ARE YOU A VICTIM OF HARASSMENT IN THE WORKPLACE IN CALIFORNIA?

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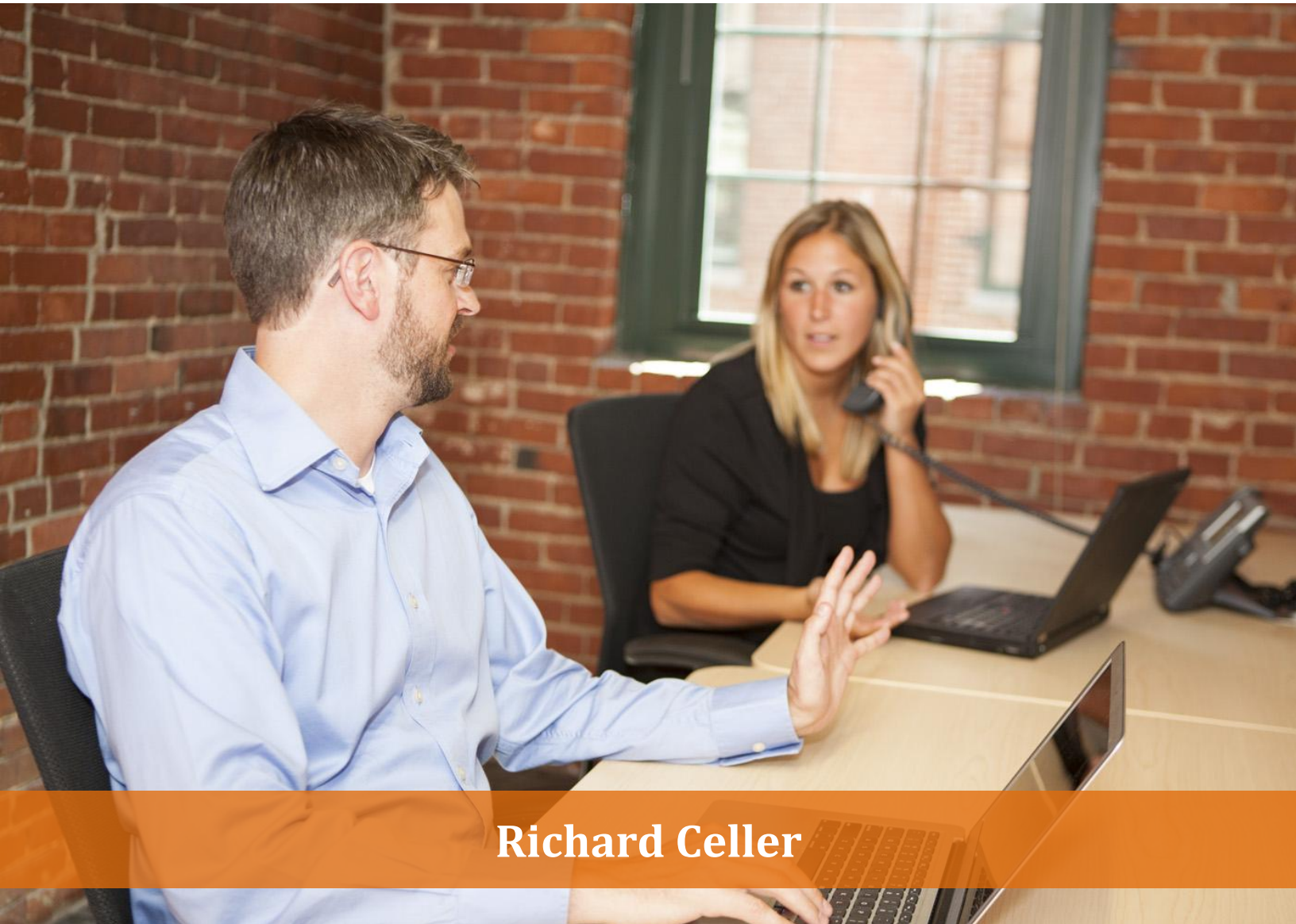

Richard Celler

In the United States a growing number of state and federal laws protect workers from discrimination in the workplace. Employment discrimination, however, is not limited to overt actions based on a protected class. Sometimes, discrimination is ongoing in the form of harassment in the workplace. The word “harassment” is a word most people are familiar with and may even use on a regular basis; however, when the word is used in connection with the subject of employment discrimination it has a very specific meaning that may differ from its common meaning.

In fact, you may even be the victim of harassment in the workplace without realizing it. Only an experienced Florida employment law attorney can evaluate your specific circumstances and tell you if you have the basis of a harassment

lawsuit; however, everyone should have a basic understanding of what the law considers to be illegal conduct in the form of harassment in the workplace.

When Is Harassment Illegal?

Most people do not realize that not all forms of discrimination are illegal. For any type of discrimination to be illegal the discrimination must be based on a legally protected class or characteristic. For example, an employer might decide not to hire anyone with brown hair. While that would clearly be discriminatory against people with brown hair, it would not be illegal because people with brown hair are not protected by any state or federal anti-discrimination laws. Harassment, therefore, is only illegal if it is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Workplace Harassment Defined

- Harassment is defined as unwelcome and unwanted conduct. A single act of unwelcome conduct, however, will not likely rise to the level of illegal harassment. Instead, the conduct typically has to be ongoing and egregious. For workplace harassment to be actionable, one of the following must be true:
- Enduring the offensive conduct becomes a condition of continued employment
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

When consider if behavior rises to the level of illegal discrimination it is important to keep in mind that there is a “reasonable person” test that applies. In other words, the question is not whether *you* consider the conduct to be intimidating, hostile or abusive but whether a r*easonable person* would consider it so.

The perpetrator of workplace harassment can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or even a non-employee. For example, if clients or customers regularly come into your workplace and make you feel uncomfortable because of their comments and/or actual behavior that could be considered illegal workplace harassment even though it is not your actual employer engaging in the conduct.

SEXUAL HARASSMENT

- Sexual harassment is a special type of illegal harassment that can be verbal conduct, physical conduct, or both. Typically, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature that:
- Explicitly or implicitly are a condition of employment, or
- Are used to make a hiring or other employment decision, or
- Unreasonably interfere with a person's performance or create an intimidating, hostile, or offensive work environment.

Sexual harassment is further broken down into two categories:

- **Quid pro quo –** this involves an employee being required to cater to unwanted sexual advances in order to keep his/her job. Basically the employee must choose between accepting the sexual harassment or losing his/her job or being "punished" in some other job related fashion, such as being passed up for a promotion.
- **Hostile work environment –**this occurs when the conduct is so pervasive that the workplace becomes intimidating and/or offensive.

Retaliation for Reporting Harassment

Another important aspect of the federal laws prohibiting harassment in the workplace is that the law also protects a workers from retaliatory conduct on the part of the employer if the employee reports the behavior. As a victim of harassment, federal law also protects you from retaliatory conduct aimed at you for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit.

Employer Liability for Harassment in the Workplace

Employers have a responsibility under the law to maintain a harassment-free workplace for all employees. Employers, for example, are automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that:

- It reasonably tried to prevent and promptly correct the harassing behavior; AND
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control, such as independent contractors or customers on the premises, if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.
If you believe you are, or have been, the victim of sexual harassment in the workplace you should report the offensive conduct to your Human Resources (HR) department or to your supervisor immediately. In the event that does not resolve the problem, consult with an experienced Florida employment law attorney to discuss your legal options.

REFERENCES

HR Hero, Harassment in the Workplace

EEOC, Harassment

HR Hero, Sexual Orientation Harassment

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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