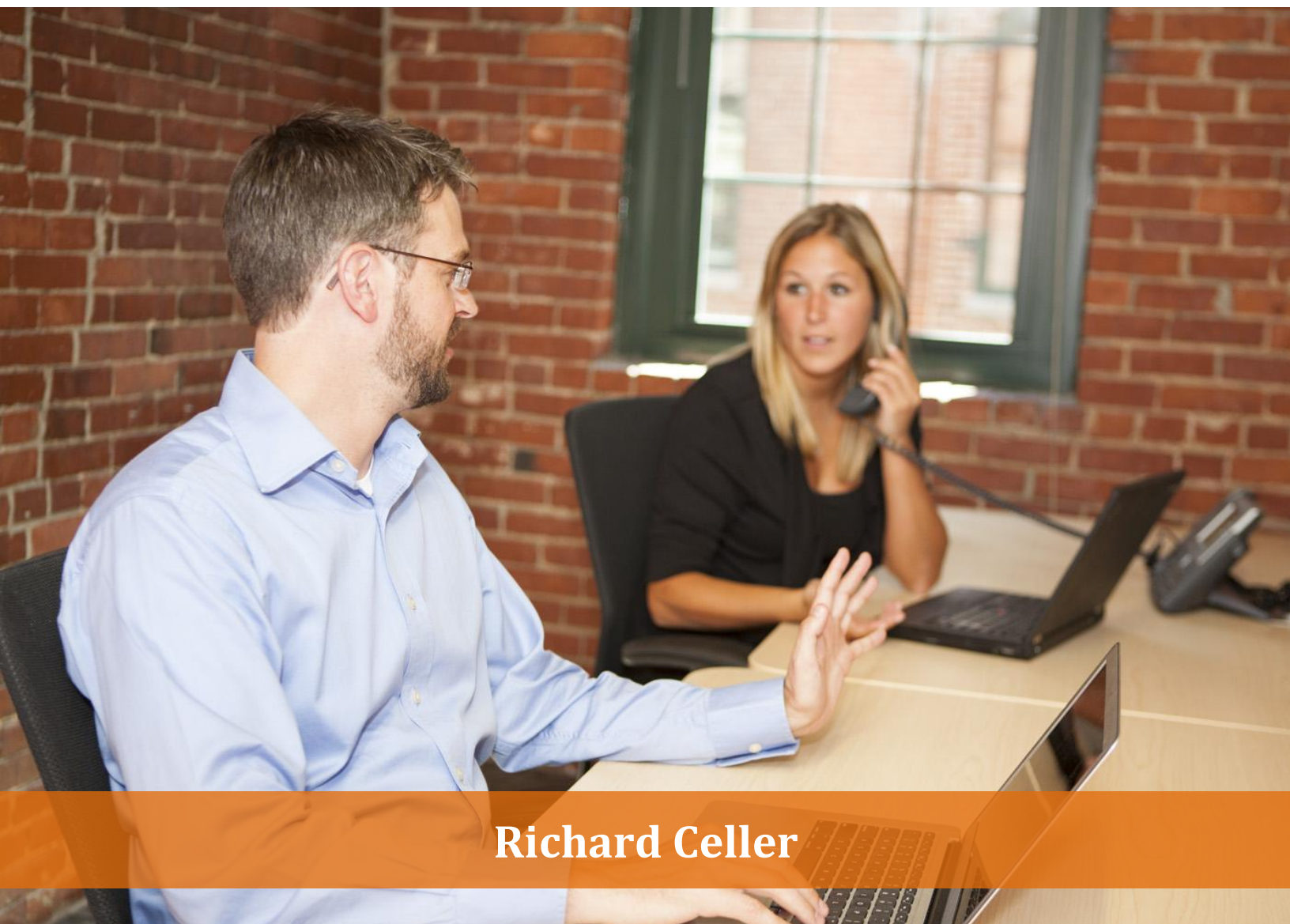


EMPLOYMENT DISCRIMINATION in FLORIDA

Should I File a Complaint or a Lawsuit?

“If you have been the victim of employment discrimination you may be entitled to pursue a complaint with the Equal Opportunity Employment Commission (EEOC), a lawsuit in federal court, a lawsuit in state court, or all three.”



Richard Celler



Without a doubt, we have come a long way in the United States from the days when discrimination was not just common place but also completely legal. We still, however, have a long way to go, particularly in the area of employment discrimination.

Despite the enactment of numerous state and federal laws prohibiting various types of discrimination in the workplace, employment discrimination continues to occur in the U.S. If you have been the victim of employment discrimination you may be entitled to pursue a complaint with the Equal Opportunity Employment Commission (EEOC), a lawsuit in federal court, a lawsuit in state court, or all three. Only an experienced Florida employment law attorney can evaluate your specific set of facts and circumstances and advise you with regard to the options available to you specifically; however, as the victim of workplace discrimination it may help to understand the difference between filing a complaint with the EEOC and filing a state or federal lawsuit.

THE ROLE OF THE EEOC

The first anti-discrimination laws were passed during the Civil Rights era in the United States in the 1960s. When the federal Civil Rights Act of 1964 was passed, the U.S. Equal Opportunity Employment Commission, or EEOC, was officially created to enforce Title VII of the Civil Rights Act, or CRA. Since the

CRA was passed a number of other federal laws have also been passed that prohibit various types of employment discrimination. The EEOC is charged with enforcing all of those laws for the federal government. In that role, the EEOC investigates formal complaints filed by employees.

FEDERAL EMPLOYMENT DISCRIMINATION LAWS

In the United States both state and federal laws prohibit employment discrimination. Though there are exceptions, the general rule is that employers with 15 or more employees are covered by the various federal anti-discrimination laws. Since the first anti-discrimination legislation was passed in the early 1960s, the federal government has passed numerous other laws that prohibit employment discrimination based on various protected characteristics. Some of the more commonly used employment discrimination laws include:

- **The Equal Pay Act of 1963 (EPA)**
- **The Age Discrimination in Employment Act of 1967 (ADEA)**
- **Title I of the Americans with Disabilities Act of 1990 (ADA)**
- **The Pregnancy Discrimination Act**
- **Civil Rights Act of 1991**
- **Sections 501 and 505 of the Rehabilitation Act of 1973**
- **The Genetic Information Nondiscrimination Act of 2008 (GINA)**

STATE EMPLOYMENT DISCRIMINATION LAWS



In the U.S. we operate under a federalist form of government which means that along with a strong central government we also have numerous smaller state governments. Both the federal government and the individual state governments may pass laws. Federal laws apply across the U.S. while state laws only apply within the state. In the State of Florida, the Florida Civil Rights Act (FCRA) of 1992 mirrors many of the protections and prohibitions found in the various federal employment discrimination laws. Although the FCRA affords many of the same

protections found in existing federal laws, there are three important areas of difference frequently found between the FCRA and federal law, including:

- Who is covered – small business that are exempt from federal laws are typically covered by the FCRA.
- Procedures that must be followed – under the FCRA you have up to 365 days to file a Charge of Discrimination whereas you only have 180 days to file a Charge of Discrimination under federal law.
- Damages available to a victim – there is often a significant difference between the FCRA and federal laws with regard to the type and amount of damages available.

WHEN ARE YOU REQUIRED TO FILE A CLAIM FIRST?

As a victim of employment discrimination you are required to file a complaint with the EEOC before being allowed to pursue a lawsuit in federal court unless your situation fits into one of the following exceptions to that general rule:

- **Family and Medical Leave Act (FMLA) claims may proceed directly to a lawsuit.**
- **Fair Labor Standards Act (FLSA) claims may proceed directly to a lawsuit.**
- **Age discrimination claims may go directly to court with 30 days notice to the EEOC of your intent to file a lawsuit.**

- **Gender-based pay discrimination claims under the Equal Pay Act may go directly to a lawsuit.**

WHAT IS THE DIFFERENCE BETWEEN A COMPLAINT AND A LAWSUIT?



Although the EEOC is charged with enforcing federal anti-discrimination laws and investigating complaints of violations of those laws, the reality is that a formal complaint often sits with the EEOC for months, even years, before any action is taken.

The EEOC has 180 days from the date you file a complaint to conduct an investigation; however, they can ask for an extension of that deadline. During the complaint process, the EEOC does not provide you with legal representation nor does the agency act as your legal counsel. The purpose of the EEOC investigation is simply to determine if an employer has, indeed, violated a federal law. If the EEOC does find a violation they will try to reach a voluntary settlement with the employer through mediation and negotiations. Again, remember that the EEOC does not formally represent you during this process. Only when it becomes apparent that a voluntary settlement cannot be reached will the EEOC turn over the complaint to their legal department to consider a lawsuit. The odds of the EEOC actually filing a lawsuit in your case are slight. In fiscal year 2013

the EEOC took in 93, 727 formal complaints. Of those, just 131 were filed as a lawsuit, representing just 0.014 percent of all complaints filed.

At various point during the EEOC complaint process you may be given a “Right to Sue” letter by the EEOC. In most cases, you only have 90 days after you receive a “Right to Sue” letter to actually file a lawsuit. Failing to file within that time frame means you waive your right to file a lawsuit altogether. If you are represented by an attorney, your attorney can request a “Right to Sue” letter after the required waiting period. From there, you may file your case directly in state and/or federal court.

Finally, the damages you may be awarded are sometimes significantly more when you choose one venue over another. For this reason, your attorney may decide to file a lawsuit in both state and federal court where you could be entitled to compensatory damages and attorney fees as well as punitive damages if the defendant’s conduct was particularly malicious or reckless.

If you believe you are the victim of employment discrimination it is imperative that you consult with an experienced Florida employment law attorney as soon as possible to ensure that you do not inadvertently waive your right to pursue a lawsuit.

REFERENCES

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EEOC, [Filing a Claim in Federal Court](#)

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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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