

Job Discrimination Questions And Answers

This Pamphlet is intended to make you aware of the federal laws which protect workers from discrimination at work. This pamphlet is not the final answer, it is the beginning. This pamphlet is not the law. It is Information designed to help you protect yourself and those you work with. After reading this pamphlet, you may have questions. There are several options for you: you can contact the Equal Employment Opportunity Commission or the Florida Commission on Human Relations; you can contact one of the several legal aid organizations listed in the phonebook; or you can call a private attorney who specializes in employment law.

I. What Is Discrimination?

Discrimination occurs when an employer treats an employee differently than other employees in the same situation. Discrimination includes discipline against an employee based on a bias or prejudice. Discrimination can be hidden. If an employer's policies affect one group of people more harshly than another, that could be discrimination (Adverse Impact). Remember, Florida is an At-Will employment state. That means that your employer can terminate you, with or without cause, as long as it was not discriminatory. Lastly, most of the federal and state employment laws also protect job applicants from discrimination.

I. What Are the Laws Prohibiting Job Discrimination?

One of the most important things employment laws do is define which groups or "Classes" of people are protected from discrimination. They are often referred to as a "protected Class" or "Protected Group."

A.) Title VII of the Civil Rights Act of 1964 (Title VII): Prohibits employment discrimination based on race, color, religion, sex, or national origin.

National Origin Discrimination prohibits an employer discriminating against a person because of their birthplace, ancestry, culture, or linguistic characteristics.

For Example: If an employer requires employees to speak only English, he must show that the rule is necessary to perform that type of work. Employees must be informed when English is required and the consequences for violating the rule.

While the Immigration Reform and Control Act (IRCA) of 1986 requires employers to make sure that employees are authorized to work in the U.S., an employer who only asks for verification from individuals of a particular national origin or individuals who appear to be or sound foreign, may violate both Title VII and IRCA. Employers who impose citizenship requirements or give preferences to U.S. citizens may violate IRCA. Additional information about IRCA may

be obtained from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 (voice), 1-800-237-2515 (TTY for employees/applicants) or 1-800-362-2735 (TTY for employers).

Sex Discrimination includes hiring and firing practices or discrimination in terms, conditions, and privileges of employment based on a person's sex. It also includes Sexual Harassment. Sexual Harassment can range from an employer asking for sexual favors to allowing sexually based comments which create a hostile environment for persons of either gender. (This "hostile environment" standard can also be used for other types of Title VII harassment.)

Religious Discrimination includes hiring and firing based on a person's religious beliefs. This also includes harassment based on a person's religious beliefs. Furthermore, an employer must reasonably accommodate an employee or prospective employee's religious beliefs, unless doing so would impose an undue hardship. (If an employer has to spend more than a minimal expense or effort, this could be considered an "undue hardship.")

B.) Equal Pay Act of 1963 (EPA): Protects men and women who perform substantially the same work under similar conditions from wage discrimination based upon their sex. The question is whether they are performing work of equal skill, effort and responsibility. An example of different working conditions is working on different days or shifts.

C.) Age Discrimination in Employment Act of 1967 (ADEA): Protects individuals who are 40 years of age or older. Examples of discrimination include age biased comments or a pattern of terminating older employees more often than younger employees. Sometimes an employer is allowed to have an age requirement, but it must be a Bona Fide Occupation Qualification.

D.) National Labor Relations Act (NLRA): An employer cannot interfere with your right to belong to a union or participate in union activities.

E.) Title I of the Americans with Disabilities Act of 1990 (ADA): Prohibits employment discrimination against qualified individuals with disabilities. It is helpful to understand several important ADA definitions to know who is protected by the law and how they are protected.

Individual with a Disability: An individual who has a physical or mental impairment that substantially limits one or more major life activities. This also includes someone who has a record of such an impairment, or is perceived as having a disability. Examples of major life activities include walking, breathing, seeing, hearing, speaking, learning, and working. This can include certain mental disabilities such as a learning disorder or psychological conditions.

Qualified Individual with a Disability: A qualified employee or applicant with a disability is someone who satisfies the job-related requirements of the position held or desired, and who can perform the essential functions of that position, with or without reasonable accommodation.

Reasonable Accommodation: The employer must do whatever is necessary to enable the employee to perform the essential functions of his or her job. Examples include making existing facilities readily accessible to and usable by persons with disabilities, job restructuring, changing work schedules, providing special equipment, adjusting or

modifying examinations, training materials, or policies, and providing qualified readers or interpreters. This is required unless it would impose an Undue Hardship. (This time Undue Hardship means an action that requires significant difficulty or expense in relation to things such as the company's size, resources, and the nature and structure of its operation.)

Prohibited Inquiries and Examinations: An employer may not ask job applicants about their disability. Applicants may be asked whether they can perform the job. A job offer may be conditioned on the results of a medical examination, only if the examination is required for all entering employees in that job category.

Drug and Alcohol Use: Employees and applicants currently using illegal drugs are not protected by the ADA, when an employer acts on the basis of such use.

F.) Family and Medical Leave Act (FMLA): Allows employees to take unpaid leave for the birth or adoption of a child, serious medical condition of the employee, or to care for a seriously ill child, spouse, or parent. The employee must have worked for the employer for at least one year and performed at least 1250 hours of work in the last year. The most important thing is that your employer has to give you back your old job or a substantially similar one when you return.

As a Note: Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions not as permanent conditions which make you incapable of performing the job.

G.) Chapter 760 of the Florida Statutes: Similar to Title VII, but also covering matters included at the federal level in the ADA and ADEA as well. It prohibits discrimination at work based on race, color, sex, national origin, age, handicap, or marital status. It also protects you against retaliation for filing a complaint with the Florida Commission on Human Relations (FCHR).

Lastly, employers are required to post notices to all employees advising them of their rights and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

II. Which Employers Are Covered by These Laws?

Title VII and covers all private employers, federal, state and local governments that employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training. ADA coverage is similar except that state government employees are not protected.

The ADEA covers all private employers with 20 or more employees, local governments, employment agencies and labor organizations. Again, state employees are not protected.

The EPA covers all employees who are covered by the Federal Wage and Hour Law (the Fair Labor Standards Act). Virtually all employers are subject to the provisions of this Act.

The FMLA applies to private and local government employers of 50 or more people within a 75 mile radius.

Chapter 760 of the Florida Statutes applies to employers of 15 or more people, including state and local government employers, but not the federal government.

III. Filing a Charge of Discrimination

If you feel you have been discriminated against at work, one of the options available to you is to file a charge of discrimination with the EEOC. In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect a person's identity. Before filing a charge, it is recommended that you discuss your case with an attorney. Make sure it is an attorney who specializes in Employment Law. The best way to do this is to call the Florida Bar Referral Service at (850) 561-5844. An attorney will best be able to explain your options.

A charge may be filed by mail or in person at the nearest EEOC office. The EEOC in Florida is located in Miami and can be contacted at: One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, FL 33131. Phone: 305-536-4491. TTY: 305-536-5721. If you have access to the internet, information about the EEOC and the laws it enforces can be found at the following internet address: <http://www.eeoc.gov>.

You should include your name, address, and telephone number. Also include the name, address, and telephone number of the employer, employment agency, or union that you are claiming to have discriminated, and the number of persons employed (or union members) there. Lastly, provide a short description of how you believe you were discriminated against and the date(s) of the alleged violation(s).

You may also file a charge with the FCHR. They may be contacted at 325 John Knox Rd., Building F, Suite 240, Tallahassee, FL 32303-4149. Phone (850) 488-7082. You can e-mail the Commission at: fchinfo@dms.state.fl.us. You can do this in writing, in person, or over the phone.

IV. Time Limits for Filing a Charge of Discrimination

All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:

A.) A charge must be filed with EEOC within 300 days from the date of the alleged violation, in order to protect the charging party's rights. These time restraints do not apply to Equal Pay Act claims, which may be filed immediately in court.

B.) A charge may be filed with the FCHR within 365 days from the date of the violation.

Remember, to protect your rights, it is always best to contact EEOC, FCHR or an

attorney promptly when you think you have been discriminated against.

If a charge is filed with FCHR and is also covered by federal law, FCHR "dual files" the charge with EEOC to protect your federal rights. The charge usually will be retained by the FCHR for handling.

If a charge is filed with the EEOC and also is covered by state or local law, the EEOC "dual files" the charge with the FCHR, but usually retains the charge for handling.

V. What Happens After a Charge Is Filed?

The employer is notified that the charge has been filed. From this point there are a number of ways a charge may be handled.

A charge may be assigned for priority investigation if the initial facts are strong. When the evidence is less strong, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.

EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer want to try to settle the charge. If settlement efforts are not successful, the investigation continues. Mediation is available if both the charging party and the employer express an interest in this option. Mediation is an alternative to a lengthy investigation. Participation in the mediation program is confidential and voluntary. If mediation is unsuccessful, the charge is returned for investigation.

When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate.

A charge may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law. A charge may be dismissed at the time it is filed, if an initial in-depth interview does not produce evidence to support the charge. When a charge is dismissed, a notice is sent to the charging party giving the charging party 90 days to file a lawsuit on his or her own behalf ("Right to Sue").

If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination. If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored.

If EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf ("Right to Sue").

The FCHR uses a similar process to first investigate the charge and determine if there is a reasonable belief that discrimination has occurred. This final decision is made by the

Commission's Executive Director. The FCHR will then notify you of the decision and what your options are, including a hearing before the Division of Administrative Hearings or a suit.

VI. When Can an You File a Lawsuit in Court?

Remember, under most of the federal laws which protect you, you cannot sue until after the EEOC has investigated the charge. A charging party may file a lawsuit within 90 days after receiving a notice of a "Right to Sue" from EEOC, as stated above. Under Title VII and the ADA, a charging party also can request a notice of "Right to Sue" from EEOC 180 days after the charge was first filed. You can then file your suit within 90 days after receiving this notice. Under the ADEA, a suit may be filed at any time 60 days after filing a charge with EEOC, but not later than 90 days after EEOC gives notice that it has completed action on the charge.

Under the EPA, a lawsuit must be filed within two years (three years for willful violations) of the discriminatory act.

The time limits under the Florida Civil Rights Act are complex and are changing as this is written. You should consult an attorney specializing in employment law.

VII. What Can You Hope For?

The kinds of "relief" or remedies you may receive for employment discrimination include: back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will place you in the condition you would have been if there would have been no discrimination. Sometimes remedies can include payment of: attorneys' fees, expert witness fees, and court costs. Under several of these statutes emotional damages are also available.

Additional money awards may be provided by the court when there is intentional discrimination, or the employer acted with hostility or was reckless. In addition, the employer also may be required to correct the problem which led to the discrimination.

VIII. Last Note.

Remember, this pamphlet does not cover everything. If you have questions or are unsure about something, contact an attorney, the EEOC, or the FCHR. The worst thing you can do is nothing. The next worst thing you can do is to wait and see if it will stop. Call someone and protect yourself. You are the first step in making the workplace a better place.

The brochure is a production of Legal Services of North Florida, Inc.

Please contact Legal Services of North Florida for more information at www.lsnf.org