

Florida Appellate Court Finds Widow Could Independently Bring FCRA Discrimination Claim After Her Husband's Death

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On January 20, a Florida appellate court held that a personal representative can initiate a Florida Civil Rights Act (FCRA) complaint alleging discrimination on behalf of the deceased former employee. In *Cimino v. American Airlines, Inc.*, No. 4D14-2445 (Fla. 4th DCA Jan. 20, 2016), the 4th District Court of Appeal found that a widow had standing under the FCRA as the personal representative of her husband's estate to file a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) *after* her husband committed suicide, allegedly caused by his discriminatory termination. The husband had not filed the Charge prior to his suicide. Interestingly, the FCHR dismissed the Charge, finding that the spouse lacked standing to bring the claim because the husband had not initiated the Charge before his death, and a personal representative of a decedent's estate is not a "legal representative" under Florida law. The FCRA permits "[a]ny person aggrieved . . . to file a complaint with the commission within 365 days of the alleged violation" The statute goes on to define an "[a]ggrieved person" as "any person who files a complaint with the [FCHR]." Under the statute, "person" includes "an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor

union, *legal representative*, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.” (emphasis added). The appellate court’s decision reversed the FCHR’s dismissal of the Charge. The majority opinion relied on the fact that the FCRA defines “aggrieved person” to include not only an individual but a “legal representative.” The plaintiff filed her FCRA charge in her capacity as the personal representative of her deceased husband’s estate. The court emphasized that under the “plain and obvious meaning” of the FCRA, a personal representative can initiate a FCRA complaint alleging discrimination on behalf of the deceased former employee. Notably, the dissent argued that a personal representative is not necessarily a “legal representative” under Florida law and since the statute was far from clear, the court should have deferred to the FCHR’s interpretation. This is an interesting development under Florida law and has the potential to change the landscape of employment claims in Florida. A legal representative is certainly not limited to a surviving spouse, and this rationale suggests that any FCRA claims can be initiated even after an employee’s death. This is the only appellate decision on the issue and is subject to rehearing and additional challenges. If the decision stands, there will still be issues of proof, and the factual context within which this claim arose is narrow and limited. However, employers need to be aware of the breadth of standing under FCRA as a result of this decision.

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