A Lingering Snag in the Web of Bureaucracy: What is the Statute of Limitations for a Florida Civil Rights Act Claim in Court?

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Wading through the intricacies of defending an administrative claim before the Florida Commission on Human Relations ("FCHR") or the Equal Employment Opportunity Commission ("EEOC") and a resulting lawsuit can feel much like trying to untangle a never-ending web of overlapping, but distinct, deadlines and requirements. Even lawyers who regularly practice employment law may find themselves double-checking the law and requirements depending on which agency is investigating the claim, the outcome of the investigation, and what type of judicial claims are ultimately pursued and in which court (state or federal).

To clear up just one of these layers of confusion, the Florida Civil Rights Act of 1992 ("FCRA") was amended, effective July 1, 2020, to clarify the statute of limitations for filing a FCRA civil action following investigation of the complaint by the FCHR.[1] While this amendment creates some clarity going forward, it is not retroactive and, therefore, employers and defense counsel may easily find themselves still caught up in the "web" so to speak regarding claims currently making their way through the courts. So, what is the filing deadline for a FCRA claim in court following the administrative investigation? This question can only be answered with the proverbial lawyer adage "It depends."

The general purpose of the FCRA is "to secure for all individuals within the state freedom from discrimination."[2] The FCRA prohibits unlawful discrimination in employment, among other areas,[3] and was largely patterned after Title VII of the Federal Civil Rights Act of 1964 ("Title VII").[4] Any person aggrieved by a violation of the FCRA must first file an administrative complaint with the FCHR prior to filing a civil action in court.[5]

The FCRA requires the FCHR to complete its investigation of the administrative complaint within 180 days of receipt and determine whether there is reasonable cause to believe a violation of FCRA has occurred.[6] If the FCHR issues a "no reasonable cause" determination, the complainant is limited to first pursuing an administrative appeal, which may then be appealed to a court of competent jurisdiction.[7] If the FCHR determines there is reasonable cause to believe a violation has occurred, the complainant may either pursue a civil action in a court of competent jurisdiction or elect to pursue an administrative hearing.[8]

Prior to the passage of chapter 2020-153 in July 2020, the FCRA provided that if the FCHR failed to either conciliate or make a reasonable cause determination within 180 days, the complainant "may proceed under subsection (4), as if the commission determined that there was reasonable cause," *i.e.*, the complainant may go ahead and pursue a civil action or request an administrative hearing.[9] The subsection containing the requirements regarding civil actions states that any such proceeding "shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission."[10] Despite the reasonable reading of the various statutory provisions that would seem to indicate there would only be one year after the 180 days lapsed to file suit, the Florida Supreme Court held in *Joshua v. City of Gainesville* that, when the FCHR fails to issue a determination within 180 days, the default four-year statute of limitation under section 95.11, Florida Statutes, applies to such claims, meaning the plaintiff has four years from the alleged

EDITOR'S NOTE: The following article summarizes recent amendments to the Florida Civil Rights Act (FCRA) designed to clarify the limitations period for filing a civil action following the required investigation by the Florida Commission on Human Relations.

discrimination or retaliation to file the lawsuit.[11]

Under chapter 2020-153, provisions were added to section 760.11(8), Florida Statutes, requiring the FCHR to now send a notice (much like an EEOC Right to Sue notice) when the FCHR has failed to reconciliate or issue a reasonable cause determination within 180 days specifically notifying the complainant of the same and of the options to further pursue his or her claim under the statute. The notice must also explicitly inform the complainant that he or she has only one year from the date of the issuance of the notice to file a civil action.[12]

Accordingly, post-July 2020, a FCRA claim must be filed in court no later than one year following the issuance of the FCHR's reasonable cause finding or notice of its failure to conciliate or reach a reasonable cause finding (now required under section 760.11(8), as amended). The Florida Supreme Court's holding in *Joshua* has no further application under such circumstances. However, there is no language in chapter 2020-153 explicitly making the amendment retroactive and a court would likely find it is not retroactive because retroactivity would limit the rights of aggrieved individuals who filed administrative complaints prior to the amendment.[13] Consequently, there are likely still claims hanging out there with administrative complaints filed prior to July 2020 and no determination issued by the FCHR within 180 days. These claims would still be subject to the four-year general statute of limitations pursuant to *Joshua.*

One further potential "snag" in the "web" also exists. Like discrimination and retaliation claims under the FCRA, many of the parallel federal claims also require filing of an administrative charge of discrimination with the EEOC and investigation of the same prior to the filing of a civil action.[14] Under the Worksharing Agreement between the FCHR and EEOC, a charge or complaint asserting potential violations of both state and federal anti-discrimination and retaliation laws may be dual-filed, meaning a charge or complaint filed with one agency is automatically deemed filed with the other agency.[15] The charge or complaint will generally be investigated by the agency with which the charge or complaint is originally filed.[16] So, what is the statute of limitations for filing a FCRA claim in court when the EEOC is the agency investigating the charge instead of the FCHR? This question was unanswered prior to the passage of chapter 2020-153 and remains so thereafter.

The *Joshua* decision includes no indication that it involved a situation where the EEOC was investigating a claim instead of the FCHR under the Worksharing Agreement. *Villa v. AT&T Corp.*[17] appears to be the only opinion addressing such a situation prior to the passage of Chapter 2020-153. In *Villa*, a federal district judge ruled that when the EEOC investigates, the issuance of a Right to Sue letter by the EEOC has the same effect as the FCHR issuing a "reasonable cause" determination and, therefore, a plaintiff only has one year after the issuance of the Right to Sue letter to file a lawsuit under the FCRA.[18] The court in *Villa* based its holding on an interpretation of the Florida Supreme Court's holding in *Woodham v. Blue Cross & BlueShield of Florida*.[19] In *Woodham,* the Florida Supreme Court addressed a certified question of whether a plaintiff must pursue the administrative remedies contained in section 760.11(7) (the provision that applies when the FCHR has made a "no reasonable cause" determination) when the EEOC investigated the claim and issued a Notice of Right to Sue letter stating that the EEOC was unable to conclude whether a violation had occurred.[20] The Florida Supreme Court held in *Woodham* that the EEOC's Right to Sue Notice did not satisfy the "no reasonable cause" requirements of section 760.11(3) and (7), noting that the EEOC's Right to Sue Notice did not apprise the aggrieved employee of the options available to pursue her FCRA claim, as required under section 760.11(3).[21] Because the FCHR failed to make a determination either way regarding whether reasonable cause existed, the court held the employee was entitled to proceed under section 760.11(8) as if the FCHR had made a reasonable cause determination.[22]

Because there is an argument that some affirmative notice or communication from the FCHR is needed to trigger the shorter statute of limitations, employers and defense counsel should take all steps available to obtain that communication to avoid the risk of litigating civil actions on stale evidence.

Woodham did not explicitly address the applicable statute of limitations to bring the FCRA claim. However, based on the holding that the employee fell into the category of section 760.11(8), where the FCHR failed to make a cause determination either way, the four-year statute of limitations under *Joshua* arguably applies and the *Villa* court relied on a misreading of the *Woodham* decision in reaching its holding.

Following the passage of chapter 2020-153, it is still unclear what the applicable statute of limitations to file a FCRA claim is when the EEOC is investigating a dual-filed complaint. Based on *Woodham* and *Joshua*, there is an argument that some affirmative notice or communication would be needed from the FCHR to trigger the shorter one-year statute of limitations rather than the general four-year statute of limitations. Employers and defense counsel should take all steps available to obtain issuance of the same to limit civil actions on potentially stale claims and evidence.

1 Chapter 2020-153.
2 § 760.01(2), Fla. Stat. (2021).
3 *See id.* at §§ 760.08-760.10
4 42 U.S.C. § 2000e.
5 § 760.11(1), Fla. Stat. (2021).
6 *Id.* at (3).
7 *Id.* at (7).
8 *Id.* at (5).
9 § 760.11(8), Fla. Stat. (2019).
10 § 760.11(5), Fla. Stat. (2021).
11 768 So. 2d 432, 439 (Fla. 2000).
12 § 760.11(8)(b), Fla. Stat. (2019).
13 *See Polk Cty. BOCC v. Special Disability Tr. Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001) ("Although an amendment to a statute of limitations cannot extinguish an existing claim, it can, consistent with due process, shorten the limitation period applicable to the prior claim if the intent to make the amendment retroactive is clearly expressed, and if a reasonable time is allowed within which to seek enforcement of such claim.").

[14] *See, e.g., Rizo v. Ala. Dep't of Human Res.*, 228 Fed. Appx. 832, 835-36 (11th Cir. Jan. 31, 2007) ("In order to litigate a claim for discrimination under Title VII [or] the ADA . . . a plaintiff must first exhaust [her] administrative remedies, beginning with the filing of a charge of discrimination with the EEOC.").

[15] Dual-filing "is the process by which a charge of discrimination filed with one agency is deemed filed with the other agency." *Thompson v. Orange Lake Country Club, Inc.*, 224 F. Supp. 2d 1368, 1374 (M.D. Fla. 2002). To determine whether a discrimination charge is properly dual-filed, the Court must "look to the EEOC-FCHR worksharing agreement" to determine whether such a charge "constitute[s] a simultaneous filing . . . ." *Maynard v. Pneumatic Prod. Corp.*, 256 F.3d 1259, 1263 (11th Cir. 2001) (citations omitted); Florida Commission on Human Relations, *Case Status with the EEOC, What Does Dual-Filing Mean? Freq. Asked Questions*, https://fchr.myflorida.com/faq-frequently-asked-questions.

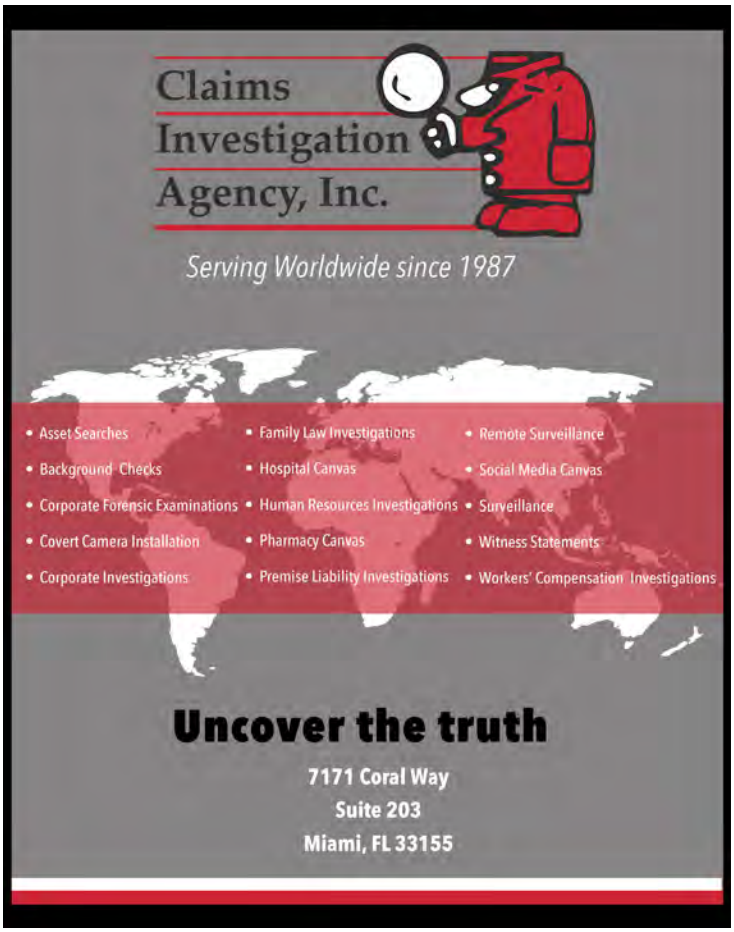
[16] Florida Commission on Human Relations, *Case Status with the EEOC, How Is It Determined Whether the EEOC or the FCHR Will Investigate a Charge That Has Been Filed with Both Agencies Simultaneously? Freq. Asked Questions*, https://fchr.myflorida.com/faq-frequently-asked-questions.

[17] 2014 US Dist. LEXIS 184664 (S.D. Fla. Oct. 6, 2014).

[18] *Id.* at *10.

[19] *Id.* at *8-10 (citing *Woodham*, 829 So. 2d 891 (Fla. 2002)).

[20] 829 So. 2d 891, 892 (Fla. 2002).

[21] *Id.* at 897.

[22] *Id.*