

Employer's Victory In Workers' Compensation Proceeding Leads To Dismissal Of Discrimination Claims

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A recent California Court of Appeal opinion reminds employers of the need to carefully monitor parallel workers' compensation proceedings involving litigants who also have civil claims pending against the employer. [*Ly v. County of Fresno*](#), 2017 WL 4546059 (Cal. Ct. App. Sept. 15, 2017).

Three Laotian correctional officers filed Fair Employment and Housing Act ("FEHA") charges alleging they had been subjected to racial and national origin discrimination, harassment and retaliation. At the same time, they pursued claims before the Workers Compensation Appeals Board ("WCAB") in which they alleged compensable psychiatric work-related injuries as a consequence of the claimed discrimination. The workers' compensation judge found for the employer, concluding that the challenged conduct was lawful, non-discriminatory and done in good faith.

After the completion of the WCAB proceedings, the employer filed a motion for summary judgment in the civil discrimination suit the plaintiffs had filed. The trial court granted summary judgment for the employer, finding the civil claims were barred by the doctrines of res judicata and collateral estoppel, as those claims had been fully litigated before the WCAB. The Court of Appeal affirmed dismissal of the civil case. In both the WCAB and civil proceedings, the plaintiffs sought redress for the same psychiatric injuries caused by the employer's discriminatory, harassing and retaliatory acts in the workplace.

This case happened to result in a win for the employer, but it could just as easily have resulted in a loss if the WCAB had ruled in favor of the employees. And that is the most important practical lesson for employers, which is the need to carefully monitor parallel workers' compensation proceedings. Such proceedings are not uncommon, but their defense usually proceeds very differently. In the workers' compensation realm, the workers' compensation insurer, not the employer, generally controls the defense of the claim. The matter proceeds under more informal rules of procedure and evidence and is tried to an administrative law judge whose sympathies often lie with the employee.

Consequently, at the outset of any employment litigation, it is critical that an employer determine if there is a pending workers' compensation proceeding; if so, the employer should carefully monitor that proceeding by proactively engaging with the insurer and its counsel to determine what issues are to be tried and to participate, to the extent possible, in any proceedings on the merits. Otherwise, the employer may find that its fate in the parallel civil proceeding—which carries with it a much greater cost of defense and potential damages—will have been decided by its workers' compensation insurer and the WCAB. Similarly, if the WCAB proceeding results in a “win,” the employer should lose no time in filing a motion for summary judgment in the pending civil action in order to take advantage of the victory.

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