



GEORGIA

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

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At-Will Employment

In Georgia, employees are presumed to be “at-will,” and their employment may be terminated for any reason, at any time, with or without cause, as long as the reason is not specifically prohibited by law. This presumption is codified at O.C.G.A. § 34-7-1. Georgia courts often dismiss wrongful discharge claims unless a contrary statute applies to the employer, which prohibits the discharge and authorizes a civil lawsuit. For example, the Georgia Fair Dismissal Act sets forth procedures and guidelines for terminating employees working in public education. O.C.G.A. §§ 20-2-940, *et seq.* Additionally, an employment agreement providing that employment is for a definite period of time during which the employee cannot be terminated without good cause is enforceable.

An employee handbook or other policy generally cannot be used to show the employee is guaranteed employment for a particular time, cannot be discharged or disciplined at will, or was wrongfully discharged. But certain handbook or policy promises, especially those concerning benefits (e.g., disability pay, severance, vacation), may be enforceable. *Amax, Inc. v. Fletcher*, 305 S.E.2d 601 (Ga. Ct. App. 1983).

Immigration Verification

In addition to federal I-9 compliance, the Illegal Immigration Reform and Enforcement Act (IIREA), effective July 1, 2011, instituted mandatory usage of E-Verify for both public and private employers for all newly-hired employees.

Since January 1, 2013, all Georgia public employers, contractors, and subcontractors are required to file a form affidavit certifying their registration and participation in E-Verify as a condition of obtaining a local business license. A signed, notarized affidavit, which attests to the contractor’s registration with the federal program and use of E-Verify, must be submitted with bid packages for state, local, and county public projects. O.C.G.A. § 13-10-91. Form affidavits to assist in obtaining business licenses and bidding may be found at www.bakerdonelson.com/files/Uploads/Documents/Alert_51013Affadavits.pdf.

Failure to comply with the IIREA is grounds to reject a bid, as well as grounds for non-renewal of a business license or permit. Knowingly and willfully accepting documents that are not secure or verified is a misdemeanor offense that is subject to monetary fines up to \$1,000, prison time up to 12 months, or both.

Drug Testing

Georgia does not prohibit the drug testing of employees, and employers are not expressly prohibited from discharging at-will employees who test positive on random drug tests. If an employer establishes a drug-free workplace program, they are eligible for a workers’ compensation insurance discount, provided the program satisfies the requirements of the Georgia Drug-Free Workplace law. O.C.G.A. § 34-9-411, 34-9-413. The law requires drug testing applicants who have received conditional offers of employment. O.C.G.A. § 34-9-415(b)(1). Those employers with a drug-free workplace program must also test employees when the following occur: after an on-the-job injury resulting in loss of work time; on reasonable suspicion of drug use; as part of a routinely scheduled employee fitness-for-duty medical examination; and after an employee returns to work following a drug rehabilitation program (not required if the employee entered the program voluntarily as opposed to after a positive drug test). *Id.* § 34-9-415(b)(2)-(5). Prior to testing, all employees and applicants for employment must be given notice of testing, along with a written policy statement containing the information outlined in the statute. O.C.G.A. 34-9-414. Workers’ compensation benefits can be denied to an employee who unjustifiably refuses to submit to a reliable, scientific test performed in the matter set forth in Section 34-9-415. Employers should cautiously approach drug testing as it can present substantial hurdles. Finally, although Georgia law authorizes the use of medical marijuana, Georgia law does not require an employer to accommodate the use/consumption/possession/sale/etc., of medical marijuana. Georgia employers are likewise permitted to have a zero-tolerance policy prohibiting the on-duty and off-duty use of marijuana. O.C.G.A. § 16-12-191(g).

Jury Duty and Court Attendance Leave

It is unlawful for an employer to discharge, discipline, or otherwise penalize an employee because the employee is absent from his or her employment for the purpose of attending a judicial proceeding in response to a subpoena, summons for jury duty, or other court order or process that requires the attendance of the

employee at the judicial proceeding. O.C.G.A. § 34-1-3. The subpoena, summons, or other court order may be from a state other than Georgia. *Thomas v. HL-A Co.*, 720 S.E.2d 648, 651-52 (Ga. App. 2011) (finding Tennessee subpoena for Georgia employee's attendance was sufficient to invoke § 34-1-3(a)). This law does not apply to an employee charged with a crime, nor does it prohibit an employer from requiring an employee to provide reasonable notification of the expected absence. O.C.G.A. § 34-1-3(c).

Military Leave

All private employers in Georgia must provide certain unpaid military leave benefits to their employees. A non-temporary employee is entitled to leave during any military service, including service in an organized militia, the reserves of the US armed forces, the Georgia National Guard, and the National Guard of another state. O.C.G.A. § 38-2-280(b) to (d). Military training leave or leave to attend service schools conducted by the U.S. Armed Forces may not exceed a total of six months during any four-year period. O.C.G.A. § 38-2-280(b).

Voting Leave

An employee, upon providing reasonable notice to his or her employer, must be permitted to take necessary time off to vote on the day on which a primary or election is held. Time off may not exceed two hours. Further, if an employee's work schedule begins at least two hours after polls open or ends at least two hours before polls close, no voting time off is required. An employer may specify the hours during which the employee may be absent. O.C.G.A. § 21-2-404.

Parental Leave

The State of Georgia does not require an employer to offer to its employees parental leave. However, the federal Family and Medical Leave Act requires employers with 50 or more employees to provide qualifying employees up to 12 weeks of unpaid leave for specified medical or family reasons under certain circumstances.

Vacation, Sick, or Bereavement Leave

The State of Georgia generally does not require employers to offer to employees paid vacation, sick, or bereavement leave, subject to exceptions below. Employers should comply with policies or applicable employment contracts.

Georgia passed the Family Care Act (the Kin Care Law), effective July 1, 2017, requiring employers who provide paid sick leave to allow eligible employees to access up to five days of leave, per calendar year, to care for their immediate family members¹. O.C.G.A. § 34-1-10. The term "Sick Leave" applies to leave that employees can use for their own incapacity, illness, or injury, during which they receive salary, wages, or other remuneration. *Id.* Employers are subject to sick leave provisions if they voluntarily provide paid sick leave and have 25 or more employees. *Id.* However, eligible employers that offer employees an employee stock ownership plan² are exempt from sick leave provisions. *Id.* Employees must work at least 30 hours a week for their employer to be eligible for sick leave provisions. *Id.*

Employee Handbooks

In Georgia, provisions in an employee handbook or other manual relating to additional compensation plans, of which an employee is aware, may be considered a binding contract between the parties. *Fulton-DeKalb Hosp. Auth. v. Metzger*, 203 Ga.App. 595, 596-597(2), 417 S.E.2d 163 (1992) (disability benefits); *Shannon v. Huntley's Jiffy Stores, Inc.* 174 Ga.App. 125, 126(2), 329 S.E.2d 208 (1985) (vacation pay); and *Fletcher v. Amax, Inc.*, 160 Ga.App. 692, 695, 288 S.E.2d 49 (1981) (severance pay). In these cases, the court reasons that the additional compensation plan represents an offer by the employer that the employee implicitly accepts by remaining in employment. *Ellison v. DeKalb County*, 236 Ga. App. 185, 186, 511 S.E.2d 284, 285 (1999). Therefore, an employer may establish a policy or enter into a contract regarding whether employees will be paid accrued vacation leave upon separation from employment. *Shannon*, 329 S.E.2d 208.

¹ "Family member" includes a child, spouse, grandchild, parent, or any dependent reported on the employees most recent tax return.

² As defined in 26 U.S.C § 4975(e)(7).

Smoking Laws

Under the “Smokefree Air Act of 2005,” smoking is prohibited in all enclosed areas not specifically exempted by statute. O.C.G.A. §§ 31-12A-1, *et seq.* Smoking is prohibited in all enclosed areas within places of employment. O.C.G.A. § 31-12A-5. Notice of the prohibition must be provided to prospective employees on their application for employment. *Id.* Outdoor places of employment are exempted from this provision, as are smoking areas designated by an employer if the designated areas otherwise comply with the requirements set forth by the statute. O.C.G.A. § 31-12A-6.

Break Time to Express Milk

On August 5, 2020, Georgia passed a law requiring employers to provide a private place for women to express breast milk. O.C.G.A. § 34-1-6. The law greatly strengthened the existing Georgia requirements on employers by making provision of breast milk expression breaks mandatory, as well as making it mandatory for employers to provide the employee a private location other than a restroom. Break time for breast milk expression must be paid. Employers with less than 50 employees may avoid abiding by the law if it would impose an undue hardship but should be careful to ensure they also comply with the federal “Providing Urgent Maternal Protections for Nursing Mothers (PUMP)” Act.

Meal and Rest Breaks

Georgia has no law regulating meal breaks or rest periods during a workday. However, the Common Day of Rest Act, O.C.G.A. § 10-1-570, *et seq.*, requires that “[a]ny business or industry which operates on either [Saturday or Sunday] and employs those whose habitual day of worship has been chosen by the employer as a day of work shall make all reasonable accommodations to the religious, social and physical needs of such employees so that those employees may enjoy the same benefits as employees in other occupations.” O.C.G.A. § 10-1-573. Certain employers, such as hospitals and public employers, may be excluded.

Minimum Wage

Georgia sets minimum wage at \$5.15 per hour. O.C.G.A. § 34-4-3. However, this minimum wage does not apply to any employer subject to the federal Fair Labor Standards Act, which currently sets the minimum wage at \$7.25 an hour. O.C.G.A. § 34-4-3(c). Georgia law requires that each employer maintain records showing the hours worked by each employee and the wages paid. O.C.G.A. § 34-4-5. Each employer shall post copies of any regulation or order issued pursuant to its provisions in a conspicuous place in an area frequented by employees. *Id.* Tipped employees are not subject to the Georgia Minimum Wage Law.

Timing of Wage Payments

Georgia employers must pay employees at least bi-monthly by cash, check, payroll card account, or electronic transfer. O.C.G.A. § 34-7-2.

The State of Georgia has no law regulating final payments to employees. However, upon the death of any person employed by a political subdivision of the State of Georgia, by any railroad company or other corporation, individual, or partnership doing business in Georgia, an employer may pay outstanding wages of \$2,500 or less to: (a) the surviving spouse; (b) in the absence of a surviving spouse to the guardian of the minor child; or (c) to any beneficiary who was so designated by the employee in writing. O.C.G.A. § 34-7-4(a). Paying the sums operates as a release from all claims to such sums or a release from all claims against the state, political subdivision, railroad company, or other corporate, partnership, or individual employer by the estate of the employee, the creditors thereof, the surviving spouse, minor child, children or the guardian thereof, or any other person. *Id.* § 34-7-4(c).

Workers’ Compensation

The Georgia Workers’ Compensation Act, O.C.G.A. § 34-9-1, *et seq.*, applies to every employer in Georgia with three or more employees. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. A workplace injury must be immediately reported to the employer; failure to timely report an injury may result in a denial of benefits. The Workers’ Compensation Act is administered by the State Board of Workers’ Compensation. Additional information may be accessed at sbwc.georgia.gov.

Child Labor Laws

Georgia law substantially restricts the employment of minors, including the times they can work. O.C.G.A. §§ 39-2-1, *et seq.* No minor under 16 years of age may be employed or permitted to work in or about a mill, factory, laundry, manufacturing establishment, or workshop, or in any occupation designated as hazardous under Section 39-2-2. O.C.G.A. § 39-2-1. No minor between the ages of 12 and 16 years of age may be employed by or permitted to work anywhere unless a certificate establishing the true age of the minor and the minor's physical fitness, has been issued by a school superintendent if in public school, the principal administrative officer if in private school, or the parent or guardian if in a home study program. O.C.G.A. § 39-2-11(a). A certificate is also required for the employment of minors older than the age of 14 when working during school vacation months for care of lawns, gardens, and shrubbery. *Id.* § 39-2-11.1.

Gun Laws

Effective July 1, 2014, no private or public employer may enforce or establish a rule that allows it to search locked, privately owned vehicles of employees, or invited guests in the employer's parking lot. O.C.G.A. § 16-11-135(a). Moreover, no employer may condition employment on an agreement that prohibits an employee from entering an employer's parking lot with a firearm that is locked and out of sight within the trunk, glove box, or other enclosed compartment, provided the employee possesses a Georgia weapons carry license. O.C.G.A. § 16-11-135(b). These provisions do not apply to an employer providing applicable employees with a secure parking area that restricts general public access through the use of a gate, security station, security officers, or other similar means that limit public access into the parking area, provided that any employer policy allowing vehicle searches upon entry should apply to all vehicles entering and be applied on a uniform and frequent basis. Nothing in the code restricts the rights of an employer who is a private property owner or person in legal control of property through a lease, a rental agreement, a contract, or other agreement to control access to such property. O.C.G.A. § 16-11-135(k). In such cases, the employer, as a private property owner, may "exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21." O.C.G.A. § 16-11-126(d).

Mini WARN Act

Georgia does not have a mini-WARN Act, but the Georgia Department of Labor requires that whenever 25 or more employees employed in one establishment are separated on the same day for the same reason (and the separation is permanent), the employer shall, within 48 hours following the separation, furnish the local office of the DOL nearest the place of business a Mass Separation Notice setting forth the information required thereon. Ga. Comp. R. & Regs. 300-2-4-.10(1); Mass Separations.

Additional Laws and Regulations

Georgia Fair Employment Practices Act of 1978, found at O.C.G.A. § 45-19-29, *et seq.*, prohibits public employers with 15 or more employees from engaging in discrimination on account of an individual's race, color, religion, sex, age, national origin, or disability.

Georgia Sex Discrimination in Employment Act of 1966, found at O.C.G.A. § 34-5-1, *et seq.*, mimics the Equal Pay Act of 1963, in that it prohibits discrimination between employees in the same establishment, on the basis of sex, in their compensation for comparable work. The law further prohibits retaliation against any employee who complains about alleged sex discrimination. *Id.* at § 34-5-3(c).

Georgia General Age Discrimination Law of 1971, found at O.C.G.A. § 34-1-2, makes it a criminal misdemeanor to discriminate against any person between the ages of 40 and 70 years, solely upon the ground of age, when the reasonable demands of the position do not require such an age distinction. The individual must be qualified physically, mentally, and by training and experience to perform satisfactorily the labor assigned to him or for which he applies.

Georgia Equal Employment for Persons with Disabilities Code of 1981, found O.C.G.A. § 34-6A-1, *et seq.*, mimics the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended, in that it prohibits discrimination because of an individual's disability with respect to wages, rates of pay, hours, or other terms and conditions of employment because of such person's disability unless such disability restricts

that individual's ability to engage in the particular job or occupation for which he or she is eligible. The Code has no administrative prerequisites to filing suit. The law further prohibits retaliation under O.C.G.A. § 34-6A-5.

Atlanta Ordinance No. 2000-79, § 1 applies to employers located within the city of Atlanta with ten or more employees. The Ordinance prohibits employment discrimination based on race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, or disability.

Polygraph Testing. Federal law significantly limits the use of polygraph tests by employers, and Georgia law provides a cause of action against a polygraph examiner if a polygraph examination is administered in a negligent or improper manner. O.C.G.A. § 51-1-37. The person may recover actual damages, attorney's fees, filing fees, and reasonable costs.

Multiracial Classification. Georgia Code § 34-1-5 requires a "multiracial" classification option on all written forms, applications, questionnaires, and other written documents or materials concerning employment law that request information on the racial or ethnic identification of an employee.

Veteran's Preference Employment Policy. Pursuant to Georgia Code § 34-1-8, an employer may create and use a veteran's preference employment policy which shall be in writing and be uniformly applied to employment decisions regarding hiring, promoting, or retaining during a reduction in force. Using such a policy under this Code section shall not constitute a violation of any local or state equal employment opportunity law.

Immunity for Disclosing Information Concerning Job Performance. Pursuant to Georgia Code § 34-1-4, upon request by a prospective employer or of the person seeking employment, an employer who:

- discloses factual information concerning an employee's or former employee's job performance;
- discloses any act committed by the employee that would violate Georgia law; or
- discloses the ability or lack of ability of the employee to carry out job duties is presumed to be acting in good faith unless:
 - (a) lack of good faith is shown by a preponderance of the evidence;
 - (b) the information was disclosed in violation of a nondisclosure agreement; or
 - (c) if the information is otherwise considered confidential according to applicable federal, state, or local statute, rule, or regulation.

***Effective January 1, 2017, notwithstanding any order issued by the federal government or any agreement entered into with the federal government by a franchisor or franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose. O.C.G.A. § 34-1-9.