

# **What Georgia Employers Need To Know**

**Courtesy of the State Bar of Georgia**



**This brochure was produced by the Employers' Duties and Problems Committee of the Young Lawyers Division of the State Bar of Georgia. It is intended only as an overview of the law as it affects private employers in Georgia and is not a complete statement of the law. Please consult the applicable law or your attorney for complete information.**

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### COBRA

Under COBRA and Georgia law, businesses that employ 20 or more employees and offer a healthcare plan must offer employees and former employees the option of continuing their healthcare coverage if the employee's healthcare coverage is lost or reduced because his or her employment has been terminated, his or her hours have been reduced, or the employee has become eligible for Medicare.

### CHILD LABOR

No minor under 12 years of age may be employed. Minors under 16 years of age who have not graduated from high school must have a work certificate (or work permit) from the child's school. In addition, there are also numerous hourly restrictions: Minors under 16 may not be employed between the hours of 9:00 p.m. and 6:00 a.m., more than 4 hours a day during the school year, more than 8 hours a day during vacations and not more than 40 hours a week. (The rules may be different for employers in agricultural industries.) Also, minors under 16 may not be employed in a "dangerous occupation."

### DRUG-FREE WORKPLACE

If an employer implements a [drug-free work place program](#), the employer may qualify for certification for a premium discount under its workers' compensation insurance policy. To qualify, an employer must have a written policy regarding its drug-free and drug testing policies, use a testing facility which meets certain criteria, provide an employee assistance program, provide a semi-annual education program on substance abuse, and conduct supervisor training.

### WAGE AND HOUR

The Fair Labor Standards Act sets out minimum wage and overtime requirements that apply to any employer who engages in interstate commerce (which is deemed to include any business with revenues of \$500,000.00 per year.) Under the law, non-exempt (hourly) employees must be paid a minimum wage which is \$5.15 per hour. When a non-exempt (hourly) employee works more than forty hours in a week, the employer must pay the employee one and one half times their regular rate of pay for every hour over forty worked that week. Employees engaged in executive, administrative or professional capacities and paid on a salary basis are exempt from this act. (That is, these employees do not have to be paid overtime). Because the Federal law is more stringent than the Georgia law, an employer who is in compliance with federal law also complies with Georgia law.

### WORKERS' COMPENSATION

Georgia law requires employers who employ three or more employees to provide [workers' compensation](#) coverage for their employees. Employees injured on the job are entitled to payment of their medical bills and income benefits for any lost time more than seven days. In most cases, workers' compensation benefits are the only source of recovery for an employee and they cannot file

a separate lawsuit against their employer. For injured employees who also had a pre-existing permanent impairment, under certain circumstances, employers may be entitled to reimbursement from the Subsequent Injury Trust Fund for a portion of workers' compensation benefits paid.

## **DISCRIMINATION**

**Age:** The Age Discrimination in Employment Act prohibits discrimination against workers who are 40 years of age or older. The law applies to all private employers with 20 or more employees, employment agencies and certain labor unions. Georgia law provides it is a misdemeanor to discriminate in hiring and employment against individuals between the ages of 40 and 70.

**Bankruptcy:** Generally, federal law prohibits discrimination in employment decisions against people who have declared bankruptcy.

**Disability:** Employers are prohibited from engaging in discrimination against qualified individuals with a disability by the Georgia Equal Employment for People with Disabilities Code, The Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990. A "qualified individual with a disability" is an individual who possesses the requisite skills, experience, education, and other job-related requirements of the position and who can perform the essential functions of the job with or without reasonable accommodation. An "individual with a disability" is a person with a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded by the employer as having such an impairment. The determination of whether a person is "disabled" should be made with reference to measures that might mitigate that individual's impairment, including medicine or eye glasses. Typical "major life activities" are caring for oneself, performing manual tasks, walking, hearing, speaking, breathing, learning and working. "Reasonable accommodation" might include making existing facilities accessible to the disabled, restructuring jobs, reassigning work or otherwise modifying schedules, or revising employment tests. An employer is not required to create a job that does not already exist. An accommodation is not reasonable where it would cause the employer undue hardship (significant difficulty or expense).

**Equal Pay:** The Equal Pay Act and Georgia law forbid employers to pay different wages to men and women who are performing equal jobs.

**Pregnancy:** The Pregnancy Discrimination Act prohibits discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits, as other persons not so affected but similar in their ability or inability to work.

**Race, Color, Religion, Sex or National Origin:** Title VII of the Civil Rights Act of 1964 prohibits discrimination (any adverse employment action) by employers of 15 or more employees, employment agencies, and labor organizations on the basis of race, color, religion, sex or national origin.

Section 1981 prohibits discrimination against employees based on their race.

**Retaliation:** The law prohibits employers from retaliating against their employees for asserting their rights to be free of discrimination.

**Sexual Orientation:** There is currently no Federal or Georgia law prohibiting discrimination against employees based on their sexual orientation.

## **EMPLOYMENT AT WILL**

Georgia recognizes the doctrine of employment at will. Employment at will means that in the absence of a written contract of employment for a defined duration, an employer can terminate an employee for good cause, bad cause or no cause at all, so long as it is not an illegal cause.

## **FAIR CREDIT REPORTING ACT**

Employers have specific duties when using a consumer credit report for hiring or employment purposes. An applicant or employee must give written consent to the employer before the employer obtains a credit report. Additionally, the employer must provide the employee or applicant with a copy of the report and a summary of their rights before the employer can take any adverse action based on the credit report.

## **FAMILY AND MEDICAL LEAVE ACT**

The FMLA requires that employers with 50 or more employees, who are employed within a 75 mile radius, provide eligible employees with up to 12 weeks of unpaid, job-protected leave each year to care for a newborn or newly adopted or foster child; to care for a seriously ill child, spouse or parent; or because of the employee's own illness. Employers may, under certain circumstances, require employees to take unpaid FMLA leave rather than accrued paid leave. It is, however, always the employer's responsibility to designate whether an employee's use of paid leave counts as FMLA leave, based on information provided by the employee and it is the employer's responsibility to notify the employee of this designation.

## **GARNISHMENT**

Garnishment is a court-ordered collection method available to creditors. Once the creditor files the garnishment papers, an employee can challenge the validity of the garnishment and the amount. Employers can also challenge the garnishment but they must file an answer within 45 days of the date of the garnishment notice. If an employer fails to file the required answer, the creditor can seek a judgment against the employer for the full amount of the employee's debt. An employer may not discharge an employee on the basis that the creditor is garnishing the employee's wages.

## **HANDBOOKS**

It is advisable for private employers in Georgia to provide their employees with an employee handbook. Under the current state of Georgia law, a handbook will generally not affect employee's "employment at will" status. Any handbook should contain a disclaimer setting forth an express provision that the at will relationship is not affected by the handbook and that the policies set forth in the handbook are subject to change at any time.

## **IMMIGRATION**

The federal immigration laws require employers to complete an INS Form I-9 to verify each employee's authorization to work in the U.S. The laws establish fines and criminal penalties for employers that knowingly hire unauthorized aliens. The laws also establish procedures for hiring on a

temporary or permanent basis certain aliens, including skilled workers and professionals in occupations with shortages of qualified U.S. workers.

## **JURY DUTY**

It is illegal to discharge or in any way penalize an employee because the employee is absent for the purposes of attending a judicial proceeding in response to a subpoena, summons for jury duty, or other court order.

## **MILITARY SERVICE**

Under federal and Georgia law, an employee who leaves a position to perform state or federal military service must generally be restored to his or her previous position or a like position.

## **SAFETY AND HEALTH**

Under the Occupational Safety and Health Act, employers have a specific duty to comply with all applicable safety and health regulations and a general duty to maintain a place of employment that is free from recognized hazards that can cause death or serious physical harm to employees.

## **PREVENTION**

Employers should have both an anti-discrimination and a non-harassment policy. The anti-discrimination policy should include language which declares that the employer will not discriminate against any qualified individuals on the basis of race, religion, national origin, color, gender, age, disability, or veteran status. The harassment policy should include not only sexual harassment, but also other forms of harassment, specifically including religious, gender and racial harassment. Additionally, the harassment policy should have a clearly defined procedure for reporting harassment, including a mechanism whereby the employee can bypass his or her immediate supervisor. The harassment policy should also include a provision which states that the company will not tolerate retaliation against individuals who complain about harassment. The harassment policy should be posted and disseminated to all employees, who sign a receipt acknowledging that they received the policy. Companies who do not have anti-harassment policies could be left without any defenses in the event of a harassment lawsuit.

## **UNIONS**

The National Labor Relations Act provides for employee rights to organize, join unions, and engage in collective bargaining. It is unlawful for an employer to interfere with an employee's right to join a union and engage in union activities, including discharging or otherwise discriminating against employees because they engage in union activities. Employers also are required to bargain in good faith with a union. Georgia has a "right to work" law which prohibits interference with employment to compel any person to either join or refrain from joining a union.

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## **QUICK REFERENCE**

### **EEOC**

(800) 669-4000

### **Federal Trade Commission**

(202) 326-2222

### **Georgia Chamber of Commerce**

(404) 223-2264

### **Georgia Department of Labor**

(404) 656-3017

### **Georgia State Board of Workers' Compensation**

(404) 656-3818

### **National Labor Relations Board**

(404) 331-2896

### **Office of Secretary of State**

(404) 656-2881

### **State Bar of Georgia**

(800) 334-6865

### **U.S. Immigration & Naturalization Service**

(800) 375-5283

## **SPONSORS**

### **AdQuest**

(404) 696-5892

### **Georgia Employers Association**

(478) 474-5508

### **Recovery Specialists, Inc.**

(404) 636-0246

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