

Management Alert



Workers' Compensation Ruling Given Preclusive Effect In Discrimination Lawsuit

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Seyfarth Synopsis: In *Ly v. County of Fresno*, the Court of Appeal held that correctional officers' claims for race, ethnicity, and national origin discrimination were barred because the claims had been previously denied in workers' compensation proceedings.

The Facts

Three Laotian correctional officers—Va Ly, Travis Herr, and Pao Yang—alleged racial and national origin discrimination, harassment, and retaliation by their employer, the County of Fresno.

The officers sued the County under the Fair Employment and Housing Act (FEHA) while also pursuing workers' compensation remedies through the Workers' Compensation Appeals Board (WCAB). In the WCAB proceedings, administrative law judges denied the officers' claims upon finding that the County's actions were non-discriminatory, good faith, personnel decisions. Then, in the FEHA action, the County moved for summary judgment, arguing that the WCAB rulings were binding.

The trial court granted summary judgment, ruling that the FEHA claims were barred. The officers appealed.

The Court of Appeal's Decision

A result in one case can be binding in another, under the doctrine of res judicata (claim preclusion). The doctrine applies if (1) a decision in a former proceeding is final and on the merits, (2) the present proceeding is based on the same cause of action as the former proceeding, and, (3) the parties in both the former and present proceeding are the same. To see if the same cause of action is involved in both cases, courts look to the primary right theory: violation of a right to be free from a particular injury gives rise to a single cause of action.

Here, the Court of Appeal first considered whether both cases (the WCAB proceeding and the FEHA lawsuit) implicated the same primary right: The workers' compensation cases sought redress for employment actions allegedly caused by unlawful discrimination, harassment, and retaliation, while the FEHA case alleged the same injuries—psychiatric injuries caused by discriminatory, harassing, and retaliatory workplace acts. Because the effect of the employment actions on the officers' mental states was at the heart of both cases, the harm suffered was identical and, therefore, the same primary right was implicated.

Next, the Court of Appeal considered whether the primary rights in the two proceedings differed on the ground that the primary right in the WCAB was compensation for work-related injuries regardless of fault, while the primary right in the FEHA action was to be free of employment discrimination. The Court of Appeal held that in both proceedings the officers sought to vindicate one primary right: the right to work in an environment free of discrimination, harassment, and retaliation.

The Court of Appeal concluded by noting that the differing burdens of proof required in the WCAB and under FEHA are immaterial, because the County actually disproved unlawful discrimination in the WCAB proceedings.

What *Ly* Means for Employers

Employers should know that when two tribunals have jurisdiction over the same claims, and neither party objects to jurisdiction, then the first final judgment from one tribunals can bind the parties in the second tribunal. This prospect should affect how employers choose to adjudicate the two matters.

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Seyfarth Shaw LLP Management Alert | October 17, 2017

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