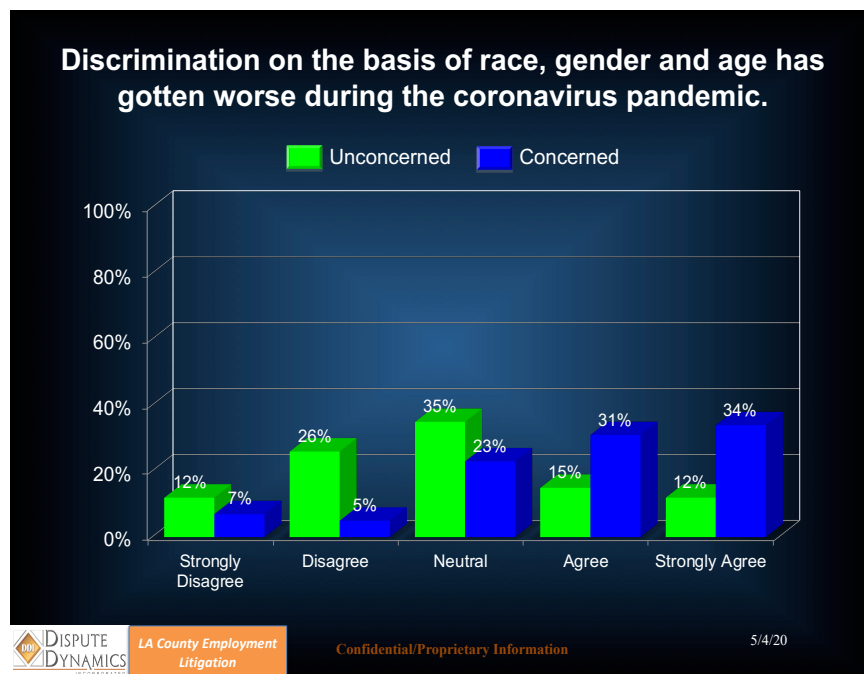
Respondents who were concerned tended to feel that corporations are using the coronavirus pandemic as an excuse to unnecessarily lay people off.



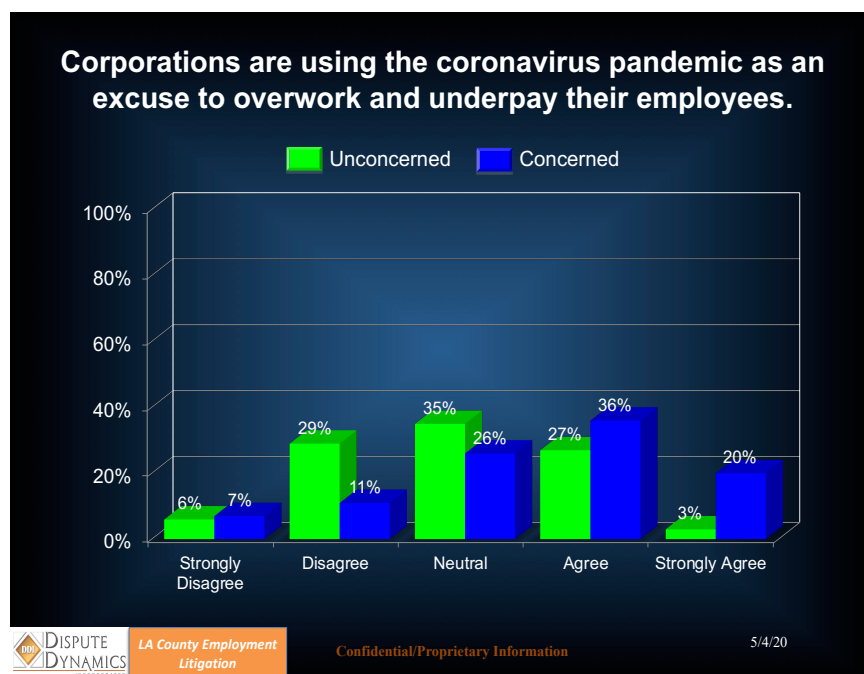
Those who were concerned about catching the virus tended to strongly agree that people of color are being hit harder than others by terminations or furloughs.



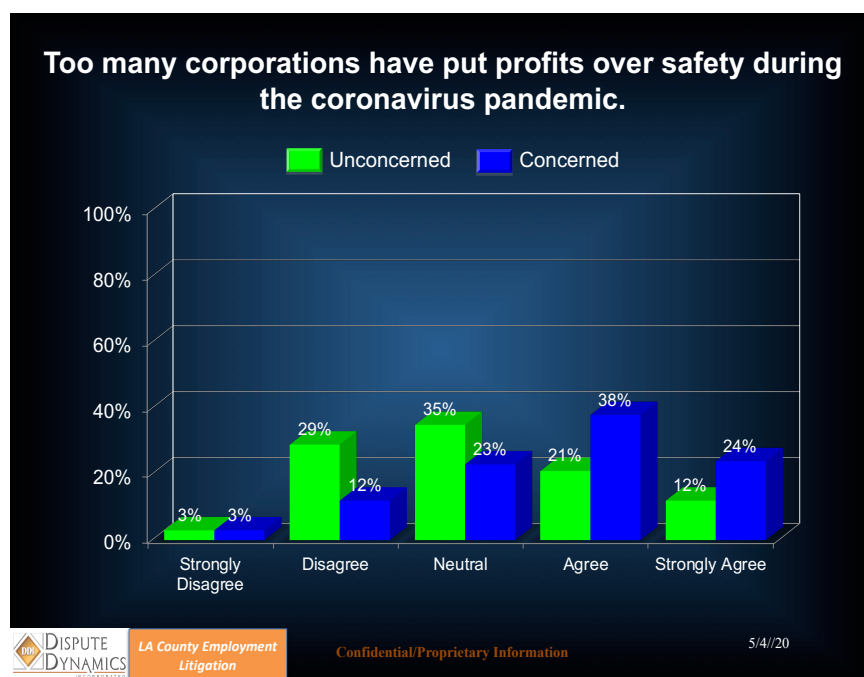
Consistent with this attitude, respondents who were concerned about catching the virus agreed that discrimination on the basis of race, gender and age has gotten worse during the pandemic.



Likewise, those concerned about catching the virus agreed that corporations are using the pandemic as an excuse to overwork and underpay employees.



Not surprisingly, respondents who were concerned about catching the virus agreed that too many corporations have put profits over safety during the pandemic.



What's Next for Employers

This survey suggests that the pandemic has amplified pro-plaintiff attitudes in LA County, and that employees who suffered hardships (real or perceived) due to the pandemic will make

sympathetic parties. A defense theme that the employer was doing the best it could during extremely challenging times could help the defense case. Efforts to keep their workforce safe and employees on the payroll could similarly counter hostile attitudes and paint the employer in a positive light. Additionally, actions the employer took to help the community deal with COVID-19 could help position the employer more favorably.

In terms of jury selection, it will be important to address potential jurors' experiences as well as attitudes related to the pandemic. Additionally, prospective jurors should be asked about their continued concern about contracting COVID-19. If LA County judges excuse those potential jurors who are afraid to serve as jurors due to COVID-19, employer-defendants may have a more equal playing field.

***Dispute Dynamics, Inc. conducted this survey nationally the week of May 4th, 2020.
Dispute Dynamics, Inc. is a national trial-consulting firm with offices on both coasts.***



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