

Georgia

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

Georgia law prohibits discrimination against private employees who are members of the state National Guard, and guarantees reemployment rights to such employees after a leave of absence to perform military service. This amendment extends these protections to Georgia employees who are members of the National Guard of any state.

O.C.G.A. § 38-2-280 (Effective Date 07/01/2016).

II. Pre-Employment Inquiry Guidelines

A new law permits employers to create and use a veterans' preference employment policy. The policy must be in writing and applied uniformly to employment decisions regarding hiring, promotion, or retention during a reduction in force. For purposes of the new law, "veterans' preference employment policy" means any employer's policy of preference in hiring, promoting, or retaining a veteran over any other qualified applicant or employee. "Employer" means any person engaged in business and having one or more employees, but does not include the federal government, state, or any political subdivision of the state. A veteran is an individual who served on active duty in the armed forces of the United States and was honorably discharged from such service. The new law further provides that an employer's use of a veterans' preference employment policy does not constitute a violation of any local or state equal employment opportunity law.

O.C.G.A. § 34-1-8 (Effective Date 07/01/2015).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

Georgia has added to the list of acceptable wage payment methods "payroll card account," which is an account directly or indirectly established through 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.

Employers electing to pay wages via payroll card account must satisfy all below requirements:

- Provide employees a written explanation of any fees associated with the account. Also, a form must be simultaneously provided – and generally available to employees – that allows employees to opt out of receiving wages via a payroll card account.
 - For employees employed on the date an employer elects to pay wages by payroll card account, the written explanation must be provided at least 30 days before the date the account becomes available.
 - For employees hired after an employer's decision, the written explanation must be provided at the time of hiring.

- Employees must have the ability to opt out of receiving wages via payroll card account by submitting a written request for a check.
- Employees must have the ability to opt out of receiving wages via payroll card account by providing the proper designation and authorization for an electronic credit transfer.

O.C.G.A. § 34-7-2 (Effective Date 05/05/2015).

V. Drug Testing

Haleigh's Hope Act allows the prescription, use, and possession of 20 fluid ounces or less of 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.

However, the law does not requires an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in any form.

Additionally, the law does not affect an employer's ability to:

- Have a written zero-tolerance policy prohibiting on-duty and off-duty marijuana use.
- Prohibit an employee from having a detectable amount of marijuana in his or her system while at work.

O.C.G.A. § 16-12-190 and O.C.G.A. § 16-12-191 (Effective Date 04/16/2015)

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

Georgia has made changes to its workers' compensation laws. Of note to employers are amendments relating to the exclusivity of workers' compensation remedies

The amendments further reinforce that remedies available for a covered workplace injury, loss of service or death to a covered employee, his or her personal representative, parents, dependents, or next of kin, are limited exclusively to those available under the workers' compensation laws. The amendments provide that these rights and remedies exclude and are in place of all other rights and remedies and all other civil liabilities whatsoever at common law or otherwise. An employer can be liable for remedies beyond those in the workers' compensation laws by expressly agreeing in writing to specific additional rights and remedies. However, using contractual provisions generally relating to workplace safety, compliance with laws or regulations, or liability insurance requirements are not construed to create rights and remedies beyond those provided by the workers' compensation laws.

The law allows an employer to satisfy its obligation to provide medical care in various ways. However, the amendment removed one of those options: specifically, the ability to keep a list of

physicians (i.e., “Conformed Panel of Physicians”) from which employees could obtain services and select as their primary authorized treating physician.

The amendments increase the maximum weekly benefit payments for temporary total disability from \$525 to \$550, and for temporary partial disability from \$350 to \$367. Also, the amendments increase the maximum death benefit payable to a surviving spouse or dependent from \$150,000 to \$220,000.

Finally, the amendments change how payments to the Subsequent Injury Trust Fund by insurers and self-insurers are determined on and after January 1, 2016.

O.C.G.A. § 34-9-11, O.C.G.A. § 34-9-201, O.C.G.A. § 34-9-262, O.C.G.A. § 34-9-265, and O.C.G.A. § 34-9-358 (Effective Date 07/01/2015).

IX. Miscellaneous

A. Work-Based Learning Program

The new law creates a program to provide learning opportunities for students to receive academic credit while participating in structured learning at a business during the normal school day. Students may receive pay for their work. The program is available to students age 16 years and older. Employers that provide learning opportunities will be certified by the State Board of Education as work-based learning employers and may receive a 5% reduction in workers’ compensation insurance premiums. To become certified by the Board of Education, employers must:

- enter a training agreement with the student, student’s parents, and school;
- develop a detailed training plan that focuses on developing technical and employability skills;
- assign a mentor to the student and assist in monitoring the student’s progress;
- provide workers’ compensation insurance for the student;
- comply with all federal, state, and local laws regarding employment of the student; and
- comply with rules and regulations of the State Board of Education.

Work-based learning students are employees for workers’ compensation purposes if they are paid for their work. If a work-based learning student is not paid, he or she is still considered an employee for workers’ compensation purposes unless:

- the work placement is similar to training offered in an educational environment;
- the placement is for the benefit of the student;
- the student does not displace regular employees;
- the employer derives no immediate benefit from the student’s work and may occasionally have its operations impeded;

- the student is not necessarily entitled to a job at the end of the placement; and
- the employer and student understand that the student is not entitled to payment for time spent at the placement.

O.C.G.A. § 33-9-40.3, O.C.G.A. § 34-9-2.4, O.C.G.A. § 34-9-430, O.C.G.A. § 34-9-431, and O.C.G.A. § 34-9-432 (Effective Date 07/01/2016).

B. Independent Contractor Taxation Reporting

Georgia law requires that employers furnish each employee with a statement of yearly wages paid and taxes withheld by January 31 of the following year. The amended law requires businesses to supply a statement of wages paid and taxes withheld to all federal Form 1099 recipients for which Georgia withholding also occurred. Additionally, employers must provide copies of the statements of wages and taxes withheld to the commissioner of the Georgia Department of Revenue:

- on or before February 28 (for calendar years beginning before December 18, 2015); or
- on January 31 (for calendar years beginning after December 18, 2015); or
- on or before the 30th day after the date on which the final payment of wages is made, when an employer has ceased to pay wages.

The amendments also change the tax return filing date of Georgia Subchapter 'S' corporations.

O.C.G.A. § 48-1-2; O.C.G.A. § 48-7-56; O.C.G.A. § 48-7-80; O.C.G.A. § 48-7-105; O.C.G.A. § 48-7-106; O.C.G.A. § 48-13-77; and O.C.G.A. § 48-13-78 (Effective Date 02/23/2016).

C. Child Labor Employment Certificate

Georgia has made changes to its child labor laws. Of note to employers are amendments relating to documentation required for employment.

Minors that are 12, 13, 14, or 15 years of age cannot be employed unless they have a written employment certificate showing their age and that they are physically fit to engage in the sought-after employment.

Who issues the certificate depends on the minor's schooling arrangement: If the minor is enrolled in public school, the school superintendent or his or her authorized staff member issues the certificate; if the minor is enrolled in a licensed private school, the principal administrative officer or his or her authorized staff issues the certificate; if the minor is enrolled in a home study program, the person, parent, or guardian providing the program issues the certificate.

To obtain an employment certificate, a minor must submit to the issuing officer: 1) A certified copy of a birth certificate or registration card; and 2) A statement from the prospective employer that: A) Describes the type of employment offered; and B) Indicates the employer could employ the minor immediately if presented an employment certificate. An employment certificate must be accompanied by a letter from the issuing officer indicating the minor is enrolled in school or a home study program full-time and has an attendance record in good

standing the current academic year. The letter must be updated in January of each subsequent academic year the minor is employed until s/he reaches age 16.

An employer must keep a copy of the certificate and in the minor's employment file. Employers that do not comply commit a misdemeanor, which is punishable by a fine up to \$1,000, up to 12 months' imprisonment, or both per violation.

The amendments remove all provisions that applied to minors 16 or 17 years old.

O.C.G.A. § 39-2-11 (Effective Date 07/01/2015)

D. Unemployment Insurance Reform

Georgia has enacted amendments modifying several provisions of its unemployment insurance statute.

Definition of Most Recent Employer

The state unemployment statute defines "most recent employer" as the last liable employer for which an individual worked and (1) from which the individual was separated from work for a disqualifying reason; or (2) from which the individual was released or separated from work under nondisqualifying conditions and earned wages equal to the lesser of \$500.00 or eight times the weekly benefit amount of the claim. The amendments modify the term to mean, for claims with benefit years that begin on or after July 1, 2015, the last employer for which an individual worked. For claims with benefit years that begin on or before June 30, 2015, the most recent employer is the last liable employer for which an individual worked, and (1) from which the individual was separated from work for a disqualifying reason; and (2) from which the individual was released or separated from work under nondisqualifying conditions and earned wages of at least 10 times the weekly benefit amount of the claim.

Chargebacks to Employer's Experience Rating Account

With regard to experience rating account charges, the statute provides that regular benefits paid in connection with benefit years beginning on or after January 1, 1992 shall be charged against the employer's experience rating account or reimbursement account, including benefits paid based upon insured wages that were earned to requalify for unemployment benefits following a period of disqualification. Pursuant to the amendments, regular benefits paid with respect to all benefit years that begin on or after July 1, 2015 shall be charged against the most recent employer's experience rating account or reimbursement account of the most recent employer, provided that the most recent employer is a liable employer, as provided in Georgia Code section 34-8-42, and the individual separated or was separated from work under nondisqualifying conditions, or the employer files the claim for the individual by submitting such reports as authorized by the Commissioner.

The amendments further provide that chargebacks to the employer's experience rating account will be made as follows:

- Benefits paid shall be charged to the account of the most recent employer, including those benefits paid based upon insured wages that were earned to requalify for unemployment benefits following a period of disqualification;
- Benefits charged to the employer's account shall not exceed the amount of wages paid by the employer during the period beginning with the base

period of the individual's claim and continuing through the individual's benefit year;

- Benefits shall not be charged to the employer's account when an individual's overpayment is waived;
- For purposes of calculating an employer's contribution rate, the employer's account shall not be charged for benefits paid to an individual for unemployment that is directly caused by a presidentially-declared natural disaster; and
- Benefits paid to individuals shall be charged against the Unemployment Trust Fund when benefits are paid but not charged against an employer's experience rating account or when the employer is not a liable employer.

Unemployment Insurance Integrity Act Compliance

The amendments bring Georgia's unemployment insurance law in compliance with the federal Unemployment Insurance Integrity Act, which requires states to implement measures designed to ensure employers promptly respond to unemployment claims. The amendments provide that an employer shall respond in a timely and adequate manner to a notice of a claim filing or a written request by the state department for information relating to a claim for benefits as specified in the rules or regulations prescribed by the Labor Commissioner. Failure to do so absent good cause may result in the employer's account being charged for overpayment of benefits paid due to the violation even if the determination is later reversed. Additionally, upon a finding of three violations within a calendar year resulting in an overpayment of benefits, an employer's account shall be charged for any additional overpayment and shall not be relieved of such charges unless good cause is shown.

Adjustment or Refund of Contributions

With respect to adjustments to or a refund of contributions, the statute provides that the Labor Commissioner may, where no application for an adjustment or refund has been made, initiate any adjustments or refunds deemed appropriate where no written request for a refund or an adjustment has been received, provided such amounts were assessed within the last three years. The amendments modify this provision to require that the Labor Commissioner may make such adjustments or refunds for amounts that were erroneously collected, provided the assessments occurred within the previous seven years.

Grounds for Disqualification of Benefits

Georgia law provides that an individual is not eligible for unemployment benefits where the individual has left the most recent employer voluntarily without good cause in connection with the individual's most recent work. The statute provides that good cause exists if the individual voluntarily separates from work to accompany a spouse who is required to relocate on military orders. The amendments add to the circumstances establishing good cause. In addition to the military spouse exception, the employer's account will not be charged for any benefits paid out to an individual who leaves an employer due to family violence verified by reasonable documentation demonstrating that:

- Leaving the employer was a condition of receiving services from a family violence shelter;
- Leaving the employer was a condition of receiving shelter as a resident of a family violence shelter; or

- Family violence caused the individual to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or the safety of any member of the claimant's immediate family.

Statute of Limitations

Finally, the amendments add a new provision governing the statute of limitations for actions to recover overpayments. The Labor Commissioner or an authorized representative of the Commissioner must bring such an action within seven years from the release date of the notice of determination and overpayment by the Department of Labor.

O.C.G.A. § 34-8-43, O.C.G.A. § 34-8-157, O.C.G.A. § 34-8-164, O.C.G.A. § 34-8-194, and O.C.G.A. § 34-8-254.

E. Franchisor Not an Employer of Franchisee's Employees

The Protecting Georgia Small Businesses Act amends Georgia law to clarify that a franchisor is not the employer of the franchisee or the franchisee's employees. The law adopts the definitions of franchise, franchisee, and franchisor defined under federal law. Thus, a franchisee is any person who is granted a franchise, and a franchisor is any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, the definition of "franchisor" includes subfranchisors. For purposes of this definition, a subfranchisor is a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance

O.C.G.A. § 31-4-9 (Effective Date 01/01/2017).