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STATE

Littler on

Georgia Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Georgia employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

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[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

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3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Georgia, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Georgia Commission on Equal Opportunity	Neither Georgia statute nor common law provides guidance for determining independent contractor status for fair employment practices purposes.
Income Taxes	Georgia Department of Revenue	Neither Georgia statute nor common law provides guidance for determining independent contractor status for state income tax purposes.[5]
Unemployment Insurance	Georgia Department of Labor	Statutory tests. There are two alternative tests to determine independent contractor status. Under the first test, any individual who receives wages in exchange for services is an employee unless it is shown that: A. such individual has been and will continue to be free from control or direction over

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] The only guidance the state income tax law provides is in a regulation stating: "[a]ny term used in these Regulations has the same meaning as when used in a comparable context in the laws of the United States or Regulations of the Internal Revenue Service, relating to Federal income taxes, unless a different meaning is clearly required or the term is specifically defined in the Georgia Code or Regulations." GA. COMP. R. & REGS. 560-7-6-.02.

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		the performance of such services, both under the individual's contract of service and in fact; and B. such individual is customarily engaged in an independently established trade, occupation, profession or business.[6] This is a modified ABC test (using only the "A" and "C" prongs). The following criteria are used to determine whether the A prong applies: • the individual is not prohibited from working for other companies or holding other employment contemporaneously; • the individual is free to accept or reject work assignments without consequence; • the individual is not prescribed minimum hours to work or, in the case of sales, does not have a minimum number of orders to be obtained; • the individual has the discretion to set their own work schedule; • the individual receives only minimal instructions and no direct oversight or supervision regarding the services to be performed, such as the location where the services are to be performed and any requested deadlines; • when applicable, the individual's work or services have no territorial or geographic restrictions; and • the individual is not required to perform, behave, or act or, alternatively, is compelled to perform, behave, or act in a manner related to the performance of services for wages which is determined by the Commissioner of the Department of Labor to demonstrate employment, in accordance with this law.

[6] GA. CODE ANN. § 34-8-35(f).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		Additional exclusions apply for certain music industry professionals and services performed by or facilitated through a network company (ride share network service or business entity that maintains an online enabled application or platform used to facilitate delivery services in the state).[7] If an employer does not meet the first test, then independent contractor status will be presumed only if there has been a determination by the Internal Revenue Service regarding the individual and the services performed that decided against employee status.[8]
Wage & Hour Laws	Not applicable	Georgia has no wage and hour laws.
Workers' Compensation	State Board of Workers' Compensation	Statutory test. Under the Georgia Workers' Compensation statute, an individual must meet all of the following criteria to qualify as an independent contractor: 1. is a party to a contract, written or implied, which intends to create an independent contractor relationship; 2. has the right to exercise control over the time, manner, and method of the work to be performed; and 3. is paid on a set price per job or a per unit basis, rather than on a salary or hourly basis. A person who does not meet all of the above listed criteria shall be considered an employee, unless otherwise determined by an administrative law judge to be an independent contractor.[9]

[7] GA. CODE ANN. § 34-8-35.

[8] GA. CODE ANN. § 34-8-35.

[9] GA. CODE ANN. § 34-9-2(e). The Workers' Compensation Act further provides that"[a] person shall be an independent contractor and not an employee *if such person has a written contract* as an independent contractor and if such person buys a product and resells it, receiving no other compensation, or provides an agricultural

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Georgia does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[10]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[11] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify

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service or such person otherwise qualifies as an independent contractor." GA. CODE ANN. § 34-9-1(2) (emphasis added).

[10] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

[11] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

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provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[12]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Under the Georgia Illegal Immigration Reform and Enforcement Act of 2011, private employers with more than 10 employees must confirm the eligibility of new in-state hires using the federal E-Verify program. *Employees* include individuals who work under the direction and supervisor of an employer for not less than thirty-five hours per week and who receive a federal W-2 form (but not a form 1099).[13]

In addition, businesses applying to the state, counties, or municipalities for business licenses must furnish an affidavit showing E-Verify participation or exemption for the E-Verify requirement before any licenses will be issued.[14] Georgia provides a standardized form affidavit and exemption form for private employers.[15] The affidavit of E-Verify authorization must be a signed and sworn statement and employers must attest to their use of E-Verify according to federal regulations. The affidavit must include the employer's E-Verify user number and authorization date. Employers that are exempt must provide evidence of their exemption through a signed, sworn statement in which they attest to employing fewer than 11 employees on January 1 of the year in which they submit the statement.[16] For all subsequent business license renewals, businesses must submit either a federal work authorization user number or an assertion of exemption from the requirement.[17]

1.2(b)(ii) *State Contractors*

Employers that are state or local public service contractors and subcontractors are required to register with and use E-Verify to confirm the eligibility of new hires before entering into any public contract or subcontracts for the physical performance of services.[18] *Physical performance of services* means labor or services performed for a Georgia state or local government agency using a bidding process or by contract where such labor or services are valued at $2,500 or more.[19]

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[12] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[13] GA. CODE ANN. § 36-60-6(a)-(b).

[14] GA. CODE ANN. § 36-60-6(c)-(d).

[15] The affidavit of compliance form is available at http://op.bna.com/hrlw.nsf/id/pstr-8qcpeb/$File/PrivEmplAff.pdf and the exemption form is available at http://op.bna.com/hrlw.nsf/id/pstr-8qcpfw/$File/PrivEmplExem.pdf.

[16] GA. CODE ANN. § 36-60-6(c)-(d).

[17] GA. CODE ANN. § 36-60-6(d)(2).

[18] GA. CODE ANN. § 13-10-91(b); GA. COMP. R. & REGS. 300-10-1-.01 to -.03.

[19] GA. CODE ANN. § 13-10-90(4).

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State contractors and subcontractors must comply with the employment verification requirements as a condition of contracts for the physical performance of services, and must certify this compliance by providing a signed, sworn statement[20] in bids that attests to:

- registration with, authorization to use, and use of E-Verify;
- E-Verify user identification number and authorization date;
- continued use of E-Verify throughout the contract period; and
- commitment to only contract for the physical performance of services under the contract only with subcontractors that provide statements attesting to this same information.[21]

1.2(b)(iii) *State Enforcement, Remedies & Penalties*

The Georgia Office of the Attorney General enforces the employment verification requirements and can investigate alleged violations. Employers found to have committed good-faith violations of the employment verification requirements are provided 30 days to comply with the requirements. Thereafter, the attorney general can file civil or criminal lawsuits against employers to ensure compliance.[22]

State Contractors. Any person who knowingly makes a false, fictitious, or fraudulent statement in such an affidavit can be prosecuted, and if convicted, prohibited from bidding on or entering any public contract for 12 months following the conviction.[23]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[24] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies

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[20] In lieu of the required affidavit, a contractor, subcontractor, or sub-subcontractor that has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of any part or all of the original contract with the public employer shall instead provide a copy of their state issued driver's license or state issued identification card and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the original contract with a public employer. GA. CODE ANN. § 13-10-91(b)(5).

[21] GA. CODE ANN. § 13-10-91(b)(1), (3); GA. COMP. R. & REGS. 300-10-1-.07 to -.08. The contractor affidavit form is available at http://op.bna.com/hrlw.nsf/id/pstr-8qcpgr/$File/ContractAff.pdf and the subcontractor affidavit is available at http://op.bna.com/hrlw.nsf/id/pstr-8qcphm/$File/SubcontAff.pdf.

[22] GA. CODE ANN. § 36-60-6(j).

[23] GA. CODE ANN. § 13-10-91(b)(9).

[24] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

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and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Employers may make preemployment inquiries about and otherwise use arrests records, unless those records relate to conduct leading to an arrest that was discharged under Georgia's First Offenders Act (FOA). The FOA authorizes a court to place a criminal defendant who pleads guilty "without entering a judgment of guilt" on probation.[25] Upon fulfillment of the terms of probation, the defendant is *discharged*, which means that the defendant "shall not be considered to have a criminal conviction."[26] The "discharge" is not a criminal conviction and "may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector."[27]

Employer Access to Criminal History Records. Georgia employers may obtain the nonrestricted criminal history of an applicant or employee from the Georgia Bureau of Investigation's Crime Information Center by submitting the individual's fingerprints or a signed consent on a form prescribed by the Center, which

[25] GA. CODE ANN. § 42-8-60.

[26] GA. CODE ANN. § 42-8-62.

[27] GA. CODE ANN. § 42-8-63. There are certain circumstances in which a discharge may be used to disqualify a person from employment, including individuals applying for employment at schools and facilities with vulnerable adults. *See* GA. CODE ANN. § 42-8-63.1(b). Moreover, although an employer may not use a FOA discharge as the basis for disqualifying an applicant, an employer may use the underlying facts in determining an appropriate personnel action for an employee. 1986 Ga. Op. Att'y Gen. 189 (discussing *Dominy v. Mays*, 257 S.E.2d 317 (Ga. Ct. App. 1979)). Further, without raising the issue that the FOA refers solely to applicants, the Georgia Court of Appeals held that the FOA does not provide a private cause of action for at-will employees. *See Mattox v. Yellow Freight Sys., Inc.*, 534 S.E.2d 561 (Ga. Ct. App. 2000) (affirming the dismissal of a wrongful discharge claim arising from the plaintiff's termination for a crime committed nine years earlier that had been discharged under the FOA).

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must include such person's full name, address, Social Security number, and date of birth.[28] *Criminal history* is defined as:

> information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. Such term also includes the age and sex of each victim as provided by criminal justice agencies.[29]

Adverse Action. If an employer obtains an individual's criminal records from the Georgia Crime Information Center and decides not to hire the individual, or makes any adverse employment determination based on the records, the employer is required to disclose to the individual:

1. the fact that a record was obtained;
2. the specific contents of the record; and
3. a statement regarding how the information affected the employment decision.[30]

Ban-the-Box Law. Georgia has not implemented a state "ban-the-box" law covering private employers.

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

Atlanta's antidiscrimination ordinance prohibits employment discrimination on the basis of an individual's criminal history status. While the ordinance does not prohibit an employer from inquiring into an individual's criminal history, an employer with 10 or more employees cannot refuse to hire, discharge, or otherwise discriminate against an applicant or an employee due to the individual's criminal history status. Further, an employer cannot print or publish a notice of job vacancy or a job advertisement that indicates any preference, limitation, specification, or discrimination related to an individual's criminal history status.[31]

The ordinance permits an employer to take adverse action against an applicant related to the individual's criminal history if the decision was based on how the criminal history related to the responsibilities of the job position in accordance with the following considerations:

- whether the applicant committed the offense;
- the nature and gravity of the offense;
- the time since the offense; and
- the nature of the job for which the applicant has applied.[32]

An employer is also not prohibited from making an adverse employment decision based on criminal history status when the decision concerns job positions where certain convictions or violations are a bar

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[28] GA. CODE ANN. § 35-3-34(a)(1)(A). More information about the process for obtaining criminal history record information is available at http://gbi.georgia.gov/obtaining-criminal-history-record-information.

[29] GA. CODE ANN. § 35-3-30(4).

[30] GA. CODE ANN. § 35-3-35(b).

[31] ATLANTA, GA CODE OF ORDINANCES § 94-112.

[32] ATLANTA, GA CODE OF ORDINANCES § 94-114.

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to employment in that position under state or federal law, including but not limited to positions that involve work with children and positions in law enforcement.[33]

1.3(a)(iv) *State Guidelines on Employer's Use of Conviction Records*

Employers may inquire about and otherwise use conviction records unless they have been expunged or the conviction was discharged under the FOA.[34] For information on the FOA and adverse action regarding criminal records, see **1.3(a)(ii)**.

Certain employers in Georgia are required to obtain a criminal records check of their employees. No facility operated as a day care center, group day care home, family daycare home, or childcare institution may employ an individual until that individual has provided the facility with a satisfactory preliminary records check indicating that the individual has no criminal record.[35] If the preliminary records check for any potential employee reveals a criminal record of any kind, such potential employee is not allowed to begin working until the potential employee has either: (1) obtained satisfactory state and national fingerprint records check determinations; or (2) had the unsatisfactory preliminary or fingerprint records check determination reversed.[36]

1.3(a)(v) *Local Guidelines on Employer's Use of Conviction Records*

The Atlanta prohibitions on discrimination related to an individual's criminal history status apply to both arrest records and conviction records. See **1.3(a)(ii)**.

1.3(a)(vi) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

In addition to the restrictions on the use of expunged criminal convictions discussed in **1.3(a)(ii)**, the arrest and conviction records of a person who is the subject of a restricted (*i.e.*, sealed) criminal history cannot be disclosed or made available to any private persons or businesses.[37]

Juvenile Records. An individual whose juvenile records have been sealed may respond to inquiries by stating that no records exist.[38]

1.3(a)(vii) *State Enforcement, Remedies & Penalties*

An employer that takes an adverse action against an applicant or employee based on a criminal history record without providing the required notice and information commits a misdemeanor.[39] Moreover, employers that knowingly request, obtain, or attempt to obtain criminal history information from the Georgia Crime Information Center under false pretenses or communicates criminal history information to any agency or person unlawfully may be fined, imprisoned, or both. Employers that negligently

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[33] ATLANTA, GA CODE OF ORDINANCES § 94-114.

[34] *See* GA. CODE ANN. §§ 15-11-701, 35-3-34, and 35-3-34.

[35] GA. CODE ANN. §§ 49-5-60(1), 49-5-69(a), (d).

[36] GA. CODE ANN. § 49-5-69.

[37] GA. CODE ANN. §§ 35-3-35(a)(1)(B)(i), 35-3-37(a).

[38] GA. CODE ANN. § 15-11-701(e).

[39] GA. CODE ANN. § 35-3-34(b).

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communicate or attempt to communicate criminal history information unlawfully may also be fined or imprisoned.[40]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[41] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[42] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[43]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Georgia does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history.

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[40] GA. CODE ANN. § 35-3-38(a)-(b).

[41] 15 U.S.C. §§ 1681 *et seq*.

[42] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[43] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

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1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Georgia law contains no express provisions regulating employer access to applicants' or employees' social media accounts.

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[44] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow

[44] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

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exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see **LITTLER ON EMPLOYMENT TESTING**.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Georgia law contains no express provisions regulating polygraph examinations for applicants or employees.

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[45] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[46] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see **LITTLER ON EMPLOYMENT TESTING**.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Georgia offers private employers that establish and maintain a drug-free workplace program a discount on workers' compensation insurance.[47] This program, along with statutes related to drug testing for government contractors and for "high-risk" public jobs, are discussed in **3.2(b)(ii)**. The notice and posting requirements are discussed in **2.1(b)** and **3.1(a)**, respectively.

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[45] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[46] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[47] GA. CODE ANN. § 33-9-40.2.

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2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[48] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[49] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[50] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[51]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[52]

[48] 26 U.S.C. § 36B.

[49] 42 U.S.C. § 18071.

[50] 29 U.S.C. § 218b.

[51] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[52] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[53]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[54] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[55] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[56]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the

[53] 29 C.F.R. § 2590.606-1.

[54] 29 C.F.R. § 825.300(a).

[55] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[56] 29 C.F.R. § 825.300(a).

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[57] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[58]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[59]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[60]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Drug Testing Documents	For employers subject to the Drug-Free Workplace program, applicants and employees must be given a notice of testing before the testing takes

[57] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[58] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[59] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[60] 29 C.F.R. § 531.59.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	place (one time only). All employees must also receive a *written* policy statement which contains: 1. a general statement of the employer's substance abuse policy, including: (a) the types of testing and the basis (reasonable suspicion or other) used to determine when testing will be required; and (b) the actions the employer may take against the individual on the basis of a positive confirmed test result; 2. a statement advising the individual of the existence of Georgia's statute on drug testing; 3. a general statement on confidentiality; 4. the consequences of refusing to submit to a drug test; 5. a statement advising an employee of an employee assistance program (if offered by the employer) or advising an employee of the "employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems;" 6. a statement that an individual who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive result; and 7. a statement informing an employee of the provisions of the federal Drug-Free Workplace Act or the "Drug-free Public Work Force Act of 1990," if applicable to the employer.[61] Additionally, employers must include notice of substance abuse testing on vacancy announcements for those positions for which testing is required.
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	The Georgia Department of Revenue provides an online Form G-4 (Employee's Withholding Allowance Certificate).[62]
Wage & Hour Documents	If an employer elects to pay wages by payroll card account, employees hired after an employer's decision must receive, at the time of hire, a written explanation of any fees associated with the account.[63]

[61] GA. CODE ANN. § 34-9-414.

[62] *See* https://dor.georgia.gov/documents/form-g-4-employee-withholding.

[63] GA. CODE ANN. § 34-7-2.

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2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[64] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[65]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

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[64] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[65] 42 U.S.C. § 653a.

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- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[66] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Georgia's new hire reporting law.[67]

Who Must Be Reported. Employees newly hired or rehired must be reported.

Report Timeframe. Georgia employers must submit new hire information for employees within 10 days of the hiring date. Employers submitting magnetically or electronically must report new employees, if any, at least twice per month by transmissions no more than 16 days apart.

Information Required. The report must contain the employee's name, address, Social Security number, and date of birth, as well as the employer's name, address, and employment security number or unified business identifier number.

Form & Submission of Report. The information should be submitted via a W-4 form, New Hire Reporting Form or form authorized by state agency (including a spreadsheet). Forms may be submitted electronically (including through the internet and using new hire data entry software), by mail, or by fax.

[66] HHS offers the form online at https://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[67] GA. CODE ANN. § 19-11-9.2.

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Location to Send Information.

Georgia New Hire Reporting Program
P.O. Box 38480
Atlanta, GA 30334-0480
(404) 525-2985
(888) 541-0469
(404) 525-2983 (fax)
(888) 541-0521 (fax)

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until recently, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[68] As such, the DTSA now provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

[68] 18 U.S.C. §§ 1832 *et seq.*

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2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Under the Georgia Restrictive Covenants Act (RCA),[69] applicable to agreements entered into on or after May 11, 2011, a noncompete covenant is enforceable against certain categories of employees:

- sales personnel;
- brokers;
- management personnel; and
- employees performing the duties of a "key employee" or "professional."[70]

Such agreements will be enforceable so long as its restrictions are reasonable in time, geographic area, and scope of prohibited activities.[71] Although this is the same basic enforceability test used in case law, the RCA adopts rules and standards for determining whether a given covenant satisfies the various components of the test. Among the RCA's most significant features are its flexible and common-sense rules for gauging compliance with the "geographic scope" and "prohibited activities" prongs of the test.

Both the preexisting case law and the RCA require the scope of a noncompete to be in line with the employee's actual territory and duties at the time of termination (*i.e.*, at the time the restrictions go into effect). However, courts previously required that the covenant describe the territorial scope and prohibited activities with enough specificity to enable the employee to ascertain, on the front end, exactly what the individual's future obligations will be. Under this "front-end certainty" test, noncompetes containing geographic restrictions such as "the territory where the employee is working at the time of termination" were considered unenforceable because the precise contours of the restrictions could not be ascertained until the time of termination. But, any covenant that provided the requisite front-end certainty was vulnerable to a different sort of enforceability challenge in that any subsequent change in the employee's territory or job duties could make the covenant overbroad. The RCA eliminated this problem by abolishing the front-end certainty requirement.

The RCA expressly endorses phrases such as "the territory where the employee is working at the time of termination" as adequate descriptions of a covenant's geographic scope.[72] The RCA also declares that "any good faith estimate of the activities, products, or services, or geographic areas, that may be applicable at the time of termination" is sufficient, even if the estimate "is generalized or could possibly be stated more narrowly to exclude extraneous matters" and even if it "ultimately proves to include extraneous activities, products, or services, or geographic areas."[73] In keeping with its emphasis on honoring the intent of the contracting parties, the RCA deals with such inadvertent overbreadth issues by requiring that the covenant "be construed ultimately to cover only so much of such estimate as relates to the activities actually conducted, the products or services actually offered, or the geographic areas actually involved within a reasonable period of time prior to termination."[74]

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[69] GA. CODE ANN. §§ 13-8-50 *et seq*.

[70] GA. CODE ANN. § 13-8-53(a).

[71] GA. CODE ANN. § 13-8-53(a).

[72] GA. CODE ANN. §§ 13-8-53(c)(2), 13-8-56(2).

[73] GA. CODE ANN. § 13-8-53(c)(1).

[74] GA. CODE ANN. § 13-8-53(c)(1).

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Finally, with respect to the reasonable timeframe prong of the enforceability test, the RCA adopted a new rule-of-thumb under which post-employment restrictions of two years or less are presumptively reasonable.[75] While this rule-of-thumb insulates most two-year restrictions from overbreadth challenges, it also may be construed as creating a negative inference against post-employment restrictions of more than two years.[76]

The RCA also endorses post-employment covenants that prohibit employees from soliciting (or attempting to solicit, directly or by assisting others) customers and prospects for the purpose of providing competitive products or services.[77] Notably, customer nonsolicitation agreements are not limited to the categories of employees enumerated under the RCA with regard to broader restrictive covenants, but can be entered into by any employee.[78]Consistent with the preexisting law, the RCA limits the permissible scope of such restrictions to those customers and "actively sought prospective customers" with whom the employee had "material contact" during the individual's employment.[79] The RCA, however, significantly departed from preexisting law on the question of what language is required for such a covenant to be enforceable.

Unlike the preexisting law, the RCA does not require a nonsolicitation covenant to expressly state that it is limited to actual/prospective customers with whom the employee had material contact, nor does the RCA require the covenant to list or describe the products and services that are considered to be competitive.[80] Instead, the RCA provides that any written:

> prohibition against 'soliciting or attempting to solicit business from customers' or similar language" shall be "narrowly construed to apply only to: (1) such of the employer's customers, including actively sought prospective customers, with whom the employee had material contact; and (2) products and services that are competitive with those provided by the employer's business.[81]

Enforceability Following Employee Discharge. In Georgia, for agreements entered into prior to November 3, 2010, termination appears to be one factor courts may consider.[82] Noncompete agreements entered into or after May 11, 2011 are statutorily enforceable.[83] However, agreements entered into between

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[75] GA. CODE ANN. § 13-8-57(b).

[76] This two-year rule-of-thumb does not apply to noncompete covenants that are made in connection with the sale of a business. The RCA adopts a five-year rule-of-thumb for noncompetes that are ancillary to the sale of a business.

[77] GA. CODE ANN. § 13-8-53(b).

[78] GA. CODE ANN. § 13-8-53(b).

[79] GA. CODE ANN. § 13-8-53(b).

[80] GA. CODE ANN. § 13-8-53(b).

[81] GA. CODE ANN. § 13-8-53(b).

[82] *See W.R. Grace & Co., Dearborn Div. v. Mouyal*, 422 S.E.2d 529, 531 (Ga. 1992) (noting that the situation of the parties was one factor courts considered in determining the reasonableness of a restrictive covenant in an employment contract).

[83] GA. CODE ANN. § 13-8-51(18) (defining *termination* under the RCA as "the termination of an employee's engagement with an employer, whether with or without cause, upon the initiative of either party.").

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November 3, 2010 and May 11, 2011 are undecided due to the questioned constitutionality of the law during this period.[84]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Georgia, courts have held that a noncompete signed at the inception of employment is supported by adequate consideration.[85] Likewise, generally courts have held that continued employment constitutes sufficient consideration to support a noncompete agreement.[86]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

The RCA abrogated the "all-or-nothing" rule and expressly authorizes courts to "modify a covenant that is otherwise void and unenforceable" so long as the modification does not render the covenant more restrictive with regard to the employee than as originally drafted.[87] Modification, however, means "the limitation of a restrictive covenant to render it reasonable in light of the circumstances in which it was made[,] includ[ing] severing or removing that part of a restrictive covenant that would otherwise make

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[84] *See Cox v. Altus Healthcare & Hospice, Inc.*, 706 S.E.2d 660 (2011).

[85] *Roberts v. Tifton Med. Clinic, P.C.*, 426 S.E.2d 188, 191-92 (1992) (noting that "when an employee agrees to subject himself to possible future restrictions, he does so in exchange for the opportunity to have the job" and thus observing courts have traditionally subjected restrictive covenants contained in employment agreements to stricter scrutiny than to those contained in business sales agreements); *see also Keeley v. Cardiovascular Surgical Assoc.*, P.C., 510 S.E.2d 880 (Ga. Ct. App. 1999) (finding adequate consideration where employer and employee agreed to the terms of employment prior to executing a written employment agreement that additionally contained a noncompete not prior agreed to; employee signed the written agreement prior to employment).

[86] *Compare Glisson v. Global Sec. Servs., LLC*, 653 S.E.2d 85 (2007) (continued employment not adequate consideration for noncompete in case involving employee who was not terminable at will under his employment agreement) with *Mouldings, Inc. v. Potter*, 315 F.Supp. 704, 713 (M.D. Ga. 1970) (noting "It has been held that a mere agreement to continue to employ an employee furnishes a sufficient consideration for a non-competition covenant under Georgia law.") and *Breed v. National. Credit Ass'n*, 88 S.E.2d 15 (Ga. 1955).

[87] GA. CODE ANN. § 13-8-53(d). *See Belt Power, LLC v. Reed*, 2020 WL 1150059 (Ga. Ct. App. March 10, 2020) (finding that use of the RCA's "blue pencil provision" is discretionary, not mandatory).

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the entire restrictive covenant unreasonable..."[88] The current climate in Georgia is that adding or supplying language is not within the discretion of the courts and, as such, Georgia courts will not modify a restrictive covenant where the exercise of the court's authority would require the addition of a material term rather than simply narrowing or severing impermissible language or terms.[89] Courts interpreting contracts entered into prior to the RCA apply the all-or-nothing rule. Accordingly, for pre-May 11, 2011 covenants, in the absence of a general severability provision, an employer's breach of a single provision can render an entire contract unenforceable.[90]

2.3(b)(iv) *State Trade Secret Law*

Definition of a Trade Secret. Under the Georgia Trade Secrets Act of 1990, a *trade secret* is defined as:

> [I]nformation, without regard to form, including but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information:
>
> 1. Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> 2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[91]

This definition covers economically valuable information that is not generally known to competitors. The statute protects not only information that is actually valuable, but also information that may be of potential value to the holder. This contrasts with a narrower, common-law definition of trade secrets that protected only materials sufficiently developed to be usable. Diverse information such as computer programs, poultry vaccines, bottle-labeling methods, and fluorination methods have been found to constitute trade secrets under Georgia law.[92]

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[88] GA. CODE ANN. § 13-8-51 (11)(A).

[89] *See N. Am. Senior Benefits, L.L.C. v. Wimmer*, 2023 WL 3963931 (Ga. Ct. App. June 12, 2023) (holding that court lacked authority to add material term to post-employment non-solicitation-of-employees covenant), *rev'd on other grounds*, 2024 WL 4029937 (Ga. Sept. 4, 2024); *but see Motorsports of Conyers, LLC v. Burbach*, 892 S.E.2d 719, 726-27 & n.6 (Ga. 2023) (stating that a trial court may be required to blue-pencil a restrictive covenant to protect the reasonable interests of all parties, but ultimately "leav[ing] for another day any questions about the breadth of a trial court's discretion to decide whether to blue-pencil a restrictive covenant under [Ga. Code Ann. § 13-8-54(b)].").

[90] *See Marcre Sales Corp. v. Jetter*, 476 S.E.2d 840, 842 (Ga. Ct. App. 1996) (stating that because employment contract lacked severability language, employer's breach of termination provision of contract precluded enforcement of noncompete covenant); *see also Vulcan Steel Structures, Inc. v. McCarty*, 764 S.E.2d 458, 460 (Ga. Ct. App. 2014) (acknowledging that under the prior restrictive covenant statute in Georgia, courts would not blue pencil restrictive covenants ancillary to employment contracts).

[91] GA. CODE ANN. § 10-1-761(4).

[92] *See TDS Healthcare Sys. Corp. v. Humana Hosp. Ill., Inc.*, 880 F. Supp. 1572, 1582 (N.D. Ga. 1995); *see also Penalty Kick Mgmt. Ltd. v. Coca Cola Co.*, 318 F.3d 1284, 1291 (11th Cir. 2003); *Salsbury Labs., Inc. v. Merieux Labs.,*

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The first consideration in determining trade secret status is whether information is readily ascertainable to a reasonably diligent competitor.[93] Trade secret protection is not available for information that is generally known in the industry.[94] Only information that is shown not to be otherwise ascertainable is afforded trade secret status.[95] In determining accessibility, Georgia courts have generally evaluated items in their entirety rather than examining their component parts.[96]

The Georgia Trade Secrets Act also requires employers to make reasonable efforts to maintain the secrecy of the subject information. If the owner/employer does not inform others, expressly or through its actions, that the information is confidential, or takes no precautions to maintain secrecy, a court will not grant the information trade secret status.[97] In *Servicetrends, Inc. v. Siemens Medical Systems, Inc.*, the evidence showed that the company widely distributed to its customers data regarding service and repair of its medical equipment.[98] Based on that dissemination, the court determined that the company had no requisite intent to maintain the secrecy of the data.

Limited disclosure of information through controlled channels does not destroy the trade secret nature of information. In one case, the employer established that customer lists were not freely distributed and that certain employees to whom the customer information was disclosed were required to sign confidentiality agreements.[99] The Georgia Supreme Court considered it immaterial that all employees were not required to sign confidentiality agreements since adequate steps were taken to control the dissemination and use of the information.[100] By taking actions such as marking appropriate documents confidential, keeping sensitive information in a secured location and limiting access based on the "need to know," employers can enhance the likelihood that a court will find reasonable secrecy efforts have been made.[101]

Misappropriation of a Trade Secret. A written contract is not required to maintain an action for misappropriation of a trade secret. However, even if a trade secret and a duty not to use or disclose exists,

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Inc., 908 F.2d 706, 712 (11th Cir. 1990); *Union Carbide Corp. v. Tarancon Corp.*, 742 F. Supp. 1565, 1579 (N.D. Ga. 1990).

93 *Capital Asset Research Corp. v. Finnegan*, 160 F.3d 683 (11th Cir. 1998).

94 *Taylor Freezer Sales Co. v. Sweden Freezer E. Corp.*, 160 S.E.2d 356, 359 (Ga. 1968).

95 *Camp Creek Hospitality Inns, Inc. v. Sheraton Franchise Corp.*, 139 F.3d 1396, 1410-12 (finding information to be subject to the Georgia Trade Secrets Act where plaintiff presented expert testimony that such information is closely guarded in the industry and that a competitor could not derive such information through legitimate means).

96 *CMAX/Cleveland, Inc. v. UCR, Inc.*, 804 F. Supp. 337, 357 (M.D. Ga. 1992) (determining that a computer software program as a whole was not readily ascertainable, without addressing accessibility of certain components).

97 *See, e.g.*, *Bacon v. Volvo Serv. Ctr., Inc.*, 597 S.E.2d 440, 443-44 (Ga. Ct. App. 2004) (where employer did not inform employees that customer information was confidential and such information was stored on computer without password protection and available to employees through other means, the information was not a trade secret).

98 870 F. Supp. 1042, 1074 (N.D. Ga. 1994).

99 *Avnet, Inc. v. Wyle Labs., Inc.*, 437 S.E.2d 302, 304 (Ga. 1993).

100 437 S.E.2d at 304.

101 *See Stone v. Williams General Corp.*, 597 S.E.2d 456, 459 (Ga. Ct. App. 2004) (limiting access to customer documentation and instructing employees not to leave premises with documents indicative of trade secret status), *rev'd on other grounds*, *Williams Gen. Corp. v. Stone*, 632 S.E.2d 376 (Ga. 2006).

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no liability attaches unless the information has been misappropriated.[102] The Georgia Trade Secrets Act sets forth a rather lengthy definition of conduct constituting misappropriation of a trade secret. Prohibited conduct includes disclosure or use of a trade secret without express or implied consent by one who:

- used improper means to acquire knowledge of the trade secret;
- before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or
- at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was: (1) derived from a person who utilized improper means to acquire it; (2) acquired under circumstances giving rise to a duty to maintain its secrecy; or (3) derived through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.[103]

The *improper means* by which a trade secret may be acquired and, therefore, misappropriated, is defined by the Georgia Trade Secrets Act to include: "theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means."[104] *Improper means* does not include independent development or reverse engineering of a trade secret that was not acquired by misappropriation. Reverse engineering is the dismantling and examination of a publicly-available product to understand how the product is put together and operates. The statute's exclusion of reverse engineering from the definition of improper conduct is consistent with Georgia common law.[105]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Disputes sometimes arise between current or former employees and their employers regarding ideas and inventions developed during the course of the employment relationship. In Georgia, the respective rights and obligations of the parties with regard to inventions arise from the contract of employment.[106] Every patent or interest in an idea developed by the employee during employment may be assigned to the employer without restriction.[107] Further, the employer may require employees to execute an invention assignment agreement as a condition of hire.[108]

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[102] *See Taylor & Rozier, Inc. v. Anderson*, 440 S.E.2d 767, 768 (Ga. Ct. App. 1994) (no evidence of misappropriation or use of improper means to obtain information).

[103] GA. CODE ANN. § 10-1-761(2).

[104] GA. CODE ANN. § 10-1-761(1); *Opteum Fin. Servs., L.L.C. v. Homestar Mortg. Servs., L.L.C.*, 406 F. Supp. 2d 1378 (N.D. Ga. 2005).

[105] GA. CODE ANN. § 10-1-761(1).

[106] *Landrum v. J.F. Pritchard & Co.*, 228 S.E.2d 290, 291 (Ga. Ct. App. 1976).

[107] 228 S.E.2d at 291.

[108] *See, e.g.*, *Georgia-Pac. Corp. v. Lieberam*, 959 F.2d 901, 907 (11th Cir. 1992).

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3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[109]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[110]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[111]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[112]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language

[109] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[110] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[111] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[112] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	common to migrant or seasonal agricultural workers who are not fluent or literate in English.[113]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[114]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[115]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[116]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[117] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[118]

[113] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[114] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[115] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[116] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[117] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[118] 41 C.F.R. §§ 60-300.44, 60-741.44.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[119]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[120]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[121]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[122]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[123]

[119] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[120] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[121] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[122] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[123] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[124]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[125] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[126]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[127]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where

[124] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[125] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[126] 29 C.F.R. § 13.5.

[127] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
(contracts entered into on or after January 30, 2022)	accessible to employees, summarizing the applicable minimum wage rate and other required information.[128]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Drug-Free Workplace: Current Listing of Providers	Employers that are subject to the Drug-Free Workplace program but do not maintain an employee assistance program must post a conspicuous notice with a current listing of all providers of such assistance (abuse programs, mental health providers, etc.) in the area. The listing must be updated annually in July and include accurate contact information for all providers.[129]
Drug-Free Workplace: Notice of Drug Testing Policy	Employers subject to the Drug-Free Workplace program that conduct drug testing must conspicuously post a copy of the substance abuse testing policy on the employer's premises.[130]
Fair Employment Practices: Equal Pay for Equal Work Act	Employers with 10or more employees engaged in intrastate commerce must post a notice (DOL-4107) in a conspicuous place concerning the equal pay law.[131]
Human Trafficking Resource Center Poster	Certain businesses must post a notice concerning human trafficking in each public bathroom as well as near the public entrance. This requirement applies to adult entertainment establishments, bars, airports, passenger rail stations, bus stations, truck stops, emergency rooms, urgent care centers, farm labor contractors and day haulers, privately operated job recruitment centers, safety rest areas along Georgia highways, hotels, and establishments that offer massage or bodywork services by a massage therapist or a person who is not a

[128] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[129] GA. CODE ANN. § 34-9-416. Employers must create their own form to satisfy this posting requirement.

[130] GA. CODE ANN. § 34-9-414. Employers must create their own form to satisfy this posting requirement.

[131] GA. CODE ANN. § 34-5-7. This poster is available in English at http://dol.georgia.gov/documents/poster-equal-pay-equal-work-act-85x11 and in Spanish at http://dol.georgia.gov/sites/dol.georgia.gov/files/related_files/document/dol4107sp.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	massage therapist, government buildings, convenience stores, manufacturing facilities, and medical offices. The poster must be displayed in English, Spanish, and any other language deemed appropriate by the Georgia Bureau of Investigation.[132]
Unemployment Insurance: Benefits for Employees	Employers covered by the Georgia Employment Security statute must post and maintain, in accessible locations, a poster (DOL-810) notifying employees about unemployment insurance and how to file claims.[133]
Unemployment Insurance: Employer Vacation	Employers covered by the Georgia Employment Security statute must post and maintain, in accessible locations, a poster (DOL-154) concerning when unemployment insurance is not payable (*i.e.*, while on paid vacation, etc.).[134]
Wages, Hours & Payroll: Minimum Wage	With certain exceptions, employers not subject to the FLSA must post conspicuous copies of state regulations or orders, if any.[135]
Workers' Compensation: Bill of Rights for the Injured Worker; Panel of Physicians/MCO Poster	All employers with three or more employees, with some exceptions, must post two forms provided by the State Board of Workers' Compensation. Employers must post: (1) the Bill of Rights poster (WC-BOR); and (2) either the Panel of Physicians (WC-P1) or Managed Care Organization (MCO) (WC-P3) poster, depending on which applies to the employer.[136]
Workplace Safety: No Smoking Signs	All employers with areas subject to the Georgia Smoke Free Air Act must post notice in all areas where smoking is prohibited. Prospective employees must be notified of the Georgia prohibition on smoking in enclosed workspaces. "No smoking" signs, or the international symbol thereof should be posted.[137]

[132] GA. CODE ANN. § 16-5-47. This poster is available at https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/human%20trafficking%20post%209-13-13.pdf.

[133] GA. COMP. R. & REGS. 300-2-7-.15. This poster is available in English at http://dol.georgia.gov/sites/dol.georgia.gov/files/related_files/document/dol810.pdf and in Spanish at http://dol.georgia.gov/sites/dol.georgia.gov/files/related_files/document/dol810sp.pdf.

[134] GA. COMP. R. & REGS. 300-2-7-.15. This poster (DOL-154) is available in English at http://dol.georgia.gov/sites/dol.georgia.gov/files/related_files/document/dol154.pdf and in Spanish at http://dol.georgia.gov/sites/dol.georgia.gov/files/related_files/document/dol154sp.pdf.

[135] GA. CODE ANN. §§ 34-4-3, 34-4-5.

[136] GA. CODE ANN. §§ 34-9-81.1, 34-9-201. This poster is available at https://sbwc.georgia.gov/forms/board-forms.

[137] GA. CODE ANN. §§ 31-12A-5 to 31-12A-8. Employers must identify their own form to satisfy this posting requirement.

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3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[138]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[139]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[140]	For the full period the plan or system is in effect, and for at least 1 year after its termination.

[138] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[139] 29 C.F.R. § 1627.3(b).

[140] 29 C.F.R. § 1627.3(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[141]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[142]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[143]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner;	At least 3 years following the date on which the polygraph examination was conducted.

[141] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[142] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[143] 29 C.F.R. § 1602.7.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[144]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[145]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[146]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[147]	At least 2 years.
Fair Labor Standards Act	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*	3 years from the last day of entry.

[144] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[145] 29 U.S.C. § 1027.

[146] 29 C.F.R. § 1620.32(a).

[147] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Payroll Records	• full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19 • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[148] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;	

[148] 29 C.F.R. §§ 516.2, 516.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[149]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19 • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[150]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms;	At least 3 years from the last effective date.

[149] 29 C.F.R. § 516.28.

[150] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[151]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[152]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the	At least 3 years.

[151] 29 C.F.R. § 516.5.

[152] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing	

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[153]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[154]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[155]	3 years after the date of hire or 1 year following

[153] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[154] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[155] 8 C.F.R. § 274a.2.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[156]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[157]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[158]	As long as it is in effect and at

[156] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[157] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[158] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[159]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used.	At least 30 years.

[159] 26 C.F.R. § 31.6001-4.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Exceptions to this requirement include: • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[160]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[161]	Duration of employment plus 30 years.

[160] 29 C.F.R. § 1910.1020(d).

[161] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[162]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301Incident Report; and • old 200and 101Forms.[163]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[164]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later."

[162] 29 C.F.R. § 1910.1020(d).

[163] 29 C.F.R. §§ 1904.33, 1904.44.

[164] 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[165]	If the contractor has fewer than 150employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and	Until final disposition of the complaint, compliance review or action.

[165] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[166]	
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[167]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be	During the course of the covered contract as well as after the end of the contract.

[166] 41 C.F.R. §§ 60-1.12, 60-741.80.

[167] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[168]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and	At least 3 years after the work.

[168] 29 C.F.R. § 13.25.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• worker or employee employed in conjunction with the project.[169]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[170]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[171]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

[169] 29 C.F.R. § 5.5.

[170] 29 C.F.R. § 4.6.

[171] 41 C.F.R. § 50-201.501.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Discrimination Claims	Employers must make and keep records reasonably necessary to determine whether an unlawful practice has been or is being committed.[172]	None specified.
Fair Employment Practices: Apprenticeship or Training Programs	Employers that control apprenticeship or other training programs must keep all records necessary to further the fair employment practices law, including a list of applicants who wish to participate in the program and the chronological order in which applications were received.[173]	None specified.
Income Tax	*Employers must keep accurate records relating to the withholding of taxes, including:* • all remuneration paid to employees, including remuneration in forms other than cash; and • refunds.[174]	4 years after the date the tax is due or the date the tax is paid, whichever is later.
Unemployment Compensation	*Employers must keep true and accurate records concerning their unemployment obligations, including the following information with respect to each employee:* • name; • Social Security number; • states in which services are performed; • date of hire, rehire, or return to work after temporary layoff; • date of and reason for separation from work; • remuneration paid and date of payment, showing separately payment in cash and payments in other than cash, and including special payments such as bonuses; • amounts paid as reimbursement for business expenses including date of payment, amounts paid, and amount of expenses actually incurred and accounted for by the employee; • method by which remuneration is computed (*e.g.*, weekly, daily, hourly, or by piece) and rate of payment; • if the employee spends performs exempt and nonexempt services, time spent doing each; • beginning and ending date of each pay period;	Not less than 4 years after the calendar year in which the remuneration with respect to the services was paid or, if not paid, due.

[172] GA. CODE ANN. § 45-19-43.

[173] GA. CODE ANN. § 45-19-43; *see* GA. COMP. R. & REGS. 186-1-.09. Records required under this section must conform as closely as practicable to similar records required by federal law and to customary record-keeping practice.

[174] GA. CODE ANN. § 48-7-111.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total amount of remuneration paid in each quarter; • records showing payment per week, weeks of less than full-time employment, and time lost due to employee's unavailability for work; • address of each branch, office, etc. of the employer; • nature of the employer's business; • number of person's employed; and • wages paid at each branch, office, etc.[175]	
Wages, Hours & Payroll	*Employers must keep true and accurate records, including the following information with respect to each employee:* • name, address, and occupation; • daily and weekly hours worked; and • wages paid each pay period.[176]	1 year after the date of the record, though 2 years is recommended.
Workers' Compensation	Employers must keep records relevant to the payment of workers' compensation, including records of "all injuries, fatal or otherwise," suffered by employees in the course of their employment.[177]	None specified.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Georgia law does not address access to personnel files for private-sector employees.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see 1.3.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see 1.3.

[175] GA. CODE ANN. § 34-8-121; GA. COMP. R. & REGS. 300-2-6-.01.

[176] GA. CODE ANN. §§ 34-2-11, 34-4-5.

[177] GA. CODE ANN. § 34-9-12.

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3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Private employers in Georgia are not prohibited from conducting drug or alcohol tests on their employees, although employee privacy rights may be implicated. Public employers, however, must comply with federal constitutional restraints on their conduct, since a urinalysis for drug or alcohol testing purposes has been defined as a *search* within the meaning of the Fourth Amendment.[178] Georgia permits drug testing by government contractors, encourages private employers to establish a drug-free workplace program, and requires drug testing for "high-risk" public jobs.

Georgia's Drug-Free Workplace Act. Under the Georgia Drug-Free Workplace Act, persons contracting with a government agency must provide a drug-free workplace for employees as a condition of any contract.[179] Government contractors must provide certification to state agencies that a drug-free workplace will be provided before execution of a contract.[180] Although the Act does not specifically provide for drug testing, it provides that contractors are not limited in implementing additional policies and procedures to achieve and maintain a drug-free workplace.[181]

As an incentive to maintain a drug-free workplace, the Georgia legislature enacted a statute in 1993 granting private employers that establish and maintain a drug-free workplace program in compliance with the Act a discount on workers' compensation insurance.[182] Requirements for new hire documentation, as well as the posting and notification requirements, related to this Act are discussed in **2.1(b)** and **3.1(a)**, respectively.

High-Risk Jobs. State employees working in high-risk jobs are subject to random testing for the use of illegal drugs.[183] *High-risk work* is defined as those duties in which inattention to duty or errors in judgment have the potential for resulting in significant risk of harm to the employee, other employees or the general public.[184] The head of each state agency determines which jobs are considered high risk. A state employee who performs high-risk work and refuses to be tested or tests positive for illegal drugs must be terminated from employment.[185] However, the agency may allow an employee to resign rather than be fired, so long as the individuals employment is terminated.[186] Nevertheless, the agency is not required to accept an employee's resignation in lieu of dismissal.[187]

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[178] *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).

[179] GA. CODE ANN. § 50-24-3(a)(1).

[180] GA. CODE ANN. § 50-24-4.

[181] GA. CODE ANN. § 50-24-6.

[182] GA. CODE ANN. § 33-9-40.2.

[183] GA. CODE ANN. § 45-20-91(a).

[184] GA. CODE ANN. § 45-20-90(3).

[185] GA. CODE ANN. § 45-20-93.

[186] 1992 Ga. Op. Att'y Gen. 92-25, 1992 WL 478520 (Ga. Sept. 30, 1992).

[187] 1998 Ga. Op. Att'y Gen. 98-6.

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3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[188]

3.2(c)(ii) *State Guidelines on Marijuana*

In Georgia, Haleigh's Hope Act allows the prescription, use and possession of 20fluid ounces or less of a cannabis extract, referred to as "THC oil," (no more than 5% THC and an equal or greater amount of cannabidiol) if the individual is registered and has cancer, ALS, seizure disorders related to epilepsy or trauma-related head injuries, mitochondrial disease, or severe or end-stage MS, Parkinson's disease, or sickle cell disease. The law does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in any form.[189]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in the individual's gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[190]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[191]

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[188] 21 U.S.C. §§ 811-12, 841 *et seq*.

[189] GA. CODE ANN. §§ 16-12-190, 16-12-191.

[190] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[191] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

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3.2(d)(ii) *State Data Security Breach Guidelines*

Georgia law requires that when a covered entity discovers or is notified of a breach of the security system where unencrypted personal information was, or is reasonably believed to have been acquired by an unauthorized person, notice is required.[192]

Covered Entities & Information. The Georgia law covers "data collectors" and "information brokers." *Data collectors* mean any state or local agency or subdivision thereof (excluding government agencies whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or for purposes of providing public access to court records or to real or personal property information). An *information broker* means any person or entity who, for monetary fees or dues, engages in whole or in part in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated third parties.

Content & Form of Notice. Notice may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $50,000;
  - the affected class of persons to be notified exceeds 100,000; or
  - the covered entity does not have sufficient contact information.

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.

A covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is compliant with this statute. The policy must afford the same or greater protection to the affected individuals as this statute.

Timing of Notice. Notice must be made without unreasonable delay. However, notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation;
- a covered entity needs time to determine the nature and scope of the breach; or
- a covered entity needs time to restore the reasonable integrity, security, and confidentiality of the data system.

[192] GA. CODE ANN. §§ 10-1-910 *et seq.*

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Additional Provisions. If more than 10,000 persons at a single time will be notified, then the covered entity must also notify all nationwide consumer reporting agencies of the timing, distribution, and content of the notices.[193]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[194] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[195]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[196]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[197]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[198] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

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193 GA. CODE ANN. § 10-1-912.

194 29 U.S.C. § 218(a).

195 29 U.S.C. § 206.

196 29 U.S.C. §§ 203, 206.

197 29 U.S.C. § 3(m)(2)(B).

198 29 U.S.C. § 207.

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3.3(b) *State Guidelines on Minimum Wage Obligations*

When resolving any question about an employee's wages, Georgia employers must consider their obligations under state law in addition to an employer's minimum wage and overtime obligations under federal law. Georgia has left most of the regulation of compensation to the federal government, and even in those limited areas where Georgia has imposed requirements, the applicable federal laws generally are more demanding. Because an employer must determine which law imposes the more stringent wage obligation and apply the more demanding standard, federal law generally overrides Georgia wage law.

3.3(b)(i) *State Minimum Wage*

If covered by the FLSA, an employer must pay nonexempt employees at least $7.25 per hour. However, if not covered by the FLSA, an employer may pay employees the Georgia minimum wage of $5.15 per hour.[199]

3.3(b)(ii) *Tipped Employees*

Georgia has no state minimum wage provision concerning tipped employees. Employers covered by the FLSA should consult the federal provisions.

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

According to state law, the minimum wage provisions do not apply to employers covered by the FLSA if the federal minimum wage rate exceeds the state rate. The current federal minimum wage, $7.25 per hour, *does* exceed the state rate, so the exemption applies.[200]

In addition, the Georgia state minimum wage provisions do not apply if:

- the employer has sales of $40,000 per year or less;
- the employer has five employees or less;
- the employer employs domestic employees;
- the employer is a farm owner, sharecropper, or land renter;
- the employee's compensation consists wholly or partially of gratuities;
- the employee is a high school or college student;
- the employee is employed as a newspaper carrier; or
- the employee is employed by a nonprofit child-caring institution or long-term care facility serving children or mentally disabled adults who are enrolled and reside in residential facilities of the institution, provided that the employee also resides in such facilities, receives board and lodging from the facility without cost, and receives annual compensation of at least $10,000.[201]

[199] GA. CODE ANN. § 34-4-3.

[200] GA. CODE ANN. § 34-4-3.

[201] GA. CODE ANN. § 34-4-3(b).

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3.3(c) *State Guidelines on Overtime Obligations*

Georgia does not have a separate overtime provision. Therefore, the payment of overtime in Georgia is regulated by the FLSA, which establishes a 40-hour overtime standard for covered employees.

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[202] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[203]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[204] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[205] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[206] Exemptions apply for smaller employers and air carriers.[207]

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[202] 29 C.F.R. § 785.19.

[203] 29 C.F.R. § 785.18.

[204] 29 U.S.C. § 218d.

[205] 29 U.S.C. § 218d(b)(2).

[206] 29 U.S.C. § 218d(a).

[207] 29 U.S.C. § 218d(c), (d).

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The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[208] Lactation is considered a related medical condition.[209] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[210] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

There are no generally applicable meal or rest period requirements for adults in Georgia.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no generally applicable meal or rest period requirements for minors in Georgia.

3.4(b)(iii) *Lactation Accommodation Under State Law*

An employer must provide reasonable break time to an employee who desires to express breast milk during work hours. Any such break time must be paid at the employee's regular rate of compensation. If the employee is paid on a salary basis, the employer cannot require the salaried employee to use paid leave, nor may the employer reduce the employee's salary. However, an employer is not required to provide paid break time to an employee on any day that an employee is working away from any of the employer's worksites. The employer must also provide a private location, other than a restroom, where the employee can express breast milk in privacy. However, an employer that employs fewer than 50employees is not subject to the lactation accommodation requirements if accommodating an employee would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.[211]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[212] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[213]

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[208] 42 U.S.C. § 2000gg–1.

[209] 29 C.F.R. § 1636.3.

[210] 29 C.F.R. § 1636.3.

[211] GA. CODE ANN. § 34-1-6.

[212] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[213] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer

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As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

Georgia law does not define what work activities are considered to be compensable activities. Further, subject to a few exceptions, Georgia places no limitation on the number of hours most employees can be required to work. All employees of cotton or woolen manufacturing establishments, except engineers, firefighters, watchmen, mechanics, teamsters, yard employees, clerical personnel, and all help that may be needed to clean up and make necessary repairs or changes to the machinery, may not work in excess of 10 hours per day, or in the alternative, more than 60 hours per week. However, the statute provides that this hour limitation should not prevent employees from making up lost time, not to exceed 10 days, caused by accidents or other unavoidable circumstances.[214] Violators of this provision are subject to a fine of between $20 and $500 for each violation.[215]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[216] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[217] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

Georgia's statutes regulating minors in the workplace are very similar to the provisions of the FLSA. The restrictions on employment of minors are roughly broken down by age and type of work.

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requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[214] GA. CODE ANN. § 34-3-1.

[215] GA. CODE ANN. § 34-3-4.

[216] 29 C.F.R. §§ 570.36, 570.50.

[217] 29 C.F.R. § 570.6.

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3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Georgia restricts the employment of persons under the age of 16by age and by the type of job (see Table 9).

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 16	*Children under the age of 16are precluded from working in occupations connected with:* • power-driven machinery; • automobiles, trucks, tractors, motorcycles, locomotives, or any other motorized vehicles; gasoline service stations where motor vehicles are serviced by checking batteries, radiator, dispensing gasoline, oil, changing tires, lubricating, or general repair work, including garages; • use of hand or powered portable tool or equipment peculiar to or generally identified with the building and trades industry including pressure contained vessels; • butchering, slaughtering meat (including poultry and seafood), processing, rendering, or freezing and packaging same; • retail and wholesale stores where employment requires close proximity to hazardous fixtures, such as open boilers, deep fat fryers; and, demonstrable merchandise, such as: electric powered fans, guns, knives, etc.; • railroads, vessels, or boats; • unguarded gears; • dangerous poisonous gases or acids; any operation where dust or lint injurious quantities are present; • scaffolding or construction; • communication or public utilities; • freezers and meat coolers; • loading and unloading goods to or from trucks, railroad cars, conveyors, etc.; • warehouses; • explosives; • logging and sawmilling; • radioactive substances; • wrecking, ship-breaking, roofing, or demolition; • excavations and tunneling; • mines, coke breakers, coke ovens, or quarries; or • any other occupation that a reasonable person in good conscience would consider dangerous to the life, limb, or injurious to the health and/or morals of the minor.[218]

[218] GA. CODE ANN. §§ 39-2-1, 39-2-2. GA. COMP. R. & REGS. 300-7-2-.01.

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Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 12	In addition to the restrictions for minors under age 16 no minor under age 12 may work in gainful employment unless the work is in agriculture, domestic service in private homes, or employment by a parent or guardian.[219]

Restrictions on Selling or Serving Alcohol. In Georgia, persons under age 18 may not dispense, serve, sell or take orders for alcoholic beverages. Persons under age 18who are employed in supermarkets, convenience stores, breweries or drugstores may sell or handle alcoholic beverages which are sold for consumption off the premises.[220]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

In general, a minor under the age of 16 is not permitted to work:

- between the hours of 9:00 P.M. to 6:00 A.M. unless otherwise specifically allowed by the child labor laws;[221]
- in any gainful occupation during the hours when public or private schools are in session;[222] or
- in any gainful occupation for more than four hours on any day in which the school attended by the minor is in session, more than eight hours on days other than school days, or more than 40 hours in any one week.[223]

However, minors under the age of 16 may sell or deliver newspapers in residential areas starting at 5:00 A.M. (but not after 9:00 P.M.) provided the work is not performed during school hours.[224]

3.6(b)(iii) *State Child Labor Exceptions*

Minors aged 14 years or older may work during school vacation months in the care of lawns and gardens, provided the employer provides the minor with accident and sickness insurance or workers' compensation insurance, or a plan of insurance provided by the employer.[225] Special rules also apply for minors employed as actors or performers.[226]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

All individuals between the ages of 12 and 16 who wish to work must obtain an employment certificate from the school superintendent. This certificate must show the true age of the minor and must verify that the minor is physically fit to engage in the employment sought to be obtained.[227] The certificate must be

[219] GA. CODE ANN. § 39-2-9.

[220] GA. CODE ANN. § 3-3-24.

[221] GA. CODE ANN. § 39-2-3.

[222] GA. CODE ANN. § 39-2-4.

[223] GA. CODE ANN. § 39-2-7.

[224] GA. CODE ANN. § 39-2-6.

[225] GA. CODE ANN. § 39-2-11.1.

[226] GA. CODE ANN. § 39-2-18.

[227] GA. CODE ANN. § 39-2-11(a).

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accompanied by a letter from the school's administrator indicating that the minor is enrolled in school full-time and has an attendance record in good standing. This letter must be updated every January until the minor turns age 16 The certificate and letter must be kept in the minor's personnel file.[228]

To obtain an employment certificate, the issuing officer must receive a certified copy of a birth certificate or birth registration card, as well as a statement from the prospective employer indicating their intention to employ the minor immediately after being furnished with the certificate, and describing the type of employment offered.[229] Upon termination of employment of any minor between 12and 16 years of age, the employer must return the employment certificate to the issuing officer within five days. The certificate must also be returned when the minor has failed to appear for work for a period of 30 days. Once the certificate is returned, the minor must reapply for another certificate if future employment is desired.[230]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Child Labor Section of the Georgia Department of Labor enforces the state's child labor laws. An employer that violates these laws is guilty of a misdemeanor and an injunction preventing that person or business from continuing to employ the minor may be issued.[231]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[232]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[233]

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[228] GA. CODE ANN. § 39-2-11(e)(1).

[229] GA. CODE ANN. § 39-2-11(c).

[230] GA. CODE ANN. § 39-2-13.

[231] GA. CODE ANN. §§ 39-2-20 to 39-2-21.

[232] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[233] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

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According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[234]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[235] The "prepaid rule" regulation_ defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[236]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[237] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[238]

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[234] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[235] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[236] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[237] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[238] 12 C.F.R. § 1005.18.

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The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[239]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[240]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[241] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[242] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work

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[239] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[240] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[241] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[242] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

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uniforms,[243] tools and equipment,[244] and business transportation and travel.[245] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[246]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[247]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[248]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[249]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[250]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[251] or

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[243] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[244] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[245] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[246] 29 C.F.R. § 778.217.

[247] 29 C.F.R. § 531.38.

[248] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[249] 29 C.F.R. § 531.40.

[250] 29 C.F.R. § 531.40.

[251] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

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- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[252]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[253]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[254] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[255]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[256]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or

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[252] 29 C.F.R. § 825.213.

[253] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[254] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[255] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[256] 29 C.F.R. § 531.36.

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increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[257]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[258]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. In Georgia, wages may be paid by cash, check, or—with the employee's consent—via direct deposit or a payroll card account. Checks and other wage payment instruments must be negotiable and payable in cash, on demand and without discount, at an established place of business in the United States, the name and address of which must appear on the instrument. The form of payment wages is at the employer's discretion.[259]

Direct Deposit. Mandatory direct deposit is not permitted in Georgia. However, with an employee's consent, payments may be made by credit transfer to an employee's account with a financial institution authorized by federal or state regulators to receive deposits in the United States.[260]

Payroll Debit Card. Payroll card accounts are an acceptable method of wage payment in Georgia. A *payroll card account* is an account established by an employer to which electronic fund transfers of wages are made on a recurring basis, whether the account is operated or managed by the employer or a third-party payroll processor, a depository institution, or any other person.[261] An employer electing to pay wages via payroll card account must provide the employee with a written explanation of any fees associated with the payroll card account offered to the employee. For all employees employed on the date a person, firm, or corporation elects to make such wage and salary payments by using credit to a payroll card account, such written explanation must be provided at least 30 days prior to the date such payroll card account is to become available. For any employee hired after the date of such election, the written explanation must be provided at the time of hiring.[262]

3.7(b)(ii) *Frequency of Payment Under State Law*

Although an employer may choose any dates or day of the week on which to pay its employees, Georgia law requires that the pay period be divided into at least two equal periods within the month, and that the payments made on each such date correspond to the full net amount of wages or earnings due the employees for the period for which the payment is made.[263]

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[257] 29 C.F.R. § 531.37.

[258] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[259] GA. CODE ANN. §§ 34-7-2, 34-7-3.

[260] GA. CODE ANN. § 34-7-2(b).

[261] GA. CODE ANN. § 34-7-2(a).

[262] GA. CODE ANN. § 34-7-2(c).

[263] GA. CODE ANN. § 34-7-2.

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3.7(b)(iii) *Final Payment Under State Law*

Georgia law does not specify when final wages must be paid to discharged employees or employees who voluntarily quit. It is recommended, however, that employers pay final wages no later than the next regularly scheduled pay date following the employee's termination or resignation.

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Georgia does not require employers to furnish their employees with earning statements each pay period. In the absence of an applicable state law, an employer would be subject only to the relevant federal law. Although federal law does require employers to provide W-2 forms once a year, the law does not generally require statements with each wage payment.

3.7(b)(v) *Wage Transparency*

Georgia law does not address whether an employer may prohibit employees from disclosing their wages or from discussing and inquiring about the wages of other employees.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

There are no general notice requirements under Georgia law regarding making a change to regular paydays or an employee's rate of pay. Employers, however, should consider providing employees with advance written notice before a change occurs.

3.7(b)(vii) *Paying for Expenses Under State Law*

In Georgia, there is no general obligation to indemnify an employee for business expenses.

3.7(b)(viii) *Wage Deductions Under State Law*

Georgia has very few regulations concerning wage deductions. State law, however, expressly requires employers to obtain an employee's consent before deducting wages (or other earnings) for the purpose of paying union dues. Deduction authorizations are required to be in writing, but may be revoked at any time if the employee no longer wishes to belong to the union.[264] Collective bargaining agreements entered into pursuant to the Railway Labor Act, as amended, or any professional association whose membership is exclusively composed of educators, law enforcement officers, or firefighters not engaged or engaging in contracting or collective bargaining are exempt from these provisions.[265] Also, note that a federal district court has held that this right-to-work statute, which requires that checkoff authorizations concerning payroll deductions for union dues be revocable at will, is preempted by the NLRA, as amended by the Taft-Hartley Act, which gives unions the ability to bargain for irrevocable authorizations not to exceed one year.[266]

In the absence of express regulations, employers should err on the side of caution and obtain an employee's consent before implementing a deduction. Employers generally may not deduct wages in a manner that conflicts with the minimum wage requirements of the FLSA.

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[264] GA. CODE ANN. § 34-6-25.

[265] GA. CODE ANN. § 34-6-25.

[266] *Georgia State AFL-CIO v. Olens*, 194 F. Supp. 3d 1322, 1329-31 (N.D. Ga. 2016).

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3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Georgia statutes that regulate the deduction of wages pursuant to a garnishment order are similar to the federal statutes.[267] Employers may not discharge an employee based on a garnishment of the employee's wages for any one indebtedness,[268] or because of an income deduction order for spousal or child support.[269] Violation of the latter provision subjects the employer to a fine of up to $250 for the first violation and up to $500 for each subsequent violation.[270] There is no penalty provided, however, for violation of the former provision.

Employers are also prohibited by statute from discharging an employee solely because of the execution of a wage assignment to pay for child support.[271] This statute provides that the employer may collect up to $25 for the first income deduction and up to $3 for each subsequent deduction.[272]

Georgia law caps the amount of wages that can be garnished. The garnishment of an individual's wages may not exceed the lesser of: (1) 25% of an employee's disposable earnings for the week; or (2) the amount by which the employee's disposable earnings for the week exceeds $217.00.[273] Disposable earnings are defined as an employee's wages after deductions required by law have been withheld.[274] Garnishment orders for child support or alimony may withhold up to 50% of an employee's disposable earnings for a week.[275]

Both federal and state law protect retirement plans from garnishment, except for alimony and child support, until such benefits or funds have been actually received by the debtor beneficiary.[276] The exemption from process does not apply when the judgment is for alimony or child support.[277] Also, the exemption does not prevent the attachment of welfare benefits, such as medical, accident, disability, death and other benefits in the hands of an administrator or trustee.[278]

The employer must provide certain forms by regular mail to the defendant/employee who is the subject of the garnishment order: (1) the Notice to Defendant of Right Against Garnishment of Money, Including Wages, and Other Property; and (2) the Defendant's Claim Form.[279]

The employer/garnishee must file an answer with the court not sooner than 30 days nor more than 45 days after the service of the summons of garnishment, accompanied by the money admitted in the answer

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[267] *See* 15 U.S.C. §§ 1672-1674.

[268] GA. CODE ANN. § 18-4-7.

[269] GA. CODE ANN. § 19-6-33(j).

[270] GA. CODE ANN. § 19-6-33(j).

[271] GA. CODE ANN. § 19-11-20.

[272] GA. CODE ANN. § 19-11-20.

[273] GA. CODE ANN. § 18-4-20(d).

[274] GA. CODE ANN. § 18-4-20(a)(1).

[275] GA. CODE ANN. § 18-4-20(f).

[276] 29 U.S.C. § 1056(d)(3); GA. CODE ANN. § 18-4-22(a).

[277] 29 U.S.C. § 1056(d); GA. CODE ANN. § 18-4-22(b).

[278] 29 U.S.C. § 1051; GA. CODE ANN. § 18-4-22(c).

[279] GA. CODE ANN. § 18-4-82.

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to be subject to garnishment.[280] The answer must describe the money or other property subject to garnishment. If the money is wages, the employer must state specifically when the wages were earned and whether they were earned as daily, weekly, or monthly wages.[281] If the employer has been served with summons in more than one garnishment case involving the same employee/defendant, the employer's answer must state that the wages are delivered to the court subject to the claims of all the cases and give the numbers of all such cases in each answer.[282] The employer must also serve a copy of the answer on the plaintiff/creditor or their attorney.[283] The employer as garnishee is entitled to its actual reasonable expenses, including attorneys' fees, in making a true answer of garnishment.[284]

If the employer fails to timely answer the garnishment, a default judgment may be taken against it after 15 days have passed, rendering the employer liable for the employee's debt in full.[285] The employer may open the default as a matter of right within 15 days of the default by paying the cost of the action and filing an appropriate answer. The law also provides for an employer to reduce the amount owed after a default.[286]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

If an employer fails to comply with the state's minimum wage requirements, the law allows aggrieved employees, at any time within three years, to bring a private cause of action in superior court for the recovery of the difference between the amount paid to the employee and the minimum wage, plus an additional amount equal to the original claim, which shall be allowed as liquidated damages, together with costs and such reasonable attorneys' fees as may be allowed by the court. A contract or an agreement between an employer and employee, or any acceptance of a lesser wage by an employee, does not bar the action.[287]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[288] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[289] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state

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[280] GA. CODE ANN. § 18-4-10.

[281] GA. CODE ANN. § 18-4-82.

[282] GA. CODE ANN. §§ 18-4-82, 18-4-84.

[283] GA. CODE ANN. § 18-4-83.

[284] GA. CODE ANN. § 18-4-14.

[285] GA. CODE ANN. § 18-4-21.

[286] GA. CODE ANN. § 18-4-24.

[287] GA. CODE ANN. § 34-4-6.

[288] 29 U.S.C. § 1002.

[289] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-

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regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[290]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Georgia does not require employers to give their employees vacation. However, if the employer offers a vacation plan to an employee or prospective employee as part of an express or implied employment agreement, normal contractual rules apply and an enforceable obligation may arise.[291] Georgia does not have any requirement for payment of accrued vacation to terminated employees, and courts have upheld as enforceable a handbook provision providing for forfeiture of accrued vacation benefits.[292]

However, once an employer has created an "additional compensation plan" (such as a vacation policy), that plan is regulated by Georgia law. Georgia's Court of Appeals has held that "[i]t is the accepted law of this state that an additional compensation plan offered by an employer and impliedly accepted by an employee, by remaining in employment, constitutes a contract between them, whether the plan is public or private, and whether or not the employee contributes to the plan."[293] In other words, when an employer grants employees vacation time (or other benefits), the promise of vacation time is interpreted as a contract between the employer and the employee.[294]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

In Georgia, employers that operate on Saturday or Sunday must reasonably accommodate employees whose habitual day of worship falls on one of these workdays. This day of worship provision does not apply to:

- agricultural operations such as farming, animal, and poultry husbandry, forestry, and allied activity;
- the practice of healing arts by persons licensed or authorized under state law; or

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ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[290] 490 U.S. 107, 119 (1989).

[291] *Anderson v. Chatham*, 379 S.E.2d 793, 799 (Ga. Ct. App. 1989); *see also Superior Ins. Co. v. Browne*, 395 S.E.2d 611 (Ga. Ct. App. 1990).

[292] *Rybos v. St. Mary's Hosp.*, 393 S.E.2d 739, 741 (Ga. Ct. App. 1990).

[293] *Fletcher v. Amax, Inc.*, 288 S.E.2d 49, 51 (Ga. Ct. App. 1981).

[294] *See*, *e.g.*, *Georgia Ports Auth. v. Rogers*, 327 S.E.2d 511 (Ga. Ct. App. 1985) (holding that an employee was entitled to disability and sick day benefits as outlined in the employer's employee manual).

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- a person, nonprofit organization, or nonprofit corporation, if its activity is conducted solely for charitable or religious purposes.[295]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[296] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[297] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[298] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State and Local Guidelines on Domestic Partnerships & Civil Unions*

Couples may register as domestic partners in Athens-Clarke County, Fulton County, and the City of Atlanta. However, state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee benefit plans or state leave of absence laws.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

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[295] GA. CODE ANN. §§ 10-1-573 to 10-1-575.

[296] 29 U.S.C. § 1144.

[297] 29 U.S.C. § 1161.

[298] 29 U.S.C. § 1167(3).

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- for the birth or placement of a child for adoption or foster care;[299]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[300]
- to take medical leave when the employee is unable to work because of a serious health condition;[301]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50employees in 20or more workweeks in the current or preceding calendar year.[302] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[303] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Georgia law does not address family and medical leave for private-sector employees.

3.9(a)(iii) *State Guidelines on Kin Care Leave*

Georgia law does not address paid sick leave for private-sector employees. However, Georgia's kin care law requires an employer that provides sick leave to its employees to allow an employee to use the employee's sick leave for the care of an immediate family member.[304] The statute applies to employers of 25or more employees, but does not apply to any employer that offers its employees an employee stock ownership plan.[305]

Sick leave means time away from work by an employee, due to the employee's own incapacity, illness, or injury, for which the employee receives their regular salary, wages, or other remuneration, and does not include paid short-term or long-term disability.[306] *Immediate family member* means an employee's child,

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[299] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[300] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[301] 29 C.F.R. §§ 825.112, 825.113.

[302] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[303] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[304] GA. CODE ANN. § 34-1-10(b).

[305] GA. CODE ANN. § 34-1-10(a)(3).

[306] GA. CODE ANN. § 34-1-10(a)(5).

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spouse, grandchild, grandparent, or parent or any dependents as shown on the employee's most recent tax return.[307]

Employees are eligible for leave if they work for pay for a covered employer for at least 30 hours per week.[308] An employee is not entitled to use sick leave to care for a family member until the sick leave has been earned pursuant to the employer's policy. An employee who uses sick leave to care for an immediate family member must comply with the terms of the employer's employee sick leave policy (*e.g.*, the policy's requirements for providing notice, certification, etc.).[309]

The statute does not require an employer to create a sick leave policy. In addition, an employer is not required to allow an employee to use more than five days of earned sick leave per calendar year for the care of an immediate family member.[310]

The kin care statute does not reference any remedies or penalties for employer noncompliance, and expressly states it does not provide a private right of action.[311]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[312] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Georgia law does not address paid sick leave for private-sector employees.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions

[307] GA. CODE ANN. § 34-1-10(a)(4).

[308] GA. CODE ANN. § 34-1-10(a)(1).

[309] GA. CODE ANN. § 34-1-10(c).

[310] GA. CODE ANN. § 34-1-10(b).

[311] GA. CODE ANN. § 34-1-10(d).

[312] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

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under an employer's health or disability insurance or sick leave plan.[313] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because she is pregnant, as long as she is able to perform her job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[314] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[315] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Georgia law does not address pregnancy leave for private-sector employees.

[313] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[314] 29 C.F.R. § 825.202.

[315] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

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3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Georgia law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Georgia law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Georgia law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Employees in Georgia who are qualified and registered to vote in municipal, county, state, or federal political party primary or election must be provided up to two hours of time off work to vote. Employees must provide "reasonable notice" of their intent to vote, although no guidance is provided concerning what constitutes reasonable notice. An employer may specify when leave may be taken. The time off to vote law does not specify whether leave must be compensated; presumably, it is unpaid.[316]

This leave is required to vote either on election or primary day, or on one of the days that are designated for advance in-person voting.[317]

[316] GA. CODE ANN. § 21-2-404.

[317] GA. CODE ANN. § 21-2-404.

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3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Georgia law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[318] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[319] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. In Georgia, employers must grant employees time off for jury duty and when compelled to appear in a court action under a subpoena. Further, an employer may not discharge, discipline, penalize or threaten to penalize an employee because the employee is absent from work to attend a judicial proceeding in response to a subpoena, jury duty summons or other court order.[320]

Violation of this leave law entitles an employee to actual damages and attorneys' fees. This statute does not, however, apply to employees who are charged with a crime. Nor does it prohibit employers from requiring employees to give reasonable notification of an expected absence. The state attorney general has interpreted the statute as requiring employers to pay an employee's salary while absent for jury duty. The amount that the employee receives from the court for serving on the jury can be deducted from the employee's normal wages.[321]

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[318] 28 U.S.C. § 1875.

[319] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[320] GA. CODE ANN. § 34-1-3.

[321] 1989 Ga. Op. Att'y Gen. 89-55.

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3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Georgia law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[322]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or

[322] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

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member of the National Guard who faces recall to active duty if a qualifying exigency exists.[323] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.324 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.

2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service Leave. Private employers have a qualified duty to reinstate employees who take a leave of absence for military duty, including active state service as a member of the U.S. armed forces reserves or the National Guard of Georgia or another state. The Georgia Code stipulates that persons who provide a certificate of military service completion, remain qualified to do the job, and those who apply for reinstatement within 90 days after being relieved from the military service must be restored to the same employment position or to a position of like seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.[325]

The statute also protects individuals who must take a leave of absence from work to participate in assemblies or annual training, or to attend service schools conducted by the U.S. armed forces for a period of six months or less. To receive the same guarantees of reinstatement, these individuals must apply within 10 days of completion of the temporary service. However, these rights will not be guaranteed if the person's absence cumulatively exceeds six months during any four-year period.[326]

Assuming that an employee meets all statutory conditions, an employer is required to restore the employee to the same or like position and allow the employee to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on a leave of absence. An employer may not discharge an employee returning from leave without cause for one year after the restoration.[327]

Individuals who feel that their rights under these statutory provisions have been violated may petition the superior court of the county in which the employer resides for reinstatement. The court may compel the employer to reinstate the employee and may award back pay lost due to the employer's violation. The aggrieved individual will not be assessed fees or court costs for petitioning the court.[328]

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[323] 29 C.F.R. § 825.126(a).

[324] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[325] GA. CODE ANN. § 38-2-280(a).

[326] GA. CODE ANN. § 38-2-280(b).

[327] GA. CODE ANN. § 38-2-280(e).

[328] GA. CODE ANN. § 38-2-280(f).

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In addition, employers are prohibited from discharging, disciplining, or otherwise discriminating against employees based solely on their membership in the military.[329]

Other Military-Related Protections: Spousal Unemployment. Leaving employment to accompany a spouse who has been reassigned from one military assignment to another is deemed to have been done with good cause for purposes of unemployment benefits.[330]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

There are no statutory requirements for other categories of leave for private-sector employees in Georgia.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[331] Employers are also required to comply with all applicable occupational safety and health standards.[332] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[333] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Georgia does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Although Georgia has no comprehensive statutory scheme governing occupational safety and health, Georgia statutory and case law require employers to provide a safe workplace. The Georgia Code

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[329] GA. CODE ANN. § 38-2-280.

[330] GA. CODE ANN. § 34-8-194(1).

[331] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[332] 29 U.S.C. § 654(a)(2).

[333] 29 U.S.C. § 667(c)(2).

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has several provisions that set forth this duty. Georgia law provides that employers with eight or more employees (other than those engaged in agricultural or domestic labor) must furnish and use safety devices, adopt and use methods and processes that are reasonably adequate to ensure a safe workplace, and do anything else that is reasonably necessary to protect the life, health, safety, and welfare of employees.[334] Georgia law also imposes upon employers a duty to warn its employees of latent defects in machinery or dangers incident to employment when the employer knew or should have known of the defects or dangers.[335] Finally, Georgia courts have found that section 51-3-1 of the Georgia Code, which places a duty on occupiers of land to exercise ordinary care in keeping the premises safe, applies in the employment context.[336] The Georgia courts have also generally recognized that employers have a duty to furnish employees with a safe place to work and to exercise ordinary care to keep the workplace safe.[337]

Although an employer is required to furnish a safe place to work, Georgia courts have held that an employer is not an "absolute guarantor of a physically or emotionally 'safe' workplace."[338] The employer is only under a duty of ordinary care.[339] Ordinary care may involve warning an employee about dangers in the workplace, conducting inspections of the workplace, and maintaining the workplace and tools or machinery in a manner that allows employees to perform their jobs safely.

An employer has several defenses to a claim for failure to provide a safe workplace. First, the Georgia Code qualifies the safe workplace provision with an "equal knowledge" rule. Specifically, section 34-7-23 provides that an employee:

> assumes the ordinary risks of his employment and is bound to exercise his own skill and diligence to protect himself . . . . [I]n order that the employee may recover, it must appear that the employer knew or ought to have known of . . . the defects or danger . . . and it must also appear that the employee injured did not know and had not equal means of knowing such fact and by the exercise of ordinary care could not have known thereof.[340]

An employee is not, however, under a duty to inspect the premises, as is the employer.[341]

A second defense that may be available to an employer is preemption. Under certain circumstances, when a collective bargaining agreement is involved, the National Labor Relations Act may preempt an action for violation of the safe workplace rules. Also, the Fed-OSH Act may preempt claims related to safe workplace rules. See **LITTLER ON WORKPLACE SAFETY** for information on the Fed-OSH Act.

Finally, an employer may defend an action under the safe workplace rules by asserting the workers' compensation exclusivity defense. In general, Georgia courts have found that the Georgia Workers'

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[334] GA. CODE ANN. §§ 34-2-2, 34-2-10.

[335] GA. CODE ANN. § 34-7-20.

[336] *Moon v. Homeowners' Ass'n of Sibley Forest, Inc.*, 415 S.E.2d 654 (Ga. Ct. App. 1992).

[337] *See, e.g.*, *Dugger v. Miller Brewing Co.*, 406 S.E.2d 484 (Ga. Ct. App. 1991).

[338] *Cline v. McLeod*, 349 S.E.2d 232, 238 (Ga. Ct. App. 1986).

[339] *See, e.g.*, *Dugger*, 406 S.E.2d 484.

[340] GA. CODE ANN. § 34-7-23.

[341] *Hopkins v. Barron*, 6 S.E.2d 96 (Ga. Ct. App. 1939).

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Compensation Act precludes recovery of damages in a civil action when an employee claims that their employer failed, either negligently or willfully, to provide a safe workplace.[342]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

In Georgia, a driver may not physically hold or support a wireless telecommunication device. Drivers may not write, send, or read any text-based communication, including text messages, instant messages, email, or internet data on a wireless telecommunications device while driving.[343] The law, however, provides an exception for voice-based communication that is automatically converted into written form and any device used for navigation and using such a device for navigation of the vehicle or for global positioning system purposes.[344]

In addition, drivers of commercial vehicles may not operate a motor vehicle while holding a wireless telecommunications device to conduct a voice communication, using more than a single button to initiate or terminate a voice communication, or reaching for a wireless telecommunications device in such a manner that requires the driver to no longer be properly restrained by a safety belt.[345]

These prohibitions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, these requirements.

Under the statute, *wireless telecommunications device* means a cellular telephone, a portable telephone, a text-messaging device, a personal digital assistant, a standalone computer, a global positioning system receiver, or any other substantially similar wireless device used to initiate or receive a wireless communication with another person. In-vehicle security and navigation devices, among others, are excluded from the definition.[346]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

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[342] *See, e.g.*, *Betts v. MedCross Imaging Ctr., Inc.*, 542 S.E.2d 611 (Ga. Ct. App. 2000) (finding that employees' claims for intentional infliction of emotional distress based on the potential for future physical injury were covered by the Workers' Compensation Act, where employees alleged that employer exposed them to radiation); *Boulware v. Quicktrip Corp.*, 486 S.E.2d 662 (Ga. Ct. App. 1997) (holding that employee's only recourse for injury resulting from employer's failure to provide safe place to work is under the Workers' Compensation Act); *see also Dugger*, 406 S.E.2d 484; *Garrett v. Kmart Corp.*, 398 S.E.2d 302 (Ga. Ct. App. 1990).

[343] GA. CODE ANN. § 40-6-241.

[344] GA. CODE ANN. § 40-6-241.

[345] GA. CODE ANN. § 40-6-241.

[346] GA. CODE ANN. § 40-6-241.

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3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. Private property owners or persons in legal control of private property (*i.e.*, through a lease, rental, or licensing agreement, contract, or other agreement) have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property, except as provided below.[347]

Firearms in Company Parking Lots. An employer cannot establish, maintain, or enforce any policy or rule to search the locked privately-owned vehicles of employees or invited guests on the employer's parking lot or condition employment upon any agreement by a prospective employee that would prohibit that individual from entering or accessing the parking lot when the individual's personal vehicle contains a firearm, ammunition, or both, that is locked out of sight within the trunk, glove box, or other enclosed compartment or area, so long as the individual is a lawful weapons carrier.

These restrictions do not apply to vehicles owned or leased by the employer. Additionally, an employer may search a vehicle if there is a reasonable risk of immediate threat to human life or safety. Finally, an employer may search a vehicle with an employee's consent on probable cause that the employee unlawfully possesses employer property.

The statute does not require employers to implement security measures. Implementation of remedial security measures to provide protection to employees, customers, or other persons is inadmissible in evidence to show prior negligence or breach of duty of an employer in any action against the employer. In addition, employers are immune from liability in any criminal or civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm, including, but not limited to, the theft of a firearm from an employee's automobile, unless the employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using the firearm would commit a criminal act on the employer's premises.

The Georgia Supreme Court ruled in 2018 that the statute does not provide employers with immunity from liability for all actions an employee commits with a firearm during the course of employment. In *Lucas v. Beckman Coulter, Inc.*,[348] an employee took his firearm with him while on a service call and accidentally discharged his weapon, injuring the customer on the customer's premises. The trial and appellate courts found in favor of the employer on the grounds that Georgia Code section 16-11-135 afforded the employer immunity from liability because the customer's injuries and claims arose out of the employee's possession of a firearm, and that the shooting was not the result of a criminal act by the employee or the employer. The Supreme Court reversed, finding that there is no immunity under the statute where the employee did not enter the employer's parking lot in a vehicle that contained a firearm and the incident did not even occur on the employer's premises, but on the premises of the employer's customer. The court held that "[n]o support exists for the proposition that [16-11-135]'s purpose was to immunize employers from all firearm-related tort liability."[349]

Certain types of parking lots are also exempt from the law and include: a secure parking lot provided by the employer with restricted public access (*e.g.*, use of a gate, security officers, etc.) where the employer performs uniformed and frequent searches upon entry; jails; electric utilities; certain U.S. Department of Defense contractors; and employers with parking lots next to facilities providing natural gas, liquid

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[347] GA. CODE ANN. § 16-11-126(d).

[348] 2018 WL 1143830 (Ga. March 5, 2018).

[349] *Lucas v. Beckman Coulter, Inc.*, 2018 WL 1143830 at *3.

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petroleum, water storage, and vital law enforcement services. Employers may also be exempt from the law if they are the private-property owner of the parking lot facility.[350]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in enclosed areas within places of employments. This includes electronic smoking devices. However, employers may designate a smoking area. The location must be in a nonwork area and must maintain an independent air handling system. The smoking area must be for employees only. In addition to smoking areas, there is an exemption for common work areas, conference, and meeting rooms, and private offices in private places of employment where the public is allowed by appointment only.[351]

"No Smoking" signs must be clearly and conspicuously posted by the owner, operator, manager, or other person in control of a place of employment. The prohibition on smoking must be communicated to current and prospective employees upon application for employment. All ashtrays must be removed from nonsmoking areas and be placed a reasonable distance from all entrances to buildings.[352]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Georgia law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

In Georgia, any employer whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to have been carried out at the employee's workplace, may seek a temporary restraining order and an injunction on behalf of the employee

[350] GA. CODE ANN. § 16-11-135.

[351] GA. CODE ANN. §§ 31-12A-1 *et seq*.

[352] GA. CODE ANN. § 31-12A-8.

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prohibiting further unlawful violence or threats of violence by that individual at the employee's workplace or while the employee is acting within the course and scope of employment with the employer.[353]

Temporary Order. The employer, as the petitioner, must file a petition with the court for an injunction and an affidavit demonstrating reasonable proof that an employee has suffered unlawful violence or a credible threat of violence from the respondent and that great or irreparable harm will result to an employee if an injunction is not granted. The affidavit should also demonstrate that the employer has conducted a reasonable investigation into the underlying facts which are the subject of the petition.[354] If the court grants a temporary restraining order it remains in effect for a period not to exceed 15 days, unless otherwise modified or terminated by the court.[355]

Permanent Order. Within 10 days of filing the petition for an injunction or as soon as practical thereafter, but in no case later than 30 days after the filing, a hearing will be held on the petition for the injunction. In the event a hearing cannot be scheduled within the county where the case is pending within the 30-day period, the hearing will be scheduled and heard in another county of the circuit.[356] When the petition is filed, the respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and a notice of hearing on the petition.[357] The respondent may file a response which explains, excuses, justifies, or denies the alleged unlawful violence or credible threat of violence or may file a cross-complaint.[358]

At the hearing, the judge will hear testimony that is relevant and may make an independent inquiry. If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, the judge will issue an injunction prohibiting further unlawful violence or threats of violence at the employee's workplace or while the employee is acting within the course and scope of employment with the employer.[359]

The injunction cannot last more than three years. At any time within the three months before the expiration of the injunction, the petitioner may apply for a renewal of the injunction by filing a new petition for an injunction.[360]

Notification to Law Enforcement Agencies. When a temporary restraining order or injunction is granted, modified, or terminated, the employer or its attorney must deliver a copy, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion. Each appropriate law enforcement agency must make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.[361]

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[353] GA. CODE ANN. § 34-1-7(b); *see also* GA. CODE ANN. § 34-1-7(a)(1)-(4) (definitions).

[354] GA. CODE ANN. § 34-1-7(d).

[355] GA. CODE ANN. § 34-1-7(d).

[356] GA. CODE ANN. § 34-1-7(e).

[357] GA. CODE ANN. § 34-1-7(f).

[358] GA. CODE ANN. § 34-1-7(e).

[359] GA. CODE ANN. § 34-1-7(e).

[360] GA. CODE ANN. § 34-1-7(e).

[361] GA. CODE ANN. § 34-1-7(g).

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Where to File. Except for proceedings involving a nonresident respondent, the superior court of the county where the respondent resides has jurisdiction over these proceedings. For proceedings involving a nonresident respondent, the superior court where the petitioner's workplace is located generally has jurisdiction.[362]

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[363] (2) the Americans with Disabilities Act (ADA);[364] (3) the Age Discrimination in Employment Act (ADEA);[365] (4) the Equal Pay Act;[366] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[367] (6) the Civil Rights Acts of 1866 and 1871;[368] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[369]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[370] Employees must first exhaust their administrative remedies by filing a

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[362] GA. CODE ANN. § 34-1-7(c)(1)-(2).

[363] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[364] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[365] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[366] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[367] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[368] 42 U.S.C. §§ 1981, 1983.

[369] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[370] The EEOC's website is available at http://www.eeoc.gov/.

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complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[371]

3.11(a)(ii) *State FEP Protections*

Georgia has enacted limited statutes prohibiting unlawful discrimination in the workplace. However, the laws do not provide a comprehensive enforcement scheme of antidiscrimination provisions similar to federal law and there is no state enforcement agency. Three separate Georgia statutes prohibit discrimination on the basis of the following:

- age, if the individual is between 40and 70 years of age;[372]
- disability;[373] and
- sex, in the equal pay context.[374]

Age. The Georgia age discrimination statute covers any entity "carrying on" or "conducting within this state any business requiring the employment of labor."[375] This provision appears, therefore, to include all employers that hire labor, regardless of number, and includes individuals who hire agricultural and domestic labor. Employees between the ages of 40 and 70 years are protected under the Georgia age discrimination statute.[376]

The Georgia law prohibits any entity from refusing to hire, employ, or license any individual, or to bar or discharge any individual from employment, based *solely* upon the individual's age, when the reasonable demands of the position do not require such an age distinction.[377]

Disability. The state disability discrimination statute—the Georgia Equal Employment for Persons with Disabilities Code ("Georgia Disability Code")[378] defines *employer* as a person (or governmental unit or officer) in the state that employs 15or more individuals, or any person acting as an agent of such an employer.[379] It prohibits covered employers from discriminating against any individual with a disability with respect to wages, rates of pay, hours, or other terms and conditions of employment because of such person's disability, unless the disability restricts that individual's ability to engage in the particular job or occupation.[380]

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[371] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[372] GA. CODE ANN. § 34-1-2.

[373] GA. CODE ANN. §§ 34-6A-1 *et seq*.

[374] GA. CODE ANN. §§ 34-5-1 *et seq.*

[375] GA. CODE ANN. § 34-1-2(a).

[376] GA. CODE ANN. § 34-1-2.

[377] GA. CODE ANN. § 34-1-2.

[378] GA. CODE ANN. §§ 34-6A-1 to 34-6A-6.

[379] GA. CODE ANN. § 34-6A-2.

[380] GA. CODE ANN. § 34-6A-4.

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Sex. Georgia's Sex Discrimination in Employment Act (SDEA)[381] does not provide a general prohibition against sexual discrimination by private employers. Rather, this provision prohibits payment practices that discriminate on the basis of sex. It is discussed in more depth in **3.11(b)(ii)**.

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

Georgia does not have a state administrative agency to accept discrimination charges. Plaintiffs are instructed to file their charges of discrimination within 180 days with the federal EEOC.

Age. A violation of the Georgia age discrimination statute is a misdemeanor, punishable by a fine of $100 to $250.[382] This statute provides only for criminal penalties; there is no private cause of action for an alleged violation of this statute.[383] Notably, unlike federal law, the state statute contains no antiretaliation provision, filing requirements, or statute of limitations.[384] Similarly, Georgia's strong employment-at-will doctrine precludes an individual from using general provisions in Georgia tort statutes to bring a claim for wrongful discharge based upon age discrimination in violation of the Georgia age discrimination statute.[385] Consequently, despite the fact that Georgia prohibits discrimination based on age and despite the fact that this prohibition covers more employers than the federal Age Discrimination in Employment Act (ADEA), if an employer does not fall under the coverage of the ADEA, the individual will have no individual remedy against the employer under Georgia law. The employer may be fined for a violation of the state statute, but the individual may not recover legal or equitable damages from the employer under the statute.

Disability. The Georgia Disability Code provides a private cause of action for individuals with disabilities aggrieved by unfair employment practices.[386] An individual must file a state law claim with a state court having jurisdiction over the defendant within 180 days of the date of the alleged discriminatory conduct. The Georgia Disability Code gives the court the power to enjoin the employer from engaging in the unlawful employment practice(s), require the employer to reinstate or hire the individual, with or without back pay, and/or award other equitable relief that the court deems appropriate.[387] The court may also, in its discretion, award the prevailing party reasonable attorneys' fees (including expert fees) as part of the costs.[388]

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[381] GA. CODE ANN. §§ 34-5-1 to 34-5-7.

[382] GA. CODE ANN. § 34-1-2(b).

[383] *See*, *e.g.*, *Calhoun v. Federal Nat'l Mortg. Ass'n*, 823 F.2d 451, 455 (11th Cir. 1987) (affirming lower court decision that "[p]enal statutes in Georgia do not give rise to a private cause of action for the conduct proscribed"), *cert. denied sub nom.*, *Kasper v. Federal Nat'l Mort. Ass'n*, 484 U.S. 1078 (1988); *accord Wisdom v. M.A. Hanna Co.*, 978 F. Supp. 1471 (N.D. Ga. 1997), *aff'd*, 141 F.3d 1190 (11th Cir. 1998).

[384] *See* 29 U.S.C. §§ 623(d), 626(d)-(e).

[385] *Reilly v. Alcan Aluminum Corp*., 528 S.E.2d 238, 240 (Ga. 2000).

[386] 42 U.S.C. § 12117(a) (referring to remedies and procedures under 42 U.S.C. § 2000e-5); GA. CODE ANN. § 34-6A-6(a).

[387] 42 U.S.C. § 2000e-5(g); GA. CODE ANN. § 34-6A-6(b).

[388] 42 U.S.C. § 2000e-5(k); GA. CODE ANN. § 34-6A-6(b).

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The courts have held that there is no constitutional right to a jury trial under the Georgia Disability Code.[389] Although the court may impanel a jury to assist it in resolving a question of fact, it does not have to do so.[390]

3.11(a)(iv) *Additional Discrimination Protections*

Military Membership. Employers are prohibited from discharging, disciplining, or otherwise discriminating against employees based solely on their membership in the military.[391]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Augusta-Richmond County and Atlanta are subject to local fair employment practices ordinances.

- **Augusta-Richmond County.** Employers with 15 or more employees must extend antidiscrimination protections on the basis of: race, religion, color, national origin, age (40 years or older), sex or disability. [392]
- **Atlanta.** Employers (or the employee's designee or person acting in the employer's interests) employing at least 10 employees are subject to the following antidiscrimination protections: race; color; creed; religion; sex (including pregnancy, childbirth, and related medical conditions); domestic relationship status; parental status; familial status; sexual orientation; national origin; gender identity; gender expression; criminal history status; age; and disability.[393] Any aggrieved person may file a verified complaint with the City of Atlanta Mayor's Office of Constituent Services within 180 days from the date of the occurrence of the alleged unlawful discriminatory practice.[394]
- **Brookhaven.** Employers with one or more employees in the city are subject to the following antidiscrimination provisions: race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age (40 plus), disability, marital status, familial status, or veteran/military status. Certain non-profit private clubs and religious organizations are exempted. An individual alleging a violation of this ordinance may file a written complaint with the Brookhaven City Manager on a form the City will provide, within 90 days of the date of the alleged discriminatory act or practice. The losing party has the right to appeal to the Superior Court of DeKalb County, Georgia pursuant to a writ of certiorari. Any person or business found to have violated the new law is subject to civil penalties, and any business found to have been in violation three times will lose their right to operate in Brookhaven.[395]
- **DeKalb County.** Employers in DeKalb County are subject to the following antidiscrimination provisions: race, color, religion, national origin, sex, pregnancy, age, disability, genetic

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389 *See Smith v. Milliken & Co.*, 377 S.E.2d 916, 918 (Ga. Ct. App. 1989).

390 377 S.E.2d at 918.

391 GA. CODE ANN. § 38-2-280.

392 CODE OF AUGUSTA-RICHMOND CTY., GA. § 1-4-116.

393 ATLANTA, GA., CODE OF ORDINANCES §§ 94-10 (definitions), 94-111 (additional definitions), 94-112, and 94-114 (exclusions include *bona fide* occupational qualifications and certain educational institutions).

394 ATLANTA, GA., CODE OF ORDINANCES § 94-121.

395 BROOKHAVEN, GA. CODE OF ORDINANCES, §§ 15-593 *et seq.*

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information, familial status, political affiliation and opinion, sexual orientation, parental status, gender identity, marital status, and protective hairstyle.[396]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the "same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[397] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[398]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

The Georgia SDEA, which prohibits payment practices that discriminate on the basis of sex, defines *employer* as any person engaged in intrastate commerce employing 10or more employees and acting directly or indirectly in the interest of an employer in relation to an employee.[399] *Employee* means any individual employed by an employer, and includes individuals employed by the state or any of its political subdivisions, including public bodies. The only employees excluded from coverage are domestic and agricultural employees.[400]

The SDEA bars employers from paying wages to employees of one sex at a rate less than that paid to employees of the opposite sex for "equal work in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions," except where such payment is based on:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or

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396 DEKALB CNTY., GA., CODE OF ORDS. §§ 1-2, 20-16.

397 29 U.S.C. § 206(d)(1).

398 42 U.S.C. § 2000e-5.

399 GA. CODE ANN. § 34-5-2(4).

400 GA. CODE ANN. § 34-5-2(3).

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- a differential based on any factor other than sex.[401]

The Georgia SDEA also renders it unlawful to discharge or in any other manner discriminate against any covered employee because the employee has complained to the employer or any other person about a violation of the act, commenced any proceeding under the act, or testified or agreed to testify in any such proceeding.[402]

An employee alleging a violation of the SDEQ may file a civil action within one year of the alleged violation.[403] An employer that violates the Georgia SDEA is liable to the affected employee in the amount of their unpaid wages. The employee must bring an action to recover such wages in any court of competent jurisdiction no later than one year after the cause of action accrues. The plaintiff is also entitled to reasonable attorneys' fees and litigation costs, not to exceed 25% of any judgment awarded to the plaintiff. The Georgia statute also provides that any person who violates any provision of the equal pay law may be punished upon conviction by a fine not to exceed $100.[404]

The Georgia SDEA statute provides that either party in a covered dispute has a right to request arbitration. The party requesting arbitration must file a written notice of the request with the other party by either registered or certified mail, or statutory overnight delivery. Within 30 days after receipt of such notice, the other party must either accept or reject the arbitration offer. Specific procedures are set forth under the statute for implementing arbitration in the event that the parties agree to pursue this avenue of potential resolution.[405]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;

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401 GA. CODE ANN. § 34-5-3(a); *Johnson v. Shoney's Inc.*, 2005 WL 2007236, at *3 (M.D. Ga. Aug. 18, 2005).

402 GA. CODE ANN. § 34-5-3(c).

403 GA. CODE ANN. § 34-5-5.

404 GA. CODE ANN. § 34-5-3.

405 GA. CODE ANN. § 34-5-6.

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- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[406]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[407]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[408] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[409] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[410]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters

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[406] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[407] 29 C.F.R. § 1636.3.

[408] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[409] 29 C.F.R. § 1636.3.

[410] 29 C.F.R. § 1636.4.

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the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[411]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[412]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Georgia law does not address pregnancy accommodations for private-sector employees.

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for

[411] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[412] 29 C.F.R. § 1636.3.

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employers.[413] Multiple decisions of the U.S. Supreme Court[414] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[415] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Georgia.

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

There is no general whistleblower law addressing protections for private-sector whistleblowers in Georgia.

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[416] and the Railway Labor Act (RLA)[417] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all

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[413] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[414] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[415] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[416] 29 U.S.C. §§ 151 to 169.

[417] 45 U.S.C. §§ 151 *et seq*.

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private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Georgia's right-to-work law states that employees cannot be required to become or remain a member of a union as a condition of employment.[418] The statute also provides that employees have the right to refrain from membership in a union. Georgia's law also provides that payments to a union cannot be made a condition of employment and that all contracts requiring union memberships or payments as a condition of employment are void and illegal.[419] Thus, Georgia's right-to-work law prohibits provisions in collective bargaining agreements requiring union membership and/or the payment of union dues as a condition of employment.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[420] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[421] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

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[418] GA. CODE ANN. § 34-6-21.

[419] GA. CODE ANN. §§ 34-6-22, 34-6-24.

[420] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[421] 20 C.F.R. §§ 639.4, 639.6.

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4.1(b) *State Mini-WARN Act*

Georgia does not have a mini-WARN law requiring advance notice to employees of a plant closing.

4.1(c) *State Mass Layoff Notification Requirements*

Under Georgia's unemployment insurance law, employers separating 25 or more workers on the same day and for the same reason must promptly report to the Georgia Department of Labor as required by regulation.[422]

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 10 lists the documents that must be provided when employment ends under federal law.

Table 10. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[423] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[424]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under state law.

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[422] GA. CODE ANN. §§ 34-8-33, -34; GA. COMP. R. & REGS. 300-2-4-.10.

[423] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[424] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

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Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	Georgia law requires employers of fewer than 20employees to provide post-termination continued health coverage for up to 90 days. However, the law does not require such employers to provide notification of continued coverage to an employee upon termination.[425]
Unemployment Notice	**Generally.** Employers must provide employees a separation notice (Form DOL-800) when an employee leaves employment. The separation notice must contain detailed reasons for the employee's separation. The notice must be completed, signed by the employer or authorized agent, dated, and delivered to the separated employee on the last day of work. If the employee is not available at the time employment ceases, the notice must be mailed to the employee's last known address within three days of the date that the separation occurred or became known to the employer.[426] Separation notices are available online.[427] **Multistate Workers.** Georgia does not require that employees be again notified as to the jurisdiction under whose unemployment compensation law services have been covered. It is recommended, however, that employers consider providing notice of the jurisdiction where services will be covered for unemployment purposes. Employers should also follow that state's general notice requirement, if applicable.

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Georgia law does not specifically address providing former employees with references.

[425] GA. CODE ANN. § 33-24-21.1.

[426] GA. CODE ANN. § 34-8-190; GA. COMP. R. & REGS. 300-2-7-.06.

[427] Georgia Dep't of Labor, *Documents: Separation Notices*, *available at* http://dol.georgia.gov/documents?field_doc_document_type_tid=916.

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