

Employment Law in Georgia

WHAT WE ALL SHOULD KNOW

by David Lefkowitz

Have you ever wondered what your rights are as an employee in the state of Georgia? It would be impossible to summarize all the rights of an employee (or employer), but there are some basic laws and regulations that everyone should know.

WAGE AND HOUR RULES

Federal law sets out minimum wage and overtime requirements that apply to any employer who engages in interstate commerce (which is defined as any business with revenues of \$500,000.00 per year). Under the law, hourly employees must be paid a minimum wage, which is \$7.25 per hour, except for employees who earn tips and a few other exceptions, like student employees. Employees under 20 years of age may be paid a training wage of at least \$4.25 per hour, but the wage must be raised to \$7.25 after 90 days. When an hourly employee works more than forty hours in a week, the employer must pay the employee 1 1/2 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 rule, and 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.

DISCRIMINATION

There are various classes of employees who cannot be discriminated against. For instance, an employer cannot discriminate against workers who are 40 years of age or older. The law (The Fair Labor Standards Act) applies to all private employers with 20 or more employees, employment agencies and certain labor unions. Under Georgia law, it is a misdemeanor to discriminate in hiring and employment against individuals between the ages of 40 and 70.

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.

Georgia law prohibits employers from engaging in discrimination against qualified individuals with a disability. 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 reduce 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).

Federal and Georgia laws forbid employers to pay different wages to men and women who are performing equal jobs.

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 must be treated the same for all employment-related purposes, including receipt of

benefits, as other persons who are not pregnant (or have related conditions) who are similar in their ability or inability to work.

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

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. This is a good-news/bad news proposition for employees. The good news is that an employee who is injured on the job can receive benefits, even if the injury was his own fault. The bad news is that the compensation for these injuries is generally less than for a typical personal injury claim.

CHILD LABOR

No child under the age of 14 may be employed. Minors under 18 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 four hours a day during the school year, more than eight

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."

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 (discrimination, etc.). Similarly, in the absence of an employment contract, an employee can leave his job at any time, without advance notice to the employer.

JURY DUTY

It is illegal to fire, 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 generally must be restored to his or her previous position or a similar position.

SAFETY AND HEALTH

Under the Occupational Safety and Health Act (OSHA), 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.

Most of us do not take the time to learn our rights as an employee, or our obligations as an employer, until a dispute arises. Take the time to understand the rules. You might need to know them at some point.



David Lefkowitz is the founder of the Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor misconduct. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at: www.LefkowitzFirm.com.