

[NEW FLORIDA LAW SHORTENS TIME FOR FILING CERTAIN FCRA CLAIMS](#)

On June 30, 2020, Florida Governor Ron DeSantis signed into law CS/HB 255 which, among other things, amends the Florida Civil Rights of 1992 (FCRA) to statutorily define the limitations period in which a plaintiff must file a lawsuit alleging a violation of the FCRA in situations where the Florida Commission on Human Relations (FCHR) has failed to issue a determination on a charge of discrimination (Charge) within 180 days of the Charge's filing.

Background

The FCRA prohibits discrimination in employment based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. Before filing a lawsuit alleging violations of the FCRA, a putative plaintiff must first exhaust administrative remedies by filing a Charge with the FCHR within 365 days of the alleged violation.

Upon investigation, the FCHR determines whether there is reasonable cause to believe a discriminatory practice in violation of the FCRA exists. If the FCHR determines within 180 days that reasonable cause exists, the charging party may file a lawsuit or may pursue relief through the administrative process by requesting a hearing before an administrative law judge with the Division of Administrative Hearings. A charging party has one year from the date of the determination to file a lawsuit or will be forever barred from pursuing claims under the FCRA. If the FCHR issues a "no cause" determination, a charging party may seek further administrative review only and may not file a lawsuit. However, if the FCHR fails to issue a determination within 180 days of the Charge's date of filing, the charging party may proceed as if the FCHR had issued a reasonable cause determination and file a lawsuit.

The FCRA was silent regarding the time within which a lawsuit must be filed where the FCHR fails to issue a determination within 180 days. The Florida Supreme Court supplied an answer in *Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000). Based on legislative intent and due process concerns, the Court held that when the FCHR fails to make a determination within 180 days, a charging party has four years from the date the cause of action accrued (i.e., the date of the adverse action) to file a lawsuit alleging a violation of the FCRA, regardless of any subsequent determination the FCHR may make. The Florida Supreme Court's decision in *Joshua*, therefore, established different limitations periods depending on the date the FCHR issues its determination. Where a Charge is dual filed with the Equal Employment Opportunity Commission (EEOC) and FCHR, and investigated first by the EEOC, the FCHR rarely issues a determination within 180 days. As a result, in most dual-filed cases, the four-year statute of limitations applied.

Amendment

CS/HB 255's amendment to the FCRA (Amendment) effectively harmonizes the limitations periods, providing that the one-year statute of limitations that applies where the FCHR issues a timely cause determination also applies where it fails to do so. The FCHR is required to "promptly notify" the charging party of its failure to issue a determination within 180 days and of the charging party's options as a result of that failure. The one-year period in which a civil action must be brought starts on the date the FCHR certifies that this notice was mailed to the charging party.

It is unlikely that the Amendment is meant to apply retrospectively. Accordingly, the *Joshua* framework will likely apply to Charges filed before the date of the Amendment. With respect to Charges subject to the Amendment, it is unclear how “promptly” the notice will issue should the FCHR fail to make a determination within 180 days. It is also unclear how the EEOC will communicate with the FCHR when Charges are dual filed with the federal agency. For the time being, it would be prudent for employers or their representatives to track the time from the filing of a Charge and to remind the FCHR of its notice obligation in cases where the FCHR has not issued a determination within 180 days.

Bottom Line

The Amendment is beneficial to employers as it greatly reduces the time period in which a charging party may bring a lawsuit alleging violations of the FCRA where the FCHR fails to issue a determination within 180 days. Under the FCRA, a Charge must be filed within 365 days of the adverse action, the FCHR has 180 days to issue a determination, and the charging party has one year from the date of the determination (or the date of notice that a timely determination will not be made) within which to file suit. Thus, the Amendment decreases the limitations period from four years to approximately two-and-a-half years.

~ By *Bret C. Yaw, FordHarrison (Orlando)*

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