WORKPLACE MYTHS AND MISCONCEPTIONS – DO YOU KNOW YOUR RIGHTS AS AN EMPLOYEE?

"Only an experienced Florida employment law attorney can answer specific questions or provide you with individualized advice; however, it may help to separate some of the fact from fiction when it comes to what your employer can and cannot do in the workplace."

Richard Celler

As an employee in the United States you have a number of rights in the workplace. You are also protected by various state and federal laws against employment discrimination and unfair treatment in the workplace. Like most employees you likely believe you know your rights and that you have a fairly good grasp of the laws that apply to you as an employee.

You may be surprised to find that much of what you think you know amounts to workplace myths and misconceptions. Only an experienced Florida employment law attorney can answer specific questions or provide you with individualized advice; however, it may help to separate some of the fact from fiction when it comes to what your employer can and cannot do in the workplace. Consider the following myths and misconceptions:

1. Discrimination in the workplace is always illegal.

Without a doubt the #1 employment myth is that all discrimination in the workplace is illegal. This is simply not the case. Only discrimination that is based on a protected class or characteristic is illegal. For example, your employer could decide to only hire people wearing green shirts or fire everyone with long hair and it would be perfectly legal. An employer *can* discriminate as long as the discrimination is not prohibited by state or federal law. Examples of protected classes or characteristics include, but are not limited to, things such as race, religion, sex, disability, or national origin.

2. YOU CANNOT BE FIRED WITHOUT A JUSTIFIABLE REASON

Most states, including the State of Florida, are employment “at will” states. This means that unless you are operating under an employment contract with your employer you are working “at the will” or your employer. As such, your employer may terminate your employment at any time and for any reason. In fact, your employer doesn’t even need a reason to fire you

3. YOU CANNOT BE FIRED WITHOUT A GOOD REASON IF YOU ARE OVER 40 YEARS OLD.

You may have heard of the Age Discrimination in Employment Act, or ADEA, and were led to believe that it protects your job if you are over 40 years old. That is not quite right. The ADEA prohibits an employer from discriminating against you if you are over 40 years old; however, it does not provide you with any additional job protection based on your age. In other words, your employer may still fire you for no reason even if you are over 40 as long as you are not fired *because* you are over 40 years old.

4. YOU CAN SUE YOUR EMPLOYER IF YOUR BOSS MAKES A DISCRIMINATORY REMARK TO YOU.

This is where many employees get confused. An employer can be liable for creating or allowing a "harassment" on the basis of discriminatory remarks made in the workplace; however, a single remark, even an obviously discriminatory one, will unlikely qualify as a "harassment." For discriminatory comments to be legally actionable, they must be pervasive and extreme to the point where:

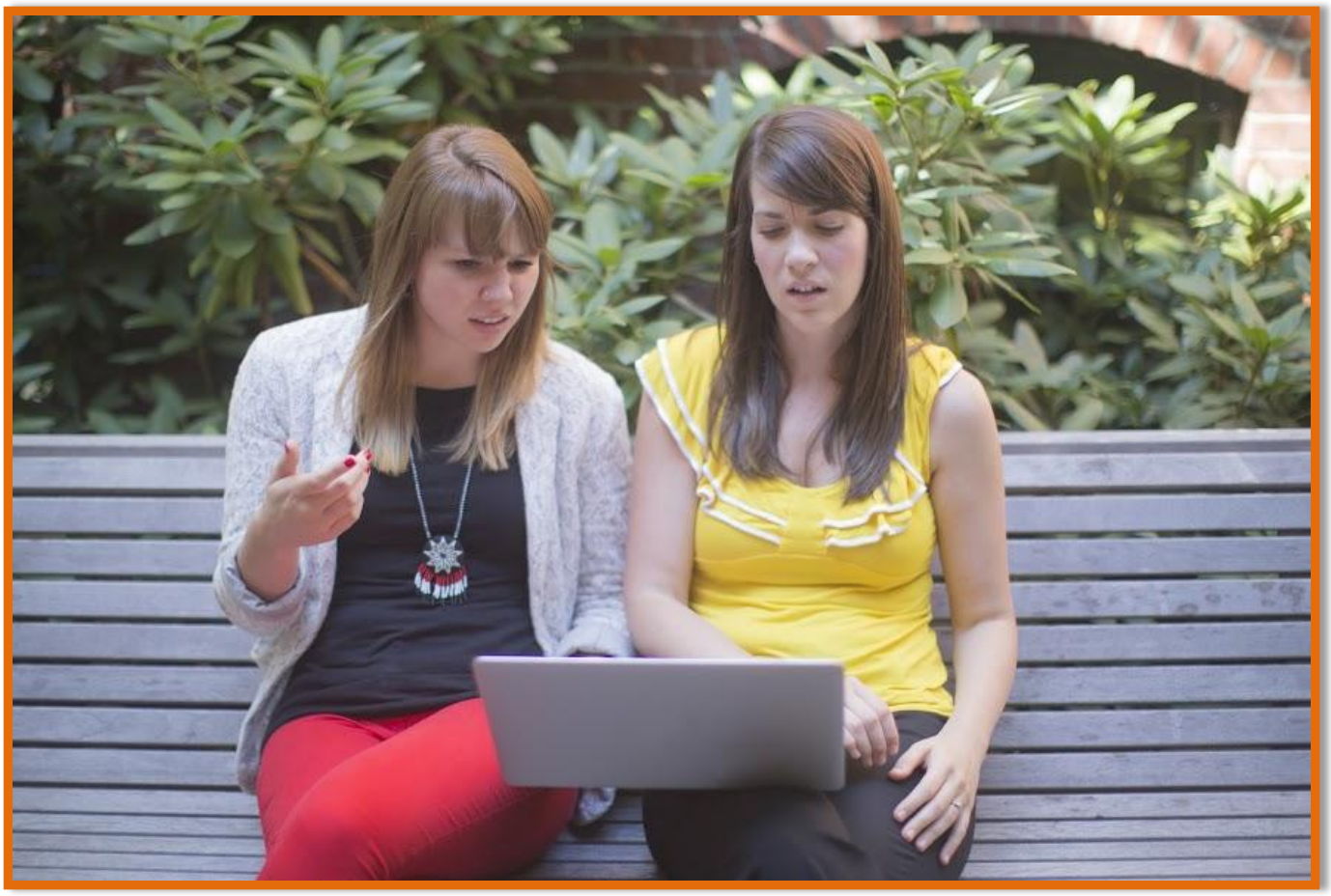
- enduring the offensive conduct becomes a condition of continued employment, or
- the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider it intimidating, hostile, or abusive.

5. IF YOUR BOSS IS IMPOSSIBLE TO WORK FOR AND BULLIES THE EMPLOYEES YOU HAVE A "HOSTILE WORK ENVIRONMENT" LAWSUIT.

Unfortunately, being impossible to work for, or even being a bully as a boss, is not illegal. Your boss can yell and scream at the employees all day long every day without it becoming illegal unless there is a relationship between your boss's attitude and a protected class such as your race or religion.

6. When interviewing for a job the interviewer cannot ask you about your ethnicity, race, religion, maritals, national origin, etc.

For the most part, this is not true. Most employers do *not* ask about things such as your ethnicity, religion, or race because they know they cannot *base a hiring decision* on the answers to those questions; however, it is actually **not** illegal to ask under federal law not under most state laws. The one important exception to this general rule is that a prospective employer cannot ask about disabilities during a hiring interview.



7. When asked for a reference an employer can only give the dates you were employed and your title or position.

Another common misconception. An employer is not prohibited from providing additional information, including derogatory information, about a current or prior employee as long as the information provided is truthful and factually accurate. Because it can lead to unnecessary litigation, and there is no benefit to an employer to providing additional information, most employers stay away from providing more than the basics when asked for a reference for an employee.

8. Breaks during the workday are required by law.

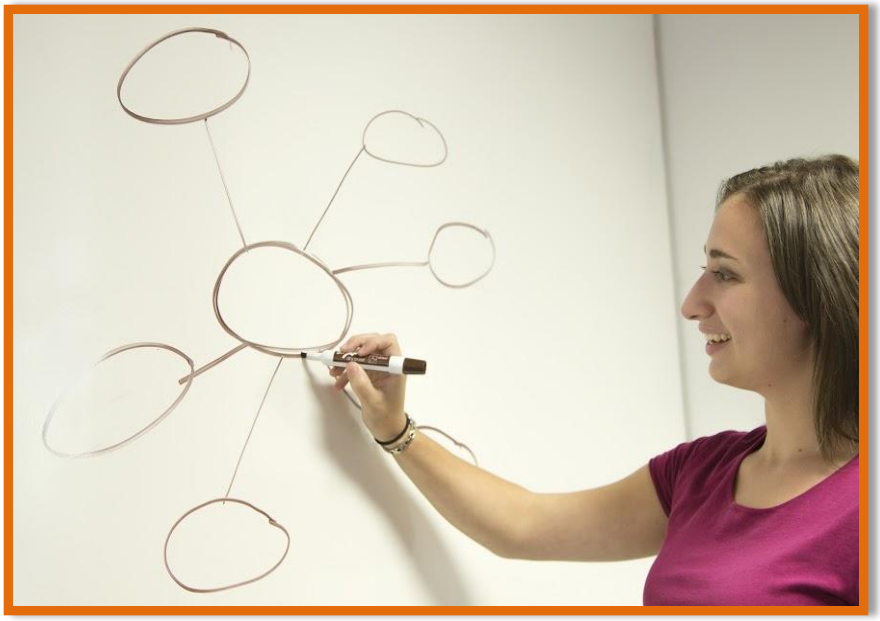
Like most people, you have probably been told that your employer is required to give you a lunch break if you work more than six hours a day as well as provide you with 15 minute breaks every four hours during the workday – or some version of that schedule. You may be very surprised to learn that there is no federal law requiring your employer to provide you with *any* type of break. Furthermore, most states do not require an employer to give employees breaks either. Florida law only mandates breaks for employees under the age of 18 years old.

9. Your position must be held for you while out on FMLA leave.

The Family and Medical Leave Act allows an eligible employee working for a covered employer to take up to 12 weeks of unpaid leave for specified family and medical reasons. While on FMLA leave your job, as well as health insurance benefits, must be protected; however, your employer is not required to hold your *exact* position for you while you are out on leave.

Your employer is only required to return you to an "**equivalent**" position, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions.

10. Your employer can use a "comp time" system, or "bank" hours, instead of paying you overtime.



Although common practice, the use of compensatory time off, or "comp time" in lieu of paying overtime is generally prohibited in the private sector according to the Fair Labor Standard Act, or FLSA. "Comp time" is described in the FLSA as "paid time off the job that is earned and accrued by an employee instead of immediate cash payment for working overtime hours." For example, if you worked 45 hours during a workweek your employer might allow you to "bank" those hours and take them off at a later time with pay. Because it is such a common practice most employees are under the misconception that it is legal when, in fact, it is not (with few exceptions) unless you work for a state or federal employer.

For the average employee at least one of these “myths and misconceptions” comes as a surprise – and these are only the tip of the proverbial iceberg. Just because an employment practice is common doesn’t make it legal. As an employee you have e right to know your rights under both federal law and the laws of the State of Florida. If you are unsure about any of those rights, consult with an experienced Florida employment law attorney.

Florida Statutes, Florida Civil Rights Act

United States Department of Labor, Family and Medical Leave Act

Equal Employment Opportunity Commission, Age Discrimination

EEOC, Harassment

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.

Richard Celler Legal, P.A.
7450 Griffin Road, Suite 230
Davie, FL 33314
Phone: 866-344-9243
Email: richard@floridaovertimelawyer.com
Website: floridaovertimelawyer.com