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1999 Survey of Rhode Island Law: Cases: Employment Law

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Employment Law. *Folan v. Department of Children, Youth, and Families*, 723 A.2d 287 (R.I. 1999). The exclusivity clause of the Workers' Compensation Act (WCA) does not bar independent statutory claims which further a fundamental public policy, such as the prevention of employment discrimination under the Fair Employment Practices Act (FEPA) and the Civil Rights Act (CRA).

FACTS AND TRAVEL

While employed as a child protective investigator for the Department of Children, Youth, and Families (DCYF), the plaintiff, Carol B. Folan (Folan), alleged that her supervisor, Frederick Lumb (Lumb), sexually harassed her.[1] As a result of this harassment, the Workers' Compensation Court found that Folan suffered an "occupational stress" injury while employed by DCYF, and awarded benefits to Folan under the WCA for total incapacity.

Following the Workers' Compensation Court's decision, the plaintiff filed a complaint seeking compensation for lost wages and damages under the state Fair Employment Practices Act,[2] the Civil Rights Act of 1990,[3] article 1, section 2, of the Rhode Island Constitution[4] and the Civil Rights of People with Disabilities statutes.[5] The superior court granted the defendants' motion to dismiss the complaint, reasoning "that plaintiff's election of benefits under the WCA barred her later action for the same injuries in [a trial court]."[6] This case came before the Rhode Island Supreme Court on the appeal of the plaintiff.[7]

ANALYSIS AND HOLDING

The correct interpretation of the WCA's exclusivity clause was the issue in this case.[8] That statute reads in pertinent part:

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1. *See* Folan v. Department of Children, Youth, and Families, 723 A.2d 287, 289 (R.I. 1999). "Lumb's harassment allegedly consisted of both verbal and physical acts, including physical assaults on the plaintiff, attempts to molest her, sending gifts and flowers, writing notes, and implying a sexual affair to other coworkers." *Id.*
2. R.I. Gen. Laws §§ 28-5-1 to -41 (1956) (1995 Reenactment & Supp. 1999).
3. R.I. Gen. Laws § 42-112-1 (1956) (1999 Supp.).
4. R.I. Const. art. I, § 2.
5. R.I. Gen. Laws §§ 42-87-1 to -51 (1956) (1998 Reenactment).
6. *Folan*, 723 A.2d at 289.
7. *See id.*
8. *See id.*

> Rights in lieu of other rights and remedies.—The right to compensation for an injury under chapters 29-38 of this title, and the remedy therefor granted by those chapters, shall be in lieu of all rights and remedies as to that injury now existing, either *at common law or otherwise* against an employer, or its directors, officers, agents, or employees; and those rights and remedies shall not accrue to employees entitled to compensation under those chapters while they are in effect, except as otherwise provided in §§ 28-36-10 and 28-36-15.[9]

Folan argued that the exclusivity clause of the WCA did not prohibit "independent statutory causes of action."[10] Conversely, the defendants argued that the "or otherwise" phrase in the exclusivity clause barred Folan from receiving WCA benefits and preserving an ensuing action based upon the same injuries.[11]

The Rhode Island Supreme Court noted that where statutes appear to conflict, the court must determine the intent of the legislature in enacting each statute, imputing to each enactment the meaning concurrent with the legislature's policies and clear purposes.[12] The court has recognized that "'[s]tatutes which relate to the same subject matter should be considered together so that they will harmonize with each other and be consistent with their general objective scope [even if] . . . the statutes in question contain no reference to each other and are passed at different times.'"[13] Since the statutes in question do not expressly state their interrelationship, the court proceeded to consider the objectives of each statute.[14]

WCA

Enacted in 1912, the WCA established an alternative system of compensation for employees injured on the job.[15] Under the WCA, employees waive their right to maintain an action in tort against their employer in exchange for a statutorily mandated rate

9. R.I. Gen. Laws § 28-29-20 (1956) (1995 Reenactment) (emphasis added).
10. *Folan*, 723 A.2d at 289.
11. *See id.*
12. *See id.* (citing Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987)).
13. *Id.* at 289-90 (quoting State v. Ahmadjian, 438 A.2d 1070, 1081 (R.I. 1981)).
14. *See id.* at 290.
15. *See id.*

of compensation.[16] The Rhode Island Supreme Court has pointed out that "the WCA embodies a legislative compromise between the interests of employees and employers in regard to work-related injuries."[17]

The WCA's exclusivity provision ensures the viability of this legislative compromise for the employer by extinguishing an employee's other rights and remedies for compensated injuries.[18] From a policy perspective, "the exclusivity clause is 'intended to preclude any common-law action against an employer, substituting a statutory remedy at the election of the employee when he enters employment.'"[19] By taking away an employee's right to a tort action and removing certain defenses from an employer, the WCA provides a quick and simple mechanism for injured employees to be compensated.[20]

FEPA and CRA

Declaring a prohibition of discrimination on the basis of age, disability, national origin, race, religion, sex, or sexual orientation, the legislature passed the FEPA in 1949.[21] The Rhode Island Supreme Court noted that "[u]nlike the WCA, the FEPA is concerned with safeguarding an employee's right to obtain and hold employment without being subjected to discrimination."[22] Recognizing the negative domestic effects and economic inequities caused by discrimination, the legislature acted to protect the public health, safety and welfare.[23]

Similar to the FEPA, the legislature enacted the CRA in 1990, providing equal protection for "'all persons within the state, regardless of race, color, religion, sex, disability, age, or country of ancestoral origin . . . .'"[24] The CRA outlines the specific rights of Rhode Island citizens that are protected from any form of employment discrimination.[25]

16. *See id.*
17. *Id.* (citing DiQuinzio v. Panciera Lease Co., 612 A.2d 40, 42 (R.I. 1992)).
18. *See id.*
19. *Id.* (quoting Hornsby v. Southland Corp., 487 A.2d 1069, 1072 (R.I. 1985)).
20. *See id.*
21. *See id.*
22. *Id.* (citing R.I. Gen. Laws § 28-5-3 (1956) (Supp. 1999)).
23. *See id.*
24. *Id.* (quoting R.I. Gen. Laws § 42-112-1 (1956) (Supp. 1999)).
25. *See id.*

The Rhode Island Supreme Court's Solution

In resolving the conflict between the exclusivity clause of the WCA and the goals of the FEPA and the CRA, the Rhode Island Supreme Court noted that a Wisconsin case, *Byers v. Labor and Industry Review Commission*,[26] expressly distinguished the WCA from the FEPA and the CRA.[27] The *Byers* court remarked that "'[t]he WCA focuses on the employee and his or her work-related injury while the [FEPA and the CRA] focus on employer conduct that undermines equal opportunity in the workplace.'"[28] Additionally, the Wisconsin Supreme Court commented that "'the WFEA [Wisconsin Fair Employment Act] is concerned with . . . eliminating a discriminatory environment in the workplace that affects not only the victim of discrimination but the entire workforce and the public welfare.'"[29] Finally, the *Byers* court determined that, since the WCA did not adequately address employment discrimination, the Wisconsin legislature intended for the WFEA to effectuate the public policy opposed to discriminatory practices in the workplace.[30]

Recognizing the different purposes of the WCA contrasted against the FEPA and the CRA, the Rhode Island Supreme Court concluded "that the Legislature did not intend the exclusivity provision of the WCA to bar the independent statutory claims created by the FEPA or the CRA."[31] The court reasoned that permitting the exclusivity clause to prevent claims under the FEPA and the CRA would nullify these anti-discrimination statutes, contrary to the legislature's intent.[32] Nonetheless, the court pointed out that any money damages received through the WCA should be credited against awards achieved under the FEPA or the CRA.[33] Satisfied that "the FEPA and the CRA provide comprehensive remedies for employer discrimination," the court found it unnecessary to con-

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26. 561 N.W.2d 678 (Wis. 1997).
27. *See Folan*, 723 A.2d at 291.
28. *Id.* (quoting *Byers*, 561 N.W.2d at 682).
29. *Id.*
30. *See id.*
31. *Id.*
32. *See id.*
33. *See id.* at 292.

sider the plaintiff's claim under article 1, section 2, of the Rhode Island Constitution.[34]

CONCLUSION

In *Folan v. Department of Children, Youth and Families*, the Rhode Island Supreme Court determined that the exclusivity clause of the WCA does not bar claims under the FEPA or the CRA. While the exclusivity provision is applicable to some statutory claims, it cannot be used to undermine fundamental public policy, such as the prevention of employment discrimination.

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34. *Id.* Furthermore, the court expressed no opinion on the plaintiff's claim under the Civil Rights of People with Disabilities statutes, leaving it for trial. *See id.* at 292 n.2.