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Law and Practice

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Arnall Golden Gregory LLP's Employment Practice has been chosen as the exclusive member in the State of Georgia of the Employment Law Alliance, a group of employment firms in every state and more than 135 countries, all of whom specialise in representing management. The Employment Practice assists management with solving the full range of employee challenges, from practical counselling on the immediate problem of the day to the most complex workforce issues. AGG's benefits lawyers advise on qualified or non-qualified plan issues, from merging benefits plans to avoiding plan terminations and limiting the risk of IRS and DOL fines, while if an employment problem goes to court, the firm's trial lawyers stand ready to expertly defend management's interests anywhere in the nation. AGG's key employment practice areas include: employee benefits and executive compensation; employer counselling; employment litigation; ERISA litigation; immigration and global migration; employment migration, restrictive covenant and competition disputes.

Authors

Henry M. Perlowski leads Arnall Golden Gregory's Employment Practice, as well as co-leading the firm's Annual Employment Law Seminar. His primary areas of expertise are: defending employers and advising boards in executive separation, earn-out and fiduciary duty disputes; defending class and collective actions under federal and state anti-discrimination and wage-and-hour laws; handling employee benefits disputes, including disputes under various forms of health plan structures; addressing competition, trade secret, breach of corporate opportunity and related disputes; counselling employers on multi-jurisdictional restructurings, workplace integrations following corporate transactions, and developing alternative dispute resolution programs; advising management teams on negotiating employment contracts, equity and other benefits in corporate acquisitions. He is a member of: the Employment Law Alliance (representative for AGG, the exclusive Georgia member firm); co-chair of the Trade Secrets and Competition Group and the North American Membership Committee; the American Bar Association (Section of Labor and Employment, EEO Committee); and the National Association of Professional Background Screeners (NAPBS).

Ashley S. Kelly is the firm's General Counsel and a member of its Executive Committee. She serves as one of the leaders of the Employment Practice, is former co-chair of the Litigation Practice, and co-leader of AGG's Annual Employment Law Seminar. A member of the American Bar Association (Section of Litigation), Ashley's key practice areas include: employer counselling; employment litigation, icluding discrimination, wage and hour, and contract disputes; ERISA litigation; alternative dispute resolution and arbitration; complex business disputes; employment migration, restrictive covenant and competition disputes; and internal investigations; social networking; class action litigation. Ashley is the author of Inside the Minds: Mediation and Arbitration Best Practices (Aspatore Books) and the online article #MeToo and Mandatory Arbitration of Sexual Harassment Claims: An Evolving Legal Landscape.

Theresa Y. Kananen is a partner in the firm's Litigation and Employment practices, and serves as co-chair of the Payment Systems Team. On the employment side, Theresa focuses her practice on handling both employment litigation and counseling for employers. She has appeared before administrative agencies, such as the Equal Employment Opportunity Commission (EEOC) and Department of Labor, and argued on her clients' behalf in state and federal courts. In addition to advising and training employers, Theresa represents them in a full range of employment litigation, including claims involving discrimination and harassment, wage and hour issues, restrictive covenants, the Family and Medical Leave Act, employee benefits, and employment contracts. She also advises clients on issues of compliance in background screening and has handled civil disputes arising out of purported violations of the Fair Credit Reporting Act (FCRA). Theresa frequently speaks on various employment law and human resources topics.

Edward P. Cadagin is an associate in the Litigation and Employment Practice Groups and a presenter at AGG's annual Employment Law Seminar. His primary professional focus is on: breach of contract cases, employment disputes, FLSA compliance and class actions, corporate governance matters, Fair Credit Reporting Act claims, and cases involving a range of business torts. He also has experience with Foreign Corrupt Practices Act compliance and investigations. While at Georgetown University Law Center in Washington, D.C., Ed was chosen to be a Legal Research & Writing Law Fellow and an extern for the Department of Justice, Criminal Division – FCPA Unit. He is a cum laude graduate of Georgetown Law.

1. Current Socio-Economic, Political and Legal Climate; Context Matters

1.1 "Gig" Economy and Other Technological Advances

The regional climate in Georgia is particularly employer-friendly and sees minimal state regulation. As noted in most of our responses, employers in Georgia, as in every state, must comply with federal law, but the absence of significant state regulation leaves Georgia employers substantial leeway in structuring compensation, benefits, hiring and termination with little oversight at the state level. In addition, Georgia recently overhauled its laws on restrictive covenants to make them more enforceable and business-friendly.

The Georgia Department of Economic Development has recently engaged in a push to attract businesses to the region, and the publication Site Selection named Georgia the Number 1 State for Business for the fifth year in a row in 2017. Georgia offers a number of tax credits to employers, including small businesses. Effective 1 January 2019, Georgia's corporate tax rate will decrease from 6% to 5.75% for income earned in-state.

In addition to a favourable fiscal climate, the workforce pool in Georgia is diverse and talented. Georgia is home to a number of prestigious, nationally ranked universities, including the University of Georgia, Georgia State University, Georgia Institute of Technology, and Emory, to name only a few. The presence of high-quality local schools means that Georgia employers have access to abundant high-quality, skilled labour. The state sees very little union membership, except in very specific industry segments (such as auto and flooring). Further, the Atlanta airport, Hartsfield Jackson, is one of the busiest in the world, making both domestic and international travel convenient with numerous direct flights.

The socio-economic and political issues on the national stage are just as relevant in Georgia as in any other region.

With regard to the "gig" economy, "gig" services such as Lyft, Uber, GrubHub, and Instacart abound in Georgia. In a common theme throughout this narrative, unlike some other states, Georgia has not enacted any state specific laws governing the "gig" relationships. Rather, companies with a "gig" business model located in Georgia must be concerned primarily with the worker classification and compensation issues existing under federal law—specifically, whether "gig" workers are appropriately classified as independent contractors or as employees, who are subject to wage and hour laws, and for whom certain social taxes must be paid. There is currently litigation on the proper classification of "gig" workers in multiple jurisdictions within the United States, and while the rulings could affect businesses in Georgia equally with businesses located elsewhere, these issues are not specific to Georgia.

1.2 "Me Too" and Other Movements

The "Me Too" movement, the "Black Lives Matter" movement, and other general privacy issues are not state-specific. These movements exist in Georgia as in many other states in the nation. Again, unlike other states, Georgia generally has not enacted legislation responding to these movements. For example, in response to the #MeToo movement, certain other states have enacted, or are considering enacting, laws that require employers to present training on the prevention of workplace harassment to their supervisors and employees. While implementing such training is a good practice in Georgia, it is not required by Georgia law.

1.3 Decline in Union Membership

Union membership in Georgia, as with other southern States, is particularly low. In fact, in 2016, the percentage of employees in Georgia with union membership was 3.9% - well below the national average of 10.7%. Georgia, however, is a "right-to-work" state, which means that membership in a union, or payment of dues to a labour organization, cannot be made a condition of employment. O.C.G.A. § 34-6-21 and § 34-6-22. Any employment agreement purporting to require union membership or the payment of fees will be void under Georgia law. Moreover violation of the right-to-work law is punishable by injunction and damages. O.C.G.A. §§ 34-6-23 through 34-6-27. Because of the low number of unionized employees, as well as the lack of union tradition culturally, Georgia is an attractive location for businesses whose workforces are generally unionized.

1.4 National Labor Relations Board

Owing to the low number of unionized workers in Georgia, rulings from the NLRB do not have a tremendous impact on Georgia's employers and employees. Nevertheless, Georgia employers are still governed by the National Labor Relations Act's protection of "concerted activity" by *non-union* employees. Generally speaking, "concerted activity" occurs when two or more employees discuss, complain of, or otherwise act together to improve or change the terms and conditions of employment. Practically speaking, the NLRB rulings that may most affect non-unionised workplaces in Georgia are those dealing with employee handbook provisions. Specifically, the NLRB frowns on any employer policies that inhibit employees' ability to discuss the terms and conditions of their employment, including through social media. For example, handbook policies that generally prohibit employees from posting negative comments about their employer online have been considered unlawful by the NLRB, because they could lead employees to believe that the employer is attempting to squelch employees' ability to discuss the terms and conditions of their employment. As shown by this example, NLRB rulings addressing the protection of concerted activity impact all Georgia employers.

2. Nature and Import of the Relationship

2.1 Defining and Understanding the Relationship

As stated previously, the low level of state regulation makes Georgia an employer-friendly venue. Georgia is a staunch "at-will" employment state, meaning that either the employee or the employer may terminate the employment relationship at any time and for any reason, as long as the reason is not unlawful. Georgia is also a right-to-work state, so employees cannot be forced to pay union dues in a unionised workplace.

Georgia law will recognise and enforce employment contracts in accordance with normal contract principles. In addition, employers in Georgia are strongly encouraged to implement a handbook setting forth their policies and procedures for the sake of clarity, as the handbook is frequently the first line of defence in disputes regarding the terms and conditions of employment. With that being said, every employment manual should contain numerous conspicuous and express disclaimers, emphasising that the employment relationship is at-will, that the terms of the employee handbook do not constitute a contract, and that the company retains the exclusive right to unilaterally modify, rescind or amend the procedures contained in the handbook at any time, with or without notice

Georgia does not have a comprehensive wage and hour law; rather, employers must comply with the federal Fair Labor Standards Act. Accordingly, there are no state requirements regarding the payment of overtime, the provision of breaks, or the like. Although Georgia does have a state minimum wage – currently USD5.15 per hour – it is in almost all instances pre-empted by the higher federal rate of USD7.25.

With respect to benefits, Georgia has not implemented any laws requiring that employers offer paid or unpaid leave. The one minimal Georgia regulation related to leave is the Family Care Act of 2017, which states that if employers with more than 25 employees choose to offer sick leave, employees must be permitted to use up to five days of sick leave to care for the illnesses of immediate family members. Notably, the law does not require that sick leave be offered, but only regulates how sick leave can be used in shops of more than 25 people when the employer does choose to offer it.

Georgia does not have any significant analogues to federal anti-discrimination statutes, but there are a few noteworthy regulations. For example, the City of Atlanta has a specific ordinance prohibiting discrimination on the basis of age, race, disability, sexual orientation, religion and other protected characteristics. The Georgia Sex Discrimination Act prohibits any employer from paying one sex at a lesser rate than the other for comparable work. This statute largely mirrors the federal Equal Pay Act.

While Georgia has enacted a few other anti-discrimination laws, they have little effect on private employers. For example, Georgia's General Age Discrimination Law prohibits employers from discriminating against persons between 40 and 70 years' old on the grounds of age, but provides no private cause of action. Georgia has also enacted the Fair Employment Practices Act prohibiting discrimination on the basis of race, colour, religion, national origin, sex, handicap, or age, but that statute applies to public, state employers, not private employers.

Thus, employers operating in Georgia need to be concerned primarily with complying with federal laws and regulations.

2.2 Alternative Approaches to Defining, Structuring and Implementing the Basic Nature of the Entity

See above, **2.1 Defining and Understanding the Relationship**.

2.3 Immigration and Related Foreign Workers

Immigration is regulated at the federal level, chiefly under the Immigration and Nationality Act (INA). The Immigration Reform and Control Act (IRCA) of 1986 was enacted to curb illegal immigration, denying welfare benefits to undocumented immigrants and strengthening sanctions against employers who hire them. The U.S. Congress has control over all immigration-related regulations, while the executive branch of the federal government is in charge of enforcing immigration laws.

The federal government's jurisdiction over immigration law has been upheld by the U.S. Supreme Court, which has overruled attempts by State laws to discriminate against immigrants. More fundamentally, however, the Supremacy Clause of the U.S. Constitution is interpreted to mean that federal laws trump state laws in the realm of immigration.

With that being said, many states have passed laws directly bearing on immigration. For example, the Georgia legislature is currently debating a bill that would make it easier for people living without legal status in Georgia to end up in a deportation proceeding. The bill, SB 452, would require local law enforcement and court officials in Georgia to report to U.S. immigration enforcement if they learn a suspect is in the country illegally.

2.4 Collective Bargaining Relationship or Union Organizational Campaign

Collective bargaining negotiations as well as union organizing campaigns are governed by the NLRA. Georgia does not have any specific regulations governing these issues.

3. Interviewing Process

3.1 Legal and Practical Constraints

Georgia itself imposes very few constraints on the employment relationship, but the obligation to comply with federal law is a constant in any state, including this one. Beginning at the interview stage, if the employer requires background checks, the process must comply with the federal Fair Credit Reporting Act (FCRA). Just as in the courts in many other jurisdictions, federal courts in Georgia have recently seen active litigation from the plaintiffs' bar for violations of the FCRA. However, unlike other jurisdictions, Georgia has not implemented a "ban the box" measure, which would prohibit private employers from asking about an applicant's criminal history. (Notably, Georgia does have a "ban the box" law applicable to public employers). Still, however, even private employers may be well advised not to ask for such information, as it may open them to liability under federal anti-discrimination laws.

Georgia employers must also be cognisant of federal anti-discrimination laws, which would prohibit them from asking questions in the earliest stages of the interview process about an employee's disability, pregnancy, or other health conditions, or any other protected characteristic. In addition to avoiding enquiry into protected characteristics under federal law (eg, race, national origin, sex, religion), Georgia employers generally – and with some limited exceptions – are prohibited from making employment decisions based on an employee's discharged, "first offender" criminal conviction.

4. Terms of the Relationship

4.1 Restrictive Covenants

Georgia has a Restrictive Covenants Act which has substantially liberalised the drafting requirements for restrictive covenants in Georgia. Before the effective date of the adoption of the new statutory scheme in 2011, even the smallest semantic variations in language caused a restrictive covenant to be deemed unreasonable and unenforceable as a matter of law. The Act dramatically altered the landscape of restrictive covenant law in Georgia, making it much easier to compose enforceable covenants, including confidentiality provisions, covenants not to compete, and customer non-solicitation provisions. Significantly, and contrary to the prior law, the Act empowers courts to modify (or "blue pencil") restrictive covenants that are deemed overbroad as to duration, geographic scope, or scope of prohibited activity.

The extent of permissible modification – for example, whether the court can rewrite overbroad provisions or only strike them – is in debate, especially given the current lack of appellate guidance. *See* O.C.G.A. §§ 13-8-53(d); 13-8-54(b); *comparePointeNorth Ins. Group v. Zander*, No. 11-3262, 2011 WL 4601028, at *3 (N.D. Ga. Sept. 30, 2011) (modifying restrictive covenant by "blue penciling" a provision to only apply to certain customers) *with LifeBrite Laboratories, LLC v. Cooksey*, No. 15-4309, 2016 WL 7840217, at *7 (N.D. Ga. Dec. 9, 2016) (interpreting the term "modify" in the Restrictive Covenants Act to mean striking unreasonable restrictions, not reforming and rewriting contracts). However, the Act sets outs fairly detailed guidelines for determining the presumptive reasonableness of a restrictive covenant; for example, in most employment situations, a covenant lasting two years or less is reasonable. O.C.G.A. § 13-8-57(b).

The Act also provides guidance about the types of competitive activity that may be restricted. *See, e.g.,* O.C.G.A. § 13-8-53. For example, a geographic restriction that includes the areas in which the employer does business at any time during the parties' relationship, even if not known at the time of entry into the restrictive covenant, is reasonable provided that:

- The total distance encompassed by the provisions of the covenant also is reasonable;
- The agreement contains a list of particular competitors as prohibited employers for a limited period of time after the term of employment or a business or commercial relationship; or
- Both subparagraphs (A) and (B) are met.

O.C.G.A. § 13-8-56(2). Given the lack of appellate interpretation of the Act, drafters should pay careful attention to the language of the statute.

Furthermore, in a shift from past law, Georgia now does not require that confidentiality obligations be limited as to time, and instead permits the obligation to keep employer information confidential to continue for as long as the information remains confidential.

Georgia law allows employers to request that employees enter into restrictive covenants (including non-competes, for certain approved categories of employees) at the outset of employment. However, if the employer wishes to implement such covenants after the inception of employment, Georgia recognises that offering an at-will employee ongoing employment in exchange for entering into a restrictive covenant is sufficient consideration to render the new covenants enforceable.

In addition, in 1990, Georgia adopted the Uniform Trade Secrets Act. The Uniform Trade Secrets Act significantly expanded the common law definition of a "trade secret", which the Georgia courts had previously construed to exclude non-technical confidential business information. The Act also establishes criminal liability for stealing, embezzling, or copying trade secrets without authority, although the definition of "trade secrets" under the criminal statute is narrower than its civil counterpart.

4.2 Privacy Issues

A. The Georgia Drug-Free Workplace Act

Georgia law does not expressly prohibit drug testing of employees; indeed, in the public sector, Georgia statutes sometimes mandate such testing. *SeeO.C.G.A. § 45-20-90, et seq.*; *O.C.G.A § 45-20-110, et seq.*; O.C.G.A. § 50-24-1. Moreover, Georgia employers that comply with the Drug-Free Workplace Act, including its detailed provisions for drug testing, may be entitled to receive a discount of 7.5% in their workers' compensation insurance premiums. O.C.G.A. §§ 33-9-40.2, 33-9-412. The Drug-Free Workplace Act is multi-pronged. To qualify for the insurance discount, an employer must do all of the following:

(1) implement a written policy that includes the employer's policy on substance abuse, the types of testing to which an employee may be required to submit and the consequences for refusing to submit, the actions the employer may take for a violation of the policy, a statement about confidentiality, a description of the employee's ability to contest or explain the result of a positive test within five days after receiving the notification of the positive result, and statements informing the employees of the Georgia Drug Free Workplace Act and the federal analogues to the Georgia act, if applicable to employers, O.C.G.A. § 34-9-413;

(2) implement a written statement regarding substance abuse testing, including types of tests, specimen collection and testing, procedures for handling of lab specimens, and confirmation testing; O.C.G.A. § 34-9-315;

(3) offer an Employee Assistance Program or maintain a resource file of drug and alcohol abuse programs, mental health providers, or others capable of assisting employees with personal and/or behavioral problems, and notify the employees in writing of the availability of those resources, O.C.G.A. § 34—416;

(4) implement semi-annual employee education on substance abuse in general and its effects on the workplace, specifically, O.C.G.A. § 34-9-417; and

(5) implement annual supervisors' training with instruction on how to recognize the signs of employee substance abuse, how to document and corroborate the signs of substance abuse, and how to refer substance abusing employees to proper treatment providers, O.C.G.A. § 34-9-418.

As indicated with the foregoing citations, the means of satisfying each of these five requirements are described in detail by the statutory provisions, which should be consulted carefully for compliance. In addition, the program must also meet certain confidentiality standards prescribed by statute. O.C.G.A. § 34-9-413.

While Georgia provides an incentive for implementing robust employee drug testing programs, in other jurisdictions, private employers subjecting employees to drug testing have sometimes faced liability for invasion of privacy and/or intentional infliction of emotional distress. To avoid such liability, employers are encouraged to provide employees with notice of the existence of, and procedures for, workplace drug testing in advance of any such testing (preferably at the beginning of the employment relationship), and to ensure that such procedures are reasonable.

B. Personnel Files

Handling of personnel information can be a delicate issue, and certain states impose tight strictures around sharing such information. Georgia, however, generally allows employers to produce personnel files in response to a validly served subpoena or through a request for documents propounded in litigation. *Chaney By and Through Guilliam v. Slack, 99 F.R.D. 531 (S.D. Ga. 1983)*. Even so, employers should be cautious in disseminating information contained in personnel files, and may be well served to request that any production be made pursuant to a confidentiality agreement.

The case law respecting invasion of privacy liability for such dissemination is not well developed in Georgia, however, and could create an area of potential risk exposure. Significantly (and positively for employers), at least one Georgia court has held that the disclosure of a personnel file is "privileged" when the employer is under a "private moral duty" to make the disclosure and the recipient is a person naturally interested in the employee's welfare. *Kobeck v. Nabisco, Inc., 305 S.E.2d 183 (Ga. Ct. App. 1983)* (disclosure to employee's husband who suspected employee of having an affair).

C. Conduct Outside of Work

Unlike some other states, Georgia employers are *not* expressly prohibited from terminating an employee based on lawful, off-duty conduct. The "at-will" doctrine permits the discharge of an employee for any reason except an illegal reason, and except where expressly foreclosed by statute, irrespective of motive. O.C.G.A. § 34-7-1.

D. Employee Medical Information

With one large exception (discussed below), neither Georgia statutes nor Georgia courts offer particularly clear guidance on the circumstances under which an employer may or may not disclose employee medical information. Thus, in keeping with the common theme of this analysis, employers located in Georgia should comply with federal restrictions on the dissemination of such information, including HIPAA (the Health Insurance Portability and Accountability Act) and the Americans with Disabilities Act (ADA). In addition to liability under federal statute, tort liability may attach in the case of improper disclosure of medical information, including through an invasion of privacy claim.

In one area of particular clarity, Georgia law extensively regulates the disclosure of information pertaining to an employee who is infected with HIV or AIDS through the Georgia AIDS Confidentiality Act, codified at O.C.G.A. § 24-9-47. Employers who receive requests for disclosure of such information should review the AIDS Confidentiality Act and consider whether the requested disclosure can be made consistently with that legislation.

E. Searches, Surveillance, and Monitoring of Employer Premises

Although private employers are not subject to the requirements of the Fourth Amendment of the United States Constitution—which restricts the government from engaging in unreasonable searches and seizures—private employers may nevertheless be subject to private civil liability in tort for improper searches and seizures, or for detaining employees in connection with such searches and seizures. Potential causes of action in tort for employer searches may include intentional infliction of emotional distress, assault, battery, false imprisonment, malicious prosecution, and/or defamation. Thus, employers should be cautious in conducting employee searches, and should provide employees with notice of grounds for workplace searches and search procedures well in advance of any search. Disclosing the circumstances under which a search may be conducted and warning employees in advance, in writing, that they should have no expectation of privacy with respect to the employer's premises, may be helpful in defending any later claims arising out of a search.

In addition, O.C.G.A. § 16-11-62, a Georgia statute of general applicability, prohibits various forms of clandestine surveillance, eavesdropping, and recording of private conversations or events. But, recognizing the employer's legitimate interest in conducting certain forms of employee surveillance, Georgia courts and the Georgia legislature have made some exceptions to the general prohibition on clandestine surveillance. *See* O.C.G.A. § 16-11-65; *Jackson v. Nationwide Credit, Inc., 426 S.E.2d 630 (Ga. Ct. App. 1992)*. As with employee searches, employers can help reduce the risk of liability for surveillance (or at least set up a defense to any claim) by disclosing to employees in advance the fact of surveillance and/or the location of any cameras.

F. Lie Detector Testing

In unusual situations, an employer may wish to have an employee submit to a lie detector test. As with many other topics discussed here, Georgia has not enacted any laws prohibiting the use of polygraph testing in the employment setting. However, an employer who elects to use a polygraph test may face tort claims from the employee in private litigation along the same lines as those described in the foregoing section. Moreover, Georgia law expressly contemplates that claims may be brought against polygraph examiners who negligently administer a test. *See* O.C.G.A. § 51-1-37. Like employers in all states, Georgia employers should be aware of the existence of the federal Employee Polygraph Protection Act of 1988, 28 U.S.C. § 2001 *et seq*., which sets forth many restrictions on an employer's use of such testing

4.3 Discrimination, Harassment and Retaliation Issues

The Georgia Fair Employment Practices Act of 1978 prohibits most public, state employers (with 15 or more employees) from discriminating against employees on the basis of race, color, religion, national origin, sex, handicap, or age. O.C.G.A. §§ 45-19-29 to 45-19-45. The Georgia General Assembly drafted the Fair Employment Practices Act to coincide with the federal anti-discrimination laws, and thus, the statute, despite its more limited scope, largely mirrors the prohibitions of Title VII, the ADA, and the ADEA. In addition, the Georgia General Assembly has passed the Georgia Sex Discrimination in Employment Act, the General Age Discrimination Law and the Georgia Equal Employment for Persons with Disabilities Code, all of which extend prohibitions of discrimination to both the public and private sector.

The Georgia Sex Discrimination in Employment Act of 1966 applies to all employers, public and private, with 10 or more employees engaged in interstate commerce. It prohibits the payment of wages to employees of one sex at a lesser rate than the payment of wages to the opposite sex for "comparable work" on jobs that require the same or essentially the same knowledge, skill, effort, and responsibility. *O.C.G.A. § 34-5-1, et seq*. While the statute in many ways tracks the federal Equal Pay Act, the term "comparable work" is unique to the Georgia statute, and commentators have suggested that the inclusion of the phrase may expand the scope of the state statute beyond that of the federal Equal Pay Act. Private actions may be filed to recover damages and up to 25% of the judgment in attorneys' fees.

The Georgia General Age Discrimination Law of 1971 prohibits employers from discriminating against any person between the ages of 40 and 70 years solely on grounds of age, "when the reasonable demands of the position do not require such an age distinction." O.C.G.A. § 34-1-2. The statute, however, does not contain a private civil remedy provision, and the Georgia Supreme Court has held that the General Age Discrimination Law does not permit a discharged employee to sue in tort for wrongful discharge based on allegations of age discrimination; *Reilly v. Alcan Aluminum Corp., 528 S.E.2d 238 (Ga. 2000)*. The only relief for violating the statute is a misdemeanor criminal prosecution, with a fine of $100-$250 if the employer is found guilty.

The Georgia Equal Employment for Persons with Disabilities Code of 1981, *O.C.G.A. § 34-6A-1, et seq*., prohibits any Georgia employer, public or private, with 15 or more employees, from discriminating against "disabled individuals," defined as "any person who has a physical or mental

impairment which substantially limits one or more of such person's major life activities, and who has a record of such impairment." The statute is unique to Georgia and, while loosely modeled after the federal Rehabilitation Act, is in many respects broader than its federal counterpart. Unlike the federal Americans with Disabilities Act of 1990, however, the Georgia Disabilities Code does *not* impose a duty on employers to "reasonably accommodate" an employee's disability. The Georgia Disabilities Code provides for a private right of action for aggrieved employees against employers with 15 or more employees, allowing the recovery of damages, as well as equitable relief. O.C.G.A. § 34-6A-6.

Finally, it should be noted that Georgia employers located within the City of Atlanta, with 10 or more employees, additionally are subject to an anti-discrimination Ordinance that prohibits employment discrimination based on race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, and/or disability. Atlanta Code of Ordinances, art. V, §§ 94-110 – 94-114 (2001). Violation of the ordinance may result in a range of penalties up to and including loss of a professional or business license or contract with the City.

Georgia employers, at least in the private sector, are not subject to any state statute expressly prohibiting harassment in the workplace. Nevertheless, there is Georgia authority supporting the proposition that employers and/or supervisors may be subject to common law tort liability for acts of workplace harassment, e.g., under the doctrines of assault, battery, invasion of privacy, intentional infliction of emotional distress, negligent hiring, negligent training, negligent supervision, or negligent retention. *See Simon v. Morehouse School of Medicine*, 908 F. Supp. 959 (N.D. Ga. 1995) (invasion of privacy, intentional infliction of emotional distress); *Cox v. Brazo*, 303 S.E.2d 71 (Ga. Ct. App. 1983) (negligent hiring).

4.4 Workplace Safety

Both by statute and judicial decision, Georgia requires employers to maintain a safe workplace. *See* O.C.G.A. § 34-7-20 and § 51-3-1. The duty imposed on the employer is that of "ordinary care," which generally requires that the employer give notice to its employees of known dangers in the workplace, and inspect the premises to discover whether there are any manifestly dangerous conditions. Significantly, an employee may be foreclosed from pursuing an action against his or her employer for failure to maintain a safe workplace if the employee had knowledge of the dangerous condition or had an "equal means" of discovering the condition. *See* O.C.G.A. § 34-7-23. In addition, certain actions for failure to maintain a safe workplace may be preempted by section 301 of the National Labor Relations Act or section 18(a) of the Occupational Safety and Health Act, or may be precluded by Georgia's workers' compensation law. *Dugger v. Miller Brewing Co.*, 406 S.E.2d 484 (Ga. Ct. App. 1991).In an effort to encourage safety in the workplace, the Georgia legislature passed a Drug-Free Workplace Program law. As described above, this voluntary program allows businesses to receive a 7.5% discount off their workers' compensation insurance premium so long as they adopt (and certify) a drug-free workplace program that complies with the strictures of the law. *See* O.C.G.A. § 34-9-410 *et seq*.

5. Termination of the Relationship

5.1 Addressing Issues of Possible Termination of the Relationship

Georgia courts have consistently refused to recognise "wrongful termination" claims, finding them to be impermissible inroads to the statutorily mandated employment at-will doctrine. Thus, absent a contractual requirement – for example, that an employee can only be terminated for delineated reasons constituting "cause" – termination can be made at any time so long as it does not violate state or federal law. In addition to the federal employment statutes (and particularly the discrimination statutes), Georgia, by statute, prohibits private employers from terminating employees for the following reasons:

- based upon the employee taking time off in connection with a summons for jury duty, subpoena, or other court order or process that requires attendance at a judicial proceeding;
- based upon the employee taking time off to vote, as long as the employee meets certain statutory criteria, including the provision of reasonable notice; or
- based upon the employee making a complaint, testifying, or instituting proceedings related to the Sex Discrimination in Employment Act.

We find that the disciplinary process is typically of particular interest to global entities, who may be accustomed to a complicated, legally prescribed procedure. Georgia does not have similar mandatory requirements. While employers often implement progressive discipline procedures, again, these are adopted by the employer as a matter of policy or contract.

Georgia has no state statute analogous to the federal Worker Adjustment and Retraining Notification Act (WARN) and, thus, state law does not mandate the provision of notice prior to mass layoffs or similar workforce reductions. Similarly, absent a contract or collective bargaining agreement provision to the contrary, Georgia generally does not require that employers pay severance pay to their employees following termination. Separation agreements, including release of claims, are fully enforceable in Georgia, and Georgia law does not require any unique language over and above that required by the federal Older Workers Benefit Protection

Act to effectuate a release of claims upon termination of employment.

In addition to the requirements of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), Georgia employers that offer insured group coverage plans, and that employ workers who have been continuously covered under the group plan for six months prior to termination of coverage, are obligated to comply with the Georgia Health Care Continuation Law. The Georgia Health Care Continuation Law provides a right to continued coverage for employees and their dependents following the occurrence of a "triggering event" (defined similarly to qualifying events under COBRA) for a maximum of three policy months following the event, at which time the employee is eligible for conversion privileges. Global entities with Georgia (or other US) operations should also be mindful that, under COBRA and certain other federal statutes, their foreign employees may count toward the employee thresholds for determining coverage if those employees are considered part of the same control group as the US-based employees.

6. Employment Disputes: Claims; Dispute Resolution Forums; Relief

6.1 Contractual Claims

Unless an employee can present a viable claim for breach of contract, quantum meruit (ie, a suit to recover the fair value for services rendered and knowingly accepted), or a recognised common law tort, he or she generally will be unable to recover in an action brought pursuant to state law. In that regard, there is Georgia authority supporting the proposition that employers and/or supervisors may be subject to common law tort liability for acts of workplace harassment or other misconduct – eg, under the doctrines of assault, battery, invasion of privacy, intentional infliction of emotional distress, negligent hiring, negligent training, negligent supervision, or negligent retention.

6.2 Discrimination, Harassment and Retaliation Claims

See above, **6.1 Contractual Claims,** and **4.3 Discrimination, Harassment and Retaliation Issues**.

6.3 Wages and Hours Claims

As previously mentioned, Georgia does not have a comprehensive state wage and hour law.

6.4 Whistleblower/Retaliation Claims

Although Georgia has a Whistleblower Act that prohibits retaliation for reporting a violation of or failure to comply with the law, that Act applies only to public, not private, employers.

6.5 Dispute Resolution Forums

Many employers in Georgia choose to implement and utilise alternative dispute resolution procedures, such as mediation and arbitration, to resolve employment-related disputes. These procedures can provide, among other things, the confidentiality and expediency seldom found in the courts. Although most arbitration agreements are covered by the Federal Arbitration Act (FAA), Georgia has an Arbitration Act that governs agreements not covered by the FAA.

Arnall Golden Gregory LLP
171 17th Street NW
Suite 2100
Atlanta, Georgia 30363

Tel: 408-873-7020
Fax: 404-873-8501
Email: Ashley.kelly@agg.com
Web: www.agg.com