

ANATOMY OF A LAWSUIT

PRESENTED BY:

THE KRIZNER GROUP

— AN EMPLOYMENT LAW BOUTIQUE —

JCT
(Bowie)

RTIC DRINKWARE LLC
20702 Hempstead Road, Suite 110
Houston Texas 77065
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Administrative Remedies

Employment actions (and some others) require a Claimant or Plaintiff to pursue or complete his or her Administrative Remedies.

- EEOC
- FCHR
- Worksharing Process


Administrative Remedies

Time Limits –

- 300 Days for Federal (Initial Action)
- 365 Days for State (Initial Action)
- 180 Days to Investigate
- 90 Days for Civil Action (Federal)
- 1 Year for Civil Action (State)
- 4 Years Worst Case

Examples

EEOC Form 5 (1-18-18)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	Agency(ies) Charge No(s): 425-2020-████████
Florida Commission On Human Relations and EEOC <small>State or local Agency, if any</small>			
Name (Include Mr., Ms., Mx.) ██████████		Home Phone (incl. Area Code) ██████████	Date of Birth ████████
Street Address ██████████		City, State and ZIP Code ██████████	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name ██████████		No. Employees/ Members 15 - 100	Phone No. (include Area Code) ██████████
Street Address ██████████		City, State and ZIP Code ██████████	
Name EEOC-MLO		No. Employees/ Members	Phone No. (include Area Code)
Street Address Received 09-03-2020		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es)) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest: 05-01-2020 Latest: 05-01-2020 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheets): I was previously employed by Respondent as a ██████████ and I resigned my position in 2018. On April 30, 2020, I applied for a vacant position as ██████████ I received an email from ██████████ (male) on May 1, 2020 stating that it is best to let my resignation stand. I was not hired because of my sex (female) and because of my sexual orientation. I was discriminated against under Title VII of the Civil Rights Act of 1964, as amended, on the basis of sex for not conforming to sex stereotypes about how women are expected to present themselves in my physical appearance, actions and/or behaviors.			
I want this charge filed with both the EEOC and the State or local Agency, if any, will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Date 09/03/2020		SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Date		Charging Party Signature	

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:



From:

Mobile Local Office
63 S Royal Street
Suite 504
Mobile, AL 36602On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.76)

EEOC Charge No.

EEOC Representative

Telephone No.

425-2020-

ARLENE A. GORCEY,
Investigator

(251) 304-7822

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations do not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Erika LaCour

09-10-2020

Enclosure(s)

Erika LaCour,
Local Office Director

(Date Mailed)

cc:

c/o Jason C. Taylor, Esq.
1550 Village Square Boulevard, Suite 3
Tallahassee, FL 32309Marie A. Mattox, Esq.
LAW OFFICE OF MARIE MATTOX, P.A
203 North Gadsden Street
Tallahassee, FL 32301

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: [REDACTED]
[REDACTED]
[REDACTED]From: Mobile Local Office
63 S Royal Street
Suite 504
Mobile, AL 36602On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
425-2020-0 [REDACTED]	ARLENE A. GORCEY, Investigator	(251) 304-7922

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

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On behalf of the Commission

Erika LaCour

04/13/2021

Enclosures(s)

Erika LaCour,
Local Office Director

(Date Issued)

cc:

[REDACTED]
c/o Jason C. Taylor, Esq.
1550 Village Square Boulevard
Suite 3
Tallahassee, FL 32309



Ron DeSantis
Governor

State of Florida

Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer
4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1087
<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Mario Garza
Chair
Cheranne Costilla
Executive Director

FCHR No. [REDACTED]
BEOC No. [REDACTED]

COMPLAINANT

[REDACTED]
c/o Marie A. Mattox, Esquire
Marie A. Mattox, P.A.
203 North Gadsden Street
Tallahassee, FL 32301

RESPONDENT

[REDACTED]
c/o Jason Taylor, Esquire
1550 Village Square Boulevard, Suite 3
Tallahassee, FL 32309

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination with the Florida Commission on Human Relations (Commission) alleging that Respondent committed unlawful discrimination on the basis of disability, sex, and retaliation, in violation of the Florida Civil Rights Act of 1992. As required in Rule 60Y-5.004(1), Florida Administrative Code (F.A.C.), the Commission's Office of Employment Investigations completed an investigation of this matter, which is reported in the Investigative Memorandum. The Commission's Office of General Counsel reviewed all available evidence and the Investigative Memorandum, and made a recommendation to me, as Executive Director of the Commission, that it is unlikely that unlawful discrimination occurred in this matter.

Pursuant to the authority delegated to me in Rule 60Y-5.004(3), F.A.C., I accept the Office of General Counsel's recommendation and issue this Determination: No Reasonable Cause. Based upon this determination, the Clerk shall serve both the Determination and the attached Notice of Determination upon the parties.

Cheranne Costilla

Cheranne Costilla
Executive Director

Dated: *April 5*, 20*21*

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Some Exceptions

- Workers Compensation Retaliation
- 15th Amendment/42 U.S.C. § 1983

Additional Administrative Details

- No deadline for EEOC investigation – claims can extend into years
- Fla. Stat. § 760.11(8) contains language as to FCHR completing process, but difficult to enforce
- Claims can be excluded if not in original administrative complaint, but entire document is considered – notice is issue – don't rely on boxes checked only

After the Administrative Action

- Civil Complaint is Filed – Four Ways to End Case
 - Dismissal
 - Summary Judgment
 - Voluntary Resolution
 - Trial

Before We Get There

- Where is the best venue?
 - Federal vs. State – Removal of an Action
 - Can you remove? (Federal Question/Diversity)
 - Should you remove?
 - How do I remove (I would love to remove this claim from existence)?
 - Pros and Cons

Dismissal

- Focus of Court's Analysis is the Complaint
 - Four Corners Concept (Check Attachments)
 - Allegations Accepted as True
 - Court's Question is "Do Allegations Establish a Claim?"
 - Federal court has broader option, if possible
- Where dismissal not possible, Answer and Affirmative Defenses are filed, then Discovery

Dismissal Examples

■ Claim

- *Bill allegedly rear ends Jason's car. Jason sues Bill for negligence and damages*
- *Primary Elements – Liability, Causation, Damages*

■ Not a Claim

- *Bill allegedly rear ends Jason's car. Jason sues Susan, not an owner, not at the scene, for Bill's negligence*
- *No basis for liability, therefore, no causation or damages*

Discovery Process

- Florida/Federal Process Allows for Broad Range of Discovery
 - Issue is whether the information sought will lead to the discovery of admissible evidence – does not require everything to be admissible
- Court has the ability to address overburdensome discovery or require cost-sharing, but burden is on producing party to demonstrate burden or cost
- Parties have obligation to save information once there is the possibility of a claim or face a claim of spoliation.

Discovery Types

■ Written Discovery

- Interrogatories (written questions and answers – responses under oath) (limited to 30 questions, inclusive of subparts)
- Request for Production (requests for documents/things)
- Request for Admissions (requests to admit factual points/parts of case) (limited to 30 requests)

Discovery Types

- Not Written –
 - Depositions
 - Duces Tecum
 - Corporate Representative
 - Witness
 - Inspection of Item or Location

Current Discovery Issues

- Electronic Discovery
 - How many emails do you send in a day? Would your Grandmother be proud of the language?
 - IT Involvement
 - Cost (Actual Dollars and Time)
- Document Retention Schedules/Actions
- Alteration of Documents
- Decision by Committee/Puzzle Piece Witnesses

Evolving Discovery

- Scorched Earth Processes
- Virtual vs. In-Person
- Who Is In the Attorney/Client Umbrella
- Evolution from “Riding the Circuit” to “Turning Over Every Stone”

Summary Judgment

- Legal Decision By the Court (Judge)
 - Judge can make legal decisions with “undisputed material facts”
 - Factual disputes – credibility, he said/she said, disputed testimony or documents – these issues are jury issues
 - Summary judgment denial does not mean Plaintiff success, but does mean more risk, more expense
 - Federal court remains (slightly) better venue for SJ option

Summary Judgment

- Federal Court will impose schedule deadlines
- State Court requires sufficient notice for hearing (20 days after motion filed)
- Process is to provide court with evidence from discovery (testimony and documents to demonstrate
 - No disputed material facts
 - Legal judgment on case issues is appropriate

Resolution

- Yes, this means a settlement
- Yes, it often means a payment of money
- Yes, it is frustrating
- Yes, it can encourage claims
- Can be formal (think Arbitration or Mediation) or informal (negotiation)
- Informal can occur at any time
- Courts generally require mediation of cases
- End result usually results in meeting at the point of equal unhappiness

Trial

- 6 (State) or 12 (federal) people making the decision
- Judge is gatekeeper; jury is decision-maker
- 18 months of work reduced to 3 to 5 days
- Jury compromise can be a concern
- Must prepare case as if this is relatively certain
- Limitation or exclusion of issues in the form of a Motion in Limine/Objections is as important as what is admissible
- Not what is on TV
- Mistakes are made by judges and juries

Need More?

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