FLORIDA SHORTENS STATUTE OF LIMITATIONS FOR CERTAIN EMPLOYMENT DISCRIMINATION CLAIMS

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Labor, Employment, and Workplace Safety Alert

By: April Boyer, Rio J. Gonzalez

OVERVIEW

Until July 1, 2020, Florida employers had to wait four years for the statute of limitations to expire when an employee filed a charge of discrimination under the Florida Civil Rights Act of 1992 (FCRA) with the Florida Commission on Human Relations[1] (Commission) and the Commission had failed to make a determination on the charge within 180 days of filing. Effective July 1, 2020, that statute of limitations is now markedly shorter: one year.

Specifically, on June 30, 2020, Florida Governor Ron DeSantis signed into law Florida House Bill 255 (HB 255) which, among other things, limits the time period by which an employee must file a lawsuit alleging a violation of the FCRA when the Commission has failed to issue a determination on a charge of discrimination within 180 days of the complainant's filing. Previously, when the Commission failed to make a determination within 180 days of a complainant's filing, a complainant would have a generous four years from the date of the alleged adverse employment action to file a lawsuit based on the Florida Supreme Court decision *Joshua v. City of Gainesville*, 786 So. 2d 432 (Fla. 2000). Following HB 255, a complainant now has only one year to file a lawsuit if the Commission is unable to make a determination within 180 days of a complainant's filing.

BACKGROUND

The FCRA protects individuals from adverse employment actions based on an individual's race, color, religion, sex, pregnancy, national origin, age, disability, or marital status. While sexual orientation, gender identity, and gender expression are not explicitly listed in the FCRA, the Commission also will investigate such claims under the broader sex and gender category. Florida employers who have fifteen or more employees are covered by the FCRA.

Generally, an individual alleging a violation under the FCRA must exhaust administrative remedies by filing a charge of discrimination with the Commission. The charge must be filed within one year of the alleged discriminatory act. Following the filing of a charge, the Commission has 180 days to complete its investigation of the alleged discriminatory act. In the event that the Commission determines there is reasonable cause to believe the discriminatory practice occurred in violation of the FCRA, then the individual may request a hearing before the Division of Administrative Hearings or the individual may file a civil action in an appropriate court. Either remedy

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must be commenced no later than one year after the Commission issues a determination of reasonable cause or the individual is forever barred from pursuing the alleged claim under the FCRA.

Alternatively, (prior to HB 225) if the Commission did not issue a determination within the required 180 days then the individual would have four years to bring a lawsuit in an appropriate court. This was based on the Florida Supreme Court decision *Joshua v. City of Gainesville*, 786 So. 2d 432 (Fla. 2000). There, the Florida Supreme Court found that, due to legislative intent and due process concerns, the four-year statute of limitations for statutory violations found in Florida Statutes Section 95.11 applied to charges filed under the FCRA when the Commission failed to make a determination within the required 180 days. *Joshua*, 768 So. 2d 432, 433 (Fla. 2000). Moreover, discrimination charges that were dual filed with the EEOC and the Commission were less likely to be completed by the EEOC within the required 180 days under the FCRA. Therefore, dual filed charges commonly benefited from the generous four-year statute of limitations. The four-year statute of limitations has now been overturned by the Florida legislature in HB 255.

HB 255

Effective July 1, 2020, HB 255 reconciles the statutorily defined one year limitation period for investigations that the FCRA is able to complete within the required 180 days with the previously statutorily-silent limitation period for investigations that are not completed within the required 180 days.

Under HB 255, the Commission is required to "promptly" notify a charging party of possible remedies when the Commission is unable to conciliate a charge or make a reasonable cause determination within the required 180 days of the charge's filing. In its notice, the Commission must inform a charging party that the charging party has one year after the notice is mailed to commence a civil action.

KEY TAKEAWAYS

- Individuals now have one year instead of four to file a civil action in instances where the Commission is unable to conciliate a charge or make a reasonable cause determination within 180 days of the charge's filing.
- While HB 255 likely will not apply retroactively, employers will benefit from the reduced limitations period for charges filed after July 1, 2020.
- Employers should continue to work with employment counsel to implement best practices that mitigate the risk of discrimination charges.

FOOTNOTES

[1] The Commission, which has a work share agreement with the Equal Employment Opportunity Commission (EEOC), administers the Florida Civil Rights Act. The Governor appoints 12 people who are confirmed by the Senate. Among other responsibilities, the Commission initiates, investigates, conciliates, and holds hearings concerning complaints of discrimination related to employment claims.

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KEY CONTACTS



APRIL BOYER
CHAIR OF WOMEN IN THE PROFESSION COMMITTEE

MIAMI
+1.305.539.3380
APRIL.BOYER@KLGATES.COM



RIO J. GONZALEZ
COUNSEL

MIAMI
+1.305.539.3346
RIO.GONZALEZ@KLGATES.COM

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