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# Employment Law

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## Seventh Circuit Denies Plaintiff's Motion for Summary Judgment of Title VII Claim

In *Porter v. City of Chicago*, No. 11-2006, 2012 WL 5439894 (7th Cir. Nov. 8, 2012), the plaintiff, Latice Porter, sued her employer, the City of Chicago, alleging failure to accommodate religious practices, religious discrimination, and retaliation, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* Both Porter and the City filed for summary judgment. The U.S. District Court, Northern District of Illinois, denied Porter's motion and granted the City's motion. Porter appealed, and the U.S. Court of Appeals for the Seventh Circuit affirmed. *Porter*, 2012 WL 5439894, at *1.

Since 1991, the City employed Porter in a civilian position with the Field Services Section ("FSS") of the Records Services Division of the Chicago Police Department. Beginning January 1, 2001, Porter held the position of Senior Data Entry Specialist, assigned to the "auto desk," where she processed information in computer databases about towed, repossessed, stolen, or recovered vehicles. The FSS operated 24 hours a day, each day of the week, and divided its employees into "watches" for scheduling purposes: first watch was 11:30 p.m. to 7:30 a.m.; second watch was 7:30 a.m. to 3:30 p.m.; and third watch was 3:30 p.m. to 11:30 p.m. Additionally, FSS employees were assigned to groups for their days off, with some employees assigned to have Fridays and Saturdays off, others were assigned to have Saturdays and Sundays off, and the remaining employees were assigned to have other two consecutive days off. *Id.*

During Porter's employment in the FSS, many people were involved in determining or approving employees' work schedules. FSS manager, Joseph Perfetti, supervised the sergeants who ran the day-to-day operations of the FSS, including determining employees' schedules. Specifically, Sergeants Geraldine Sidor, Wanda Torres, and H.A. McCarthy were authorized to change the days-off schedules at various times between 2004 and 2009. Additionally, Director of Records, Marikay Hegarty, could determine and approve the employees' work schedules from 2004 until late 2006, when Perfetti became Acting Director of Records through August 2008. *Id.*

Porter identified herself as Christian. She attended church services on Sundays, which were held at her church at 9:00 a.m., 11:45 a.m., and sometimes 4:00 p.m. She also attended Friday night services, Wednesday night bible study classes, and Tuesday prayer services. *Id.*

Prior to 2005, Porter worked in another section of the FSS and worked the second watch. Initially, her days-off schedule rotated, but she later had an alternating-weekend days-off schedule, meaning that she had every other Saturday and Sunday off. *Id.* at *2.

In 2005, Sergeant Sidor changed Porter's schedule so that she was in the Friday/Saturday days-off group. That same day, Porter sent a request to Hegarty, asking to be assigned to the Sunday/Monday days-off group, and informed Sergeant McCarthy that she wanted Sundays off because of her involvement in her church, including singing in the choir. Sergeant McCarthy approved the request, and reassigned Porter to the Sunday/Monday days-off group. *Id.* at *2.

In August 2005, Porter submitted a written request to her supervisors, asking to work a later shift on Saturdays so she could attend classes as a student minister. Sergeant Torres approved that request and assigned Porter to work from 1:30 p.m. to 8:30 p.m. on Saturdays for the duration of the 10-week class. Porter, however, remained on the second watch for the other workdays. *Porter*, 2012 WL 5439894, at *2.

In October 2005, Porter took leave under the Family Medical Leave Act (FMLA), due to a car accident and pregnancy complications, followed by a six-month leave of absence. She returned to work on July 16, 2006. *Id.*

When Porter returned, Sergeant Sidor, who was unaware that Porter preferred Sundays off in order to attend church services, assigned her to work the second watch, with Fridays and Saturdays off. Perfetti approved the assignment. According to Sergeant Sidor and Perfetti, the assignment was dictated by the operational needs that required a balance of the workforce, because more civilian employees were in the Sunday/Monday days-off group than the Friday/Saturday group when Porter returned. *Id.*

When Porter received her assignment, she met with Perfetti and requested reassignment to the Sunday/Monday days-off group. Perfetti informed her that her request would be accommodated when availability arose in the Sunday/Monday group. Upon Porter's request, however, Sergeant McCarthy asked auto desk employees in the Sunday/Monday group if anyone would switch with Porter, but no one volunteered. Additionally, Hegarty informed Porter that she could switch to the 3:00 p.m. to 11:00 p.m. shift on Sundays, but Porter did not follow up with Hegarty about that option. *Id.*

Instead, Porter filed internal grievances, contending that she was intimidated and harassed by her supervisors, both before and after her medical leave. *Id.* at *3. She claimed that the sergeants and other supervisors yelled at her, taunted her, and called her "church girl." She also was threatened with being written up by Sergeant McCarthy for showing up to work on a day that she was scheduled to have off. When she complained to Perfetti, he refused to change her days-off schedule. *Id.*

On August 25, 2006, Porter filed a complaint with the Chicago Commission on Human Relations (CCHR), alleging discrimination against the City, Sergeant Sidor, and Perfetti. On September 14, 2006, she filed a charge of religious-based discrimination with the Equal Employment Opportunity Commission. *Porter*, 2012 WL 5439894, at *3. The CCHR found substantial evidence of discrimination. *Id.* at *3 n.1.

Between July 16, 2006, when she returned to work, and November 12, 2006, Porter was absent from work on part or all of 34 days, 16 of which were Sundays. On November 12, 2006, Sergeant Patrick Chambers issued to Porter a "counseling session report" concerning her pattern of taking Sundays off. The report contained preprinted text stating that it was "not a disciplinary action," and that it was meant "to identify concerns or poor performance" and to advise her that "continued action of this kind [wa]s unacceptable and may result in either more formalized counseling or intervention." *Id.* at *3. The report also listed the reasons Porter gave to Sergeant McCarthy for failing to report to work on Sundays: that her chest hurt after working five days and that she had a seven-month-old baby that she had "to hold which she holds in a special way." *Id.* She also claimed that her absences were not intentional. *Id.*

On November 14, 2006, Porter requested medical leave, citing chronic pain and physical therapy. She took a leave of absence on November 16, 2006, and did not return to work. *Id.*

On December 12, 2008, Porter filed suit, alleging that the City failed to accommodate her, based on her religion, and retaliated against her for requesting an accommodation and complaining of religious discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* After discovery, Porter moved for summary judgment on her failure-to-accommodate claim, and the City moved for summary judgment on all claims. The district court denied Porter's motion and granted the City's motion, concluding that that City had accommodated Porter's religious practice reasonably and that Porter did not put forth sufficient evidence to support her claims of discrimination

and retaliation. *Id.* Porter appealed, arguing that there were disputed questions of fact on all claims. *Porter*, 2012 WL 5439894, at *4.

The Seventh Circuit first addressed whether there was sufficient evidence to support Porter's claim of failure to accommodate, and concluded that there was not. To establish a *prima facie* case of religious discrimination based on an employer's failure to provide a reasonable accommodation, a plaintiff "'must show that the observance or practice conflicting with an employment requirement is religious in nature, that she called the religious observance or practice to her employer's attention, and that the religious observance or practice was the basis for her discharge or other discriminatory treatment.'" *Id.* (quoting *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1996) (citations omitted)). Once the plaintiff makes out a prima facie case of discrimination, the burden shifts to the employer to show that it made a reasonable accommodation of the religious practice or to show that any reasonable accommodation would result in undue hardship to the employer. *Id.* (citing *Ilona of Hungary, Inc.*, 108 F.3d at 1575-76). The City conceded that Porter set forth a prima facie case of discrimination, but contends that there is no genuine issue of disputed fact that it satisfied its duty to reasonably accommodate her religious practices or that any reasonable accommodation would result in undue hardship. *Id.*

Under Title VII, the reasonable accommodation requirement is meant to provide the employee with additional opportunity to observe religious practices, without imposing a duty on the employer to accommodate at all costs. Thus, an accommodation is considered "reasonable" if it removes conflict between employment requirements and religious practices. The accommodation is not required to be the employee's preferred accommodation or the most beneficial to the employee. Therefore, once the employer has provided an alternative that reasonably accommodates the employee's religious needs, the inquiry under Title VII ends. *Id.*

The City set forth several ways by which it attempted to accommodate Porter's religious practices. Specifically, it pointed to Hegarty's suggestion that Porter change to a later watch; Perfetti's offer to allow Porter to take the next available opening in the Sunday-Monday days-off group; and Sergeant McCarthy's seeking volunteers to switch days-off groups with Porter. Additionally, Porter admitted during discovery that Hegarty, who was authorized to determine and approve schedules, wanted to help her and suggested that she switch her watch so that Porter's desire to attend Sunday morning church services could be accommodated, thereby eliminating the conflict with her work schedule. Because there was no evidence that the shift change offered by Hegarty would have impacted Porter's pay or benefits, the Seventh Circuit found that the City attempted to reasonably accommodate Porter's church schedule. The court noted that Porter had received a similar accommodation in August 2005 in order to attend Sunday morning ministry classes. *Id.* at *5.

The court noted that Porter's deposition testimony was clear that she did not want to work the later watch suggested by Hegarty, but rather preferred to return to the Sunday/Monday days-off group that she was in prior to her medical leave. *Porter*, 2012 WL 5439894, at *5. Title VII, however, does not require that the employer satisfy the employee's every desire, but rather requires nothing but a reasonable accommodation only. *Id.* (citing *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 475 (7th Cir. 2001) (quoting *Rodriguez v. City of Chicago*, 156 F.3d 771, 776 (7th Cir. 1998))). Had changing shifts affected Porter's pay or other benefits, a "much more rigorous inquiry" would have been required, but in Porter's case she simply did not want to work the later shift and her refusal to work the earlier shift did not make the proposed accommodation unreasonable. *Id.*

Given an employer's requirement to offer reasonable accommodations, the Seventh Circuit has encouraged "bilateral cooperation" between the employee and employer, recognizing that the employer must engage in dialogue with an employee seeking an accommodation. *Id.* at *6 (citing *Rodriguez*, 156 F.3d at 777-78 (citing *Ansonia Bd. of Educ. v. Philbrook*, 107 S. Ct. 367 (1986))). The court rejected Porter's arguments that a mere suggestion that she change shifts was insufficient for the employer to meet its burden and that the City should have been required to invite her to apply or to

inform her how to make a request for a shift change. *Id.* at *5. The court refused to impose such "hand-holding" on the City. *Id.* at *6 (noting that in *Rodriguez*, 156 F.3d at 773-74, 778, the employer satisfied its duty to open a dialogue with the plaintiff on the question of reasonable accommodation by engaging in the collective bargaining process with the plaintiff's union, resulting in an option available to the plaintiff in order to avoid the conflict with his religious beliefs).

Because Porter expressed no interest in Hegarty's proposed shift change as a possible remedy to Porter's request for an accommodation and did not pursue it further, the court stated that it could find no fault with the City for not taking further steps to change Porter's watch. The court also noted that Porter's argument regarding the City's failure to inform her as to the procedure for executing a schedule change rang hollow, because the request could be made from the same forms that Porter used to request a change of days-off groups, which she had been successful in doing on prior occasions. Accordingly, the Seventh Circuit concluded that the City met its obligation under Title VII by offering Porter an accommodation that would have eliminated the conflict between her work schedule and her religious practice of attending Sunday morning church services. *Porter*, 2012 WL 5439894, at *6.

The Seventh Circuit also found that Porter failed to present any evidence of disparate treatment. Porter claimed that she was subjected to adverse employment actions because of her religion, in violation of Title VII. *Id.* She contended that her placement in the Friday/Saturday days-off group after her return from medical leave in July of 2006 and the issuance of the counseling session report in November 2006 were adverse employment actions. The court, however, found that Porter had not put forth evidence that either of those actions materially altered the terms or conditions of her employment. *Id.* at *7. Further, there was no evidence that the schedule set for Porter was meant to exploit a "known vulnerability," that is, her attendance at Sunday morning church services. The uncontradicted testimony was that Porter was assigned a shift to balance the days-off groups, and Hegarty tried to resolve the conflict between Porter's work and church schedules. *Id.* at *8.

Porter's hostile work environment claim failed as well, because she presented no evidence that she was subjected to severe or pervasive religious harassment. The only instances of harassment that she alleged were being called "church girl," being told to sit down "in a high-pitched voice" by a supervisor, being threatened with a "CR complaint" when she showed up to work on a scheduled day off, and receiving a counseling report in November 2006. The Seventh Circuit concluded that, even if Porter could establish that this conduct was based on her religion, a reasonable jury would not be able to find that the conduct was objectively offensive, pervasive, or severe. *Id.*

Finally, the Seventh Circuit rejected Porter's retaliation claim. The court noted that, in order to prevail on a retaliation claim under Title VII, a plaintiff must establish that she suffered a materially adverse employment action. The only potentially retaliatory action allegedly suffered by Porter was her assignment to the Friday/Saturday days-off group, to which she was assigned upon her return from leave in July 2006. The court did not find that assignment to be materially adverse, especially in light of a supervisor's promise that Porter would receive the next opening in the Sunday/Monday days-off group. Moreover, applying the standard set forth in *Burlington Northern and Sante Fe Railway Co. v. White*, 126 S. Ct. 2405 (2006), the Seventh Circuit found that the treatment received by Porter would not dissuade a reasonable worker from seeking an accommodation, and thus did not constitute retaliatory treatment. *Porter*, 2012 WL 5439894, at *9. The court also found no causal connection between Porter's assignment to the Friday/Saturday days-off group and the accommodation requested, because the assignment came after her successful requests for accommodations. More importantly, the evidence showed that Sergeant Sidor, who made the recommendation to place Porter in the Friday/Saturday days-off group, did so to balance days-off groups and had no knowledge of Porter's desire for Sundays off to attend church. Therefore, the Seventh Circuit affirmed the district court's decision on all counts. *Id.* at *10.

## State Sovereign Immunity Reigns Supreme as to the 2008 Amendment to the Illinois Human Rights Act

In *Watkins v. Office of the State Appellate Defender*, 2012 IL App (1st) 3637151, ¶ 2, Edward Watkins and Alice Washington, the plaintiffs and former employees of the defendant, the Office of the State Appellate Defender (OSAD), were supervised by the State Appellate Defender, Michael Pelletier, also a defendant in the case. Watkins and Washington alleged that they were discriminated against on the basis of their race, disability, and age under the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101, *et seq.* The circuit court dismissed the case with prejudice, holding that the plaintiffs' complaints against OSAD and Pelletier lacked subject matter jurisdiction. *Watkins*, 2012 IL App (1st) 3637151, ¶ 2. The circuit court held that it lacked jurisdiction over these matters because the State Lawsuit Immunity Act, 745 ILCS 5/1, *et seq.*, and the Court of Claims Act, 705 ILCS 505/8(a), provide the exclusive forum for claims against the State of Illinois (the State) under the IHRA with the Court of Claims. *Id*. The Appellate Court of Illinois First Judicial District affirmed the decision of the circuit court. *Id*.

OSAD employed Watkins for three years as its chief investigator. Watkins alleged that Pelletier approached him on January 18, 2008, and asked him to resign. Pelletier informed him that if he refused, he would be discharged for allegedly signing into work and submitting a travel voucher for a time period when he had not worked. *Id.* ¶ 9. On February 4, 2008, Watkins refused to resign and received a notice of discharge, which stated he was being discharged because: (1) his position was being eliminated; (2) he had failed to comply with a "calendaring program"; and (3) poor work performance. *Id*.

Watkins claimed that the allegations in his notice of discharge were untrue, as his performance reviews for 2006 and 2007 had met or exceeded OSAD's standards. Watkins claimed that OSAD failed to discharge other investigators who also had not used the calendaring program and who, unlike Watkins, were not African American. According to Watkins's complaint, Pelletier intentionally targeted him for discharge due to his race and age. Further, Watkins alleged that the actions amounted to a violation of his civil rights under the IHRA. *Id*. ¶ 10.

Washington's claims were brought under a theory of race and disability discrimination. She alleged that, on January 16, 2008, while she was on medical leave, Pelletier reduced her salary from $60,400 to $49,400 per year. Washington, an African American, filed a grievance. On February 4, 2008 Pelletier informed her that she had the option either to resign with benefits or to be discharged for failure to complete an office survey on how much time she spent during her tasks and for failing to complete the notes section of a calendaring program. Washington chose to resign, but claimed that two other investigators, who were not African American, were not asked to resign even though they had not completed the notes section of the calendaring program. *Id.* ¶ 5.

The plaintiffs each filed complaints with the circuit court. According to Watkins's complaint, Pelletier's actions amounted to a violation of Watkins's civil rights under the IHRA because he was discharged based on his race and age. *Watkins*, 2012 IL App (1st) 3637151, ¶ 10. According to Washington's complaint, she also claimed that the defendants violated her civil rights under the IHRA, as she believed that the actual bases for her forced resignation were race and disability discrimination. *Id.* ¶ 7.

The plaintiffs contended that the circuit court erred in dismissing their complaints because the defendants did not have sovereign immunity from the plaintiffs' discrimination claims brought under the IHRA. The plaintiffs argued that the 2008 amendment to the IHRA that allowed them to file suit in circuit court amounted to a waiver of the State's immunity to claims brought under the IHRA in circuit court. Alternatively, the plaintiffs asserted that, if allowing the suit in circuit court did not amount to a waiver of immunity, their claims would fall under the exception provided for violations of

Title VII and the circuit court should have allowed them to amend their complaints so as to bring their claims under Title VII. *Id*. ¶ 17.

On appeal, the court considered whether the plaintiffs' contention that the language of the 2008 amendment to IHRA, allowing plaintiffs to file in circuit court, amounted to a waiver the State's sovereign immunity. *Id*. ¶ 20.

Prior to the 2008 amendment to the IHRA, the Human Rights Commission (the Commission) had exclusive jurisdiction to hear civil rights claims. In 2008, the IHRA was amended to allow complainants to proceed in the circuit court under certain circumstances. 775 ILCS 5/7A-102(C)(4), (K) (West 2010). The plaintiffs contended that the 2008 amendment was part of a "comprehensive statutory scheme" to provide claimants under the IHRA, including those bringing suit against the State, with the option to file their complaints in circuit court. *Watkins*, 2012 IL App (1st) 3637151, ¶ 22.

The appellate court noted that the plaintiffs' argument was raised and rejected by the federal district court in *Harris v. Illinois*, 753 F. Supp. 2d 734, 741 (N.D. Ill. 2010). The *Harris* court, quoting the Illinois Supreme Court, recognized that a waiver of the State's sovereign immunity has to be clear and unequivocal. *Harris*, 753 F. Supp. 2d at 741 (quoting *In re Special Educ. of Walker*, 131 Ill. 2d 300, 303 (1989)) (quoted in *Watkins*, 2012 IL App (1st) 3637151, ¶ 23)). Specific legislative authorization must express the State's waiver, and the authorization must appear in affirmative statutory language. *Watkins*, 2012 IL App (1st) 3637151, ¶ 23 (quoting *Harris*, 753 F. Supp. 2d at 741 (quoting *Walker*, 131 Ill. 2d at 304)).

Additionally, the court in *Harris* noted that, pursuant to the Immunity Act, the State does not waive immunity, except as provided in certain other statutes, and that the IHRA is not enumerated as an exception to the Immunity Act. *Harris*, 753 F. Supp. 2d 734, 741 (N.D. Ill. 2010) (cited in *Watkins*, 2012 IL App (1st) 3637151, ¶ 23). As a result, the court concluded that, while complaints brought under the IHRA may proceed in the Illinois circuit court, neither the IHRA nor the Immunity Act contains affirmative language stating that the State has waived its immunity for claims brought under the IHRA. *Watkins*, 2012 IL App (1st) 3637151, ¶ 23. The appellate court, therefore, rejected the plaintiffs' claim that the amendment to the IHRA that allows claims to proceed in circuit court waives the State's sovereign immunity from claims arising under the IHRA. *Id*.

Even though the amendment to the IHRA did not waive the State's immunity to claims brought under the statute, the plaintiffs contended that their complaint fell under another exception of the Immunity Act. *Id.* ¶ 24. The Immunity Act, in relevant part, states:

> An employee . . . of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of Title VII of the Civil Rights Act of 1964 [citation omitted] if committed by an employer covered by that Act may bring an action under Title VII of the Civil Rights Act of 1964 against the State in State circuit court or federal court.

745 ILCS 5/1.5(e) (West 2010) (quoted in *Watkins*, 2012 IL App (1st) 3637151, ¶ 25). The plaintiffs argued that the defendants' alleged conduct would constitute a violation of Title VII and thus falls under Section 1.5(e) of the Immunity Act. *Watkins*, 2012 IL App (1st) 3637151, ¶ 26. The appellate court disagreed, finding that it is well established that any waiver of a State's sovereign immunity must be clear and unequivocal and with specific authorization. *Id*. ¶ 27. The Immunity Act appears to waive State sovereign immunity for claims that are brought under Title VII, but it is silent as to whether an individual may bring an action against the State under any other laws, such as the IHRA, that could provide a remedy for the same conduct that also happens to violate Title VII. *Id.*

The appellate court noted that there is no Illinois state case on the issue of whether the State has waived sovereign immunity under the IHRA, but that a federal district court decision did address the argument. *Id*. ¶ 28. In *Bottoms v. Illinois Department of Human Services*, 2004 WL 1403811, at *2

(N.D. Ill. 2004), the federal district court interpreted Section 1.5 of the Immunity Act as disallowing claims that were brought under statutes not expressly enumerated therein, even when the alleged conduct falls within statutes that are exceptions of the Immunity Act. *Watkins*, 2012 IL App (1st) 3637151, ¶ 28. Therefore, the plaintiffs' complaint was not actionable in the circuit court, because it was brought under the IHRA, rather than under Title VII. *Id*. ¶ 29.

Lastly, the plaintiffs contended that, if nothing else, the circuit court should have granted them leave to amend their complaint to bring their claims under Title VII. The circuit court, however, has sound discretion in its decision to grant or deny a party leave to amend its pleadings, and the reviewing court will not reverse such discretion absent an "abuse of discretion." *Id*. ¶ 30.

The appellate court held that the circuit court did not abuse its discretion in denying the plaintiffs leave to amend their complaints. The appellate court took into account the following four factors when determining whether the circuit court abused its discretion: (1) whether the proposed amended complaint would cure the defect; (2) whether the amendment would surprise or prejudice the opposing party; (3) the timeliness of the amendment; and (4) whether the moving party had previous opportunities to amend. *Watkins*, 2012 IL App (1st) 3637151, ¶ 34. The appellate court recognized that granting the plaintiffs the opportunity to amend their complaint to include a claim under Title VII would have been futile, because any Title VII claim would have been untimely. *Id*. ¶ 35. Title VII allows a plaintiff no more than 90 days to file a claim once the plaintiff receives a right-to-sue letter from the Equal Employment Opportunity Commission. The timeframe established by Title VII had passed. Accordingly, the appellate court held that the circuit court did not abuse its discretion in denying the plaintiffs' motion to amend their complaint. *Id*. ¶ 40.

Likewise, in *Lynch v. Department of Transportation*, 2012 IL App (4th) 111040, the Appellate Court of Illinois Fourth Judicial District affirmed the judgment of the circuit court, which held, *inter alia*, that the IHRA does not contain clear and unequivocal language waiving the State's sovereign immunity. *Lynch*, 2012 IL App (4th) 111040, ¶ 1. Because the statute does not contain such language, the appellate court held that the circuit court properly dismissed the plaintiffs' claims under the IHRA, pursuant to the doctrine of sovereign immunity. *Id.* ¶¶ 1-2.

In *Lynch*, the plaintiffs were state employees who sued the State of Illinois, in its capacity as their employer, for violations of the IHRA. *Id*. ¶ 1. The plaintiff, Robert Lynch, sued the Illinois Department of Transportation (IDOT) for unlawful retaliatory conduct. The plaintiff, Timothy Storm, sued the Illinois State Police for unlawful employment discrimination on the basis of age, sex, and sexual orientation. *Id*. ¶¶ 1, 5, 11. The plaintiffs' claims were dismissed by the circuit court, which concluded that it lacked subject-matter jurisdiction because the doctrine of sovereign immunity prevented the suit against the State and the legislature had not waived sovereign immunity expressly for actions brought under the IHRA. *Id*. ¶¶ 8, 14.

The questions posed on appeal were whether the State legislature waived the State's sovereign immunity when the IHRA became effective in 1980, and whether the State was required to waive its sovereign immunity in the 2008 amendments to the Act. *Id.* ¶ 17. The plaintiffs argued that the legislature waived sovereign immunity when it initially enacted the IHRA in 1980, by including the State in its definition of "employer" and making the State eligible to be sued by its employees for violations of the IHRA. *Lynch*, 2012 IL App (4th) 111040, ¶ 25. Further, the plaintiffs asserted that the legislature did not need to waive sovereign immunity again when it amended the IHRA in 2008. *Id*. ¶ 26. The appellate court disagreed.

Prior to the 2008 amendments to the IHRA, the Commission was vested with exclusive jurisdiction to hear civil rights claims under the IHRA, after administrative remedies before the Illinois Department of Human Rights (the Department) were exhausted. *Id.* ¶ 27. Because the Department and the Commission are administrative agencies, and not courts, the appellate court reasoned that the legislature had no reason to waive the State's sovereign immunity, as immunity does not apply to administrative proceedings. The appellate court noted: "As a matter of pure logic, it is

impossible for Illinois to have consented to defend itself against a claim in its courts if Illinois has withheld, from its courts, subject-matter jurisdiction over that type of claim." *Id*. (quoting *Brewer v. Bd. of Trs. of the Univ. of Ill.*, 339 Ill. App. 3d 1074, 1078 (4th Dist. 2003)).

The plaintiffs did not assert that the 2008 amendment to the IHRA waived the State's sovereign immunity, because they were adamant that the State's sovereign immunity had been waived in 1980. *Lynch*, 2012 IL App (4th) 111040, ¶ 28. The appellate court noted the First District's decision in *Watkins* and the federal court's decision in *Harris*, both discussed above, where those courts held that the State had not waived sovereign immunity for the purposes of the IHRA. *Id*. ¶ 29.

Given the decisions in *Watkins* and *Harris*, the Fourth District concluded that the legislature did not clearly, unequivocally, or affirmatively waive the State's sovereign immunity in the 2008 amendments to the IHRA. Accordingly, the appellate court affirmed the circuit court's judgment. *Id*. ¶ 33.

These cases seem to have closed the door to employees of the State bringing suit under the IHRA in the circuit court. Although the Fourth District in *Lynch*, 2012 IL App (4th) 111040, ¶ 31, equivocated on the issue of whether a remedy is still available for employees of the State in the Commission, presumably the Commission still has jurisdiction over claims made under the IHRA by employees of the State. These cases, however, leave open the question of to what extent employees of the State may pursue their IHRA claims in the Court of Claims, given the language of the 2008 amendment to the IHRA.

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