

EMPLOYMENT LAW SUMMARY

Florida: Fair Employment Laws – Overview



Because You're Different

Federal addition to the workplace discrimination protections provided to employees under federal laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA), Florida provides broad workplace discrimination protections to employees under the **Florida Civil Rights Act** (FCRA) and the **Florida Equal Pay Law** (FEPL).

This Employment Law Summary provides an overview of these and other state laws relating to fair employment in Florida.

FLORIDA CIVIL RIGHTS ACT

The Florida Civil Rights Act (CFRA) applies to Florida employers that have least **15 employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The FCRA is enforced by the [Florida Commission on Human Relations](#) (Commission).

Employers that are subject to the FCRA must post and maintain a written [notice](#) regarding the law in a conspicuous place in their employees' workplaces.

PROTECTED STATUSES

Under the FCRA, employers may not discriminate against an individual based on a protected status, which includes:

- Race;
- Color;
- Religion;
- Sex;
- Pregnancy;
- National origin (including ancestry);
- Age;
- Handicap; and
- Marital status.

PROHIBITED PRACTICES

On the basis of an individual's protected status, it is an unlawful employment practice for an employer to:

- Fail or refuse to hire or discharge the individual;
- Discriminate against the individual with respect to compensation, terms, conditions or privileges of employment or in connection with admission to, or employment in, an apprenticeship or other training program;
- Limit, segregate or classify the individual for employment in any way that would deprive him or her of employment opportunities or otherwise adversely affect their employment status; or

- Print (or cause to be printed or published) any notice or advertisement relating to employment, membership, classification, referral for employment or apprenticeship or other training that indicates a preference, limitation, specification or discrimination.

Although the FCRA does not specifically mention **sexual harassment**, Florida courts have concluded that sexual harassment is also considered a form of unlawful sex discrimination under the FCRA.

Finally, employers may not **retaliate** against an employee or prospective employee because he or she has opposed any employment practice that is unlawful under the FCRA, or because the person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under the FCRA.

EXCEPTIONS

The FCRA does not prohibit an employer from establishing the following policies or programs:

- **Bona Fide Occupational Qualification**—Taking (or failing to take) any action on the basis of a protected class in situations where religion, sex, national origin (including ancestry), age, absence of a particular handicap or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment;
- **Bona Fide Seniority Systems, Benefit Plans or Merit Systems**—Observing the terms of a bona fide seniority system, a bona fide employment benefit plan (such as a retirement, pension or insurance plan) or a system which measures earnings by quantity or quality of work, as long as the system or plan is not a maneuver to evade the Civil Rights Act;
- **Anti-nepotism Policy**—Taking (or failing to take) any action on the basis of marital status if that status is prohibited under the employer’s anti-nepotism policy; and
- **Training Program**—Making enrollment decisions on the basis of age for any employment or training program designed to benefit persons of a particular age group.

Also, a religious corporation, association, educational institution or society may restrict employment opportunities to its members or to persons who subscribe to its tenets or beliefs.

ENFORCEMENT

The Commission may investigate an employer’s practices on its own initiative at any time and will investigate after an employee files a charge. Employees may also file lawsuits alleging unlawful discrimination and seek injunctive relief and other remedies, such as back pay. A court may award compensatory damages for intangible injuries, such as mental anguish and loss of dignity, as well as punitive damages of up to \$100,000.

FLORIDA EQUAL PAY LAW

Florida’s Equal Pay Law (FEPL) applies to employers with **two or more employees** in the state. Under the FEPL, employers are prohibited from paying an employee of one gender lower wages than they pay to an employee of the opposite gender for equal work. Equal work includes jobs that require equal skill, effort and responsibility, and that are performed under similar working conditions.

However, the FEPL contains exceptions that allow employers to pay different wages to employees of opposite sexes when the payments are made pursuant to:

- A seniority system;
- A merit system;
- A system that measures earnings by quantity or quality of production; or
- Any reasonable factor other than sex when exercised in good faith.

If an employer violates the FEPL, the Florida Attorney General may sue the employer for damages, injunctive relief and civil penalties of up to \$10,000 per violation. Employees who are discriminated against in violation of the FEPL may also sue their employers. If successful, an employee may recover difference between the amount he or she was paid and the amount he or she should have been paid for a period of up to one year under the law. A court may also award costs of the action and reasonable attorney’s fees.

OTHER ANTI-DISCRIMINATION LAWS

Florida law prohibits employers from discriminating on the basis of the **sickle-cell trait**. Specifically, employers may **not**:

- Refuse employment to any person or discharge any person from employment solely because that person has the sickle-cell trait; or

- Require screening or testing for the sickle-cell trait as a condition of employment.

Florida law also prohibits employment discrimination on the basis of **AIDS, AIDS-related complex and HIV status**. The law provides individuals who have (or who are perceived as having) AIDS, AIDS-related complex or HIV with the same protection from employment discrimination as is available to handicapped persons.

Unless the absence of the HIV infection is a bona fide occupational qualification for the job in question, employers may **not**:

- Require an individual to take an HIV-related test as a condition of hiring, promotion or continued employment; or
- Discriminate against an individual based on knowledge or belief that an individual has taken an HIV-related test or the actual or perceived results of the test.

In addition, employers may not discriminate against an employee because he or she is a licensed health care worker who treats or cares for HIV-infected persons.

The law requires reasonable accommodation of otherwise qualified individuals infected with HIV. Employers asserting that such individuals are not otherwise qualified have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that other individuals will be exposed to a significant possibility of infection.

Any individual who is discriminated against on any HIV-related basis may sue under state law and receive \$1,000 or actual damages, whichever is greater. If an employer intentionally or recklessly violates this law, the individual who is discriminated against may receive the greater of \$5,000 or actual damages.

MORE INFORMATION

Contact Heffernan Insurance Brokers for more information on fair employment laws in Florida.

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