

ARE YOU PROTECTED AGAINST DISABILITY DISCRIMINATION IN THE WORKPLACE?

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Richard Celler



Once upon a time having a disability virtually ensured that you were unemployable in the United States. Disabled individuals who did find employment were often paid considerably less than their non-disabled counterparts and or suffered from other types of discriminatory behavior in the workforce. Thanks to both state and federal laws that have been implemented over the last several

decades, disability discrimination in the workplace is now illegal. Unfortunately, that does not mean it never occurs. If you believe you have been discriminated against on the basis of a disability the first step in determining if you have legal recourse is to confirm that you are actually legally protected against disability discrimination.

THE EXTERNAL OF THE PROBLEM – HOW MANY DISABLED AMERICANS ARE IN THE WORKPLACE?

According to the 2012 American Community Survey (ACS) conducted by Cornell University, which surveyed almost 200,000 individuals, approximately 33.5 percent of non-institutionalized, male or female, with a disability, ages 21-64, all races, regardless of ethnicity, with all education levels in the United States were



employed in some form. In addition, another 10.8 percent of the individuals with a disability were actively looking for work but unable to find a position.

The State of Florida ranked just below the national average (28.4 percent) with regard to

individuals with a disability who were employed and just above (12.1 percent) the national average for individuals with a disability who were actively looking for work. By comparison, according to the Bureau of Labor Statistics, approximately

60 percent of the overall population is employed in the U.S. at any given time with the percent of adults looking for work hovering between five and eight percent.

THE DEFINITION OF DISABLED

The word “disabled” can have vastly different meanings to different people. For the purpose of determining if you are protected against employment discrimination, however, the definition that matters is the definition found in the American with Disabilities Act, or ADA. According to the ADA, you are considered disabled if any of the following apply:

- You have a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- You have a history of a disability (such as cancer that is in remission).
- You are believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

In addition, under the ADA you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that “significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.”

WHAT IS EMPLOYMENT DISCRIMINATION BASED ON DISABILITY?



Discrimination in the workplace based on an individual's disability, or perceived disability, can take many forms. According to the U.S. Equal Employment Opportunity Commission, or EEOC, disability discrimination occurs when "a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment)."

Disability discrimination occurs in all facets of employment, including, but not limited to:

- Recruitment of employees
- Hiring and firing
- Wages and benefits
- Promotions and job assignments

Layoffs and leave

ABILITY TO PERFORM THE JOB

One aspect of disability discrimination claims that people frequently gloss over is



the requirement that an individual actually be able to perform the job in question. While a number of state and federal laws do prohibit discrimination in the workplace based on disability that does not mean that an employer must hire, or retain, a

disabled employee if the individual is not capable of performing the tasks necessary for the position.

To be protected under any of the anti-discrimination laws *you must be qualified to perform the job functions with or without reasonable accommodations*. In other words, if the employer made reasonable accommodations for your disability could you perform the job? If the answer to that question is yes, then you are protected assuming all other qualifications are met. If the answer is no you are not protected.

WHAT LAWS PROHIBIT DISABLED DISCRIMINATION IN EMPLOYMENT?



Both the U.S. federal government and the State of Florida have laws in place that protect disabled individuals from discrimination in employment. At the federal

level, the Americans with Disabilities Act (ADA) is the most widely recognized of those laws; however, the Rehabilitation Act of 1973 also protected federal employees and applicants from disability discrimination. In the State of Florida, the Florida Civil Rights Act (FCRA) prohibits employers from discriminating on the basis of “handicap”.

If an employer has violated your rights as a disabled individual you may have the right to pursue legal action at either the state or federal level. Although the laws are similar, the procedures that must be followed to file a complaint and the damages to which a victim may be entitled can differ. For this reason it is always best to consult with an experienced Florida employment law attorney before filing a complaint if you believe you have been discriminated against based on a disability.



If you meet the legal definition of “disabled” and you believe that you have suffered discrimination in the workplace because of that disability you *may be* entitled to compensatory and punitive damages. Because each situation is unique it is imperative that you consult with an experienced Florida employment law attorney who can evaluate the facts and circumstances of your potential case and advise you what legal options you may have.

U.S. Equal Employment Opportunity Commission, [Disability Discrimination](#)

U.S. Equal Employment Opportunity Commission, [Coverage](#)

U.S. Equal Employment Opportunity Commission, [The ADA: Your Employment Rights as an Individual with a Disability](#)

U.S. Equal Employment Opportunity Commission, [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)

Cornell University, [Disability Statistics](#)

Florida Statutes, [Florida Civil Rights Act](#)

About the Author



Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – www.floridaovertimelawyer.com.

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