

§760.11 FS | ADMINISTRATIVE AND CIVIL REMEDIES; CONSTRUCTION

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the person responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

(2) If any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate the complaint, the commission may refer such complaint to such agency for an investigation. Referral of such a complaint by the commission does not constitute agency action within the meaning of s. 120.52. If the commission refers a complaint to another agency under this subsection, the commission shall accord

substantial weight to any findings and conclusions of any such agency. The referral of a complaint by the commission to a local agency does not divest the commission's jurisdiction over the complaint.

(3) Except as provided in subsection (2), the commission shall investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992. When the commission determines whether or not there is reasonable cause, the commission by registered mail shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section.

(4) If the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

- (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or
- (b) Request an administrative hearing under ss. 120.569 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person under this act.

(5) In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. The provisions of ss. 768.72 and 768.73 do not apply to this section. The judgment for the total amount of punitive damages awarded under this section to an aggrieved person shall not exceed \$100,000. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving

a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury. The commission's determination of reasonable cause is not admissible into evidence in any civil proceeding, including any hearing or trial, except to establish for the court the right to maintain the private right of action. A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission. The commencement of such action shall divest the commission of jurisdiction of the complaint, except that the commission may intervene in the civil action as a matter of right. Notwithstanding the above, the state and its agencies and subdivisions shall not be liable for punitive damages. The total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in s. 768.28(5).

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the

costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the final order issued by the commission determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the aggrieved person may bring, within 1 year of the date of the final order, a civil action under subsection (5) as if there has been a reasonable cause determination or accept the affirmative relief offered by the commission, but not both.

(8) If the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days after the filing of the complaint:

(a) An aggrieved person may proceed under subsection (4) as if the commission determined that there was reasonable cause.

(b) The commission shall promptly notify the aggrieved person of the failure to conciliate or determine whether there is reasonable cause. The notice shall provide the options available to the aggrieved person under subsection (4) and inform the aggrieved person that he or she must file a civil action within 1 year after the date the commission certifies that the notice was mailed.

(c) A civil action brought by an aggrieved person under this section must be commenced within 1 year after the date the commission certifies that the notice was mailed pursuant to paragraph (b).

(9) No liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint with the commission.

(10) A judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(11) If a complaint is within the jurisdiction of the commission, the commission shall simultaneously with its other statutory obligations attempt to eliminate or correct the alleged discrimination by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent civil proceeding, trial, or hearing. The commission may initiate dispute resolution procedures, including voluntary arbitration, by special magistrates or mediators. The commission may adopt rules as to the qualifications of persons who may serve as special magistrates and mediators.

(12) All complaints filed with the commission and all records and documents in the custody of the commission, which relate to and identify a particular person, including, but not limited to, a complainant, employer, employment agency, labor organization, or joint labor-management committee shall be confidential and shall not be disclosed by the commission, except to the parties or in the course of a hearing or proceeding under this section. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.

(13) Final orders of the commission are subject to judicial review pursuant to s. 120.68. The commission's determination of reasonable cause is not final agency action that is subject to judicial review. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay the order of the commission, except as provided in the Rules of Appellate Procedure. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the cost. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the order of the court determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the court shall remand the matter to the commission for appropriate relief. The aggrieved party has the option to accept the relief offered by the commission or may bring, within 1 year of the date of the court order, a civil action under subsection (5) as if there has been a reasonable cause determination.

(14) The commission may adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of this section and to govern the proceedings of the commission under this section.

(15) In any civil action or administrative proceeding brought pursuant to this section, a finding that a person employed by the state or any governmental entity or agency has violated s. 760.10 shall as a matter of law constitute just or substantial cause for such person's discharge.

History. — s. 8, ch. 92-177; s. 3, ch. 92-282; s. 1, ch. 94-91; s. 417, ch. 96-406; s. 302, ch. 96-410; s. 1, ch. 2001-187; s. 97, ch. 2004-11; s. 7, ch. 2015-68; s. 3, ch. 2020-153.