COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Lorena VARELA, Complainant v. COOK COUNTY HEALTH & HOSPITALS SYSTEM,[1] Respondent	)))))))	Case No. 2012E009 Entered: July 14, 2014

ORDER

On or about February 10, 2012, Complainant Lorena Varela ("Varela") filed a complaint against her employer, Respondent Cook County Health and Hospitals System ("CCHHS"), for unlawful retaliation and race-, ancestry- and national origin-based employment discrimination in violation of the Cook County Human Rights Ordinance ("Human Rights Ordinance"). Varela not only filed various amendments to this claim pending before the Cook County Commission on Human Rights ("Commission") on April 5, 2012 and April 25, 2012, but she also filed a similar charge against CCHHS with the United States Equal Employment Opportunity Commission ("EEOC") on May 16, 2012. This Commission had not yet completed its investigation into Varela's claims under the Human Rights Ordinance when the EEOC dismissed Varela's pending federal claims on January 23, 2013. Because the EEOC decision has a preclusive effect on Varela's pending complaint before the Commission, the Commission now dismisses Varela's remaining claims.

Background

In her February 2012 complaint to the Commission, Varela alleges that she was hired by CCHHS in April 2000 and, at the time of this complaint, worked as a clerk in the ambulatory clinic of Provident Hospital. Compl. ¶¶ I, II. This workforce is predominantly black, including Varela's supervisor. *Id.* ¶¶ III.B, D. Varela is Hispanic and of Mexican ancestry. *Id.* ¶ III. Varela asserts that her supervisor gives non-Hispanic clerks preferential treatment with respect to approving vacation requests and assigning shifts. *Id.* ¶¶ III.G-N. In addition to alleging that her supervisor's generalized denial of Varela's vacation requests was unlawful discrimination, Varela alleged on April 5, 2012 that her supervisor denied a specific vacation request in March 2012 in retaliation for Varela filing her complaint with the Commission. Am. Compl. ¶¶ I.A-D (Count 2). On April 25, 2012, Varela alleged that CCHHS transferred her to another clinic in retaliation for her protected activities. 2d Am. Compl. ¶¶ A-D (second incident of retaliation).

[1] The respondent as filed was "Cook County Health Systems, Provident Hospital-Ambulatory." The Commission has substituted the correct party.

On or about May 16, 2012, Varela filed the following complaint against CCHHS with the EEOC:

> I began my employment with Respondent on or about April 28, 2000. My most recent position was Clerk V. During my employment, I was subjected to harassment. I was subjected to different terms and conditions of employment than my non-white, non-Hispanic, coworkers, including, but not limited to, vacation requests, work shifts, and benefits. On or about February 10, 2012, I filed Cook County Commission on Human Rights Complaint Number 2012E009. Subsequently, my request for vacation was denied and I was notified that I would be transferred to another clinic.
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> I believe I have been discriminated against because of my race, white, national origin, Mexican, and in retaliation for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

EEOC Charge No. 440-2012-03353. The EEOC investigated Varela's claims, but on January 23, 2013, dismissed these charges against CCHHS for failing to establish any violations of federal statutes. Dismissal and Notice of Rights, Charge No. 440-2012-03353 (EEOC Jan. 23, 2013).

Discussion

In the present case, Varela filed substantially similar complaints against CCHHS with both the Commission and the EEOC. After completing its investigation into Varela's federal claims against CCHHS, the EEOC rendered a decision on the merits that Varela's EEOC Charge lacked sufficient evidence and dismissed it. Although the Commission has not yet completed its investigation into Varela's discrimination and retaliation claims under the Human Rights Ordinance, the doctrine of *res judicata* prohibits the Commission from reaching an inconsistent result with respect to the pending claims and issues.

Res judicata, or claim preclusion, is a common law doctrine that prevents the re-litigation of claims and issues under particular circumstances to reduce the burden of duplicative litigation on adjudicative forums and litigants alike. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 464 (2008). As the United States Supreme Court explained in *Allen v. McCurry*, "*res judicata* . . . relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." 449 U.S. 90, 94 (1980). Having taken the gamble of filing the same claim in two different adjudicative forums, Varela and CCHHS are now bound by the ruling of the first agency to reach a final decision on the merits—in this instance, the EEOC.

Claim preclusion occurs when a court or agency of competent jurisdiction renders a final judgment on the merits. This judgment bars all subsequent suits between the same parties

involving the same claim, demand, or cause of action. *River Park v. City of Highland Park*, 184 Ill. 2d 290 (1998). For claim preclusion to apply, three elements must be present: 1) a final judgment on the merits rendered by a court or agency of competent jurisdiction; 2) an identity between the cause of action in that final judgment and the cause of action that will be the subject of claim preclusion; and 3) an identity between the parties to the final judgment and the parties to the proceeding that will be the subject of claim preclusion. *Id.* at 302. All three of these elements are present with respect to Varela's now resolved EEOC charge and her pending complaint with the Commission.

The EEOC rendered its January 23, 2013 decision to dismiss Varela's federal charge after conducting an investigation into Varela's allegations. Dismissal and Notice of Rights, Charge No. 440-2012-03353 (EEOC Jan. 23, 2013) ("The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes."). Much like the Commission's own process, an EEOC charge must be filed within 180 days of the alleged violation and an EEOC respondent is afforded time to file a written response. *See* 29 C.F.R. § 1601.13. The EEOC conducts an evidence investigation and makes a "reasonable cause determination" on the basis of that investigation as to whether a violation of federal law has occurred. *Id.* at §§ 1601.15-1601.17, 1601.19-1601.21. The EEOC's decision to dismiss was not, for example, of a strictly jurisdictional nature,[2] but rather a final decision on the merits.

There is also no question that the parties to the EEOC's dismissal order are the same as the parties to the matter pending before the Commission. Varela is the complainant and CCHHS is the respondent in both instances. There is strict identity between the parties to both proceedings.[3]

The sole remaining question then is whether there is identity between the causes of action Varela asserted to the EEOC and those pending against CCHHS before the Commission. Varela sought to remedy injuries from discrimination and retaliation under Title VII of the Civil Rights Act of 1964 in her EEOC charge. EEOC Charge No. 440-2012-03353. Her antidiscrimination and anti-retaliation claims at the Commission are pled under Sections 42-35 and 42-31 of the Cook County Code of Ordinances ("County Code"). 2d Am. Compl. ¶ IV (Counts 1 and 2). This facial difference in the statutes relied upon, however, is not controlling for the application of claim preclusion. Instead, identity of the causes of action exists when two actions share common facts and circumstances regarding the claims and the relief sought. *Cooney v. Rossiter*, 2012 IL 113227, 1 (2012); *Cartwright v. Moore*, 394 Ill. App. 3d 1, 2 (1st Dist. 2009). Separate legal claims are construed to be a single cause of action if they arise from a single group of operative facts. *Id*. This is true regardless of whether each claim asserts

[2] A decision by the EEOC, for example, that it lacked jurisdiction to investigate a particular charge would not be given preclusive effect.

[3] Strict identity of the parties is not a requirement of claim preclusion. *See Cooney v. Rossiter*, 2012 IL 113227, 34 (2012). Identity of the parties may also be established by the parties' privies who were not parties to the original action as long as the privies' interests were adequately represented by an actual party. *Id*.

different theories of relief.[4] *Id*. Here, the facts that give rise to Varela's complaint to the Commission and her charge to the EEOC are identical. Both cases turn on allegations of discrimination and retaliation related to the approval or denial of vacation requests and assignment of shifts at Provident Hospital. Moreover, although Title VII is a federal act and the Human Rights Ordinance a piece of local legislation, each cause of action is largely identical. *Compare* 42 U.S.C. § 2000e-2[5] *with* County Code, § 42-35(b)(1) ("No employer shall directly or indirectly discriminate against any individual in hiring, classification, grading, recruitment, discharge, discipline, compensation, selection for training and apprenticeship, or other term, privilege, or condition of employment on the basis of unlawful discrimination."). This similarity in law and fact is sufficient to meet the final requirement for the application of claim preclusion to Varela's pending complaint at the Commission.

Having obtained a judgment from the EEOC after its investigation that Varela's discrimination and retaliation claims against CCHHS are without merit, the doctrine of *res judicata* prevents the Commission from providing Varela with any other result.

Conclusion

For the foregoing reasons, the Commission orders that complaint 2012E009 pending before this Commission be DISMISSED pursuant to a DEFERRAL. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date this order.

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[4] A litigant is barred from splitting a single cause of action into more than one proceeding both when the litigation is concurrent or successive. *Cartwright*, 394 Ill. App. 3d at 2. In other words, claim preclusion bars the later action if the same evidence is necessary to maintain both proceedings because there is identity between the allegedly different causes of action. *Wilson v. Edward Hosp*., 2012 IL 112898, ¶ 1 (2012).

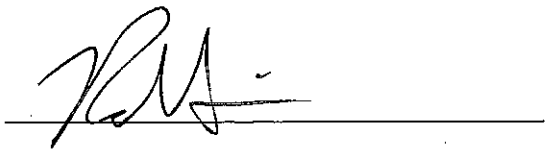
[5] Title VII states:

> It shall be an unlawful employment practice for an employer-
>
> (A) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (B) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 USCS § 2000e-2.

July 14, 2014

By delegation:



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Commission on Human Rights