Georgia - Introduction

This information is intended to familiarize women with employment discrimination law in Georgia so that they may assess the strengths and weaknesses of any claims they may have and educate themselves as to their rights so that they may informatively talk to their employers. Generally, women in Georgia who wish to bring a claim of discrimination must do so under Title VII of the Civil Rights Act of 1964, a federal statute. There are also state tort (civil) laws under which you can bring discrimination claims. These include assault, battery and intentional infliction of emotional distress. Women should read the Filing Procedures section to understand the process involved in bringing a claim and what remedies they can expect. Anyone seriously considering taking legal action should consult an attorney. Women also need to be aware that those who take their cases to court are not often successful and large awards are rare. Women may be more successful pursuing alternative dispute resolution, which is often available under mediation clauses in employment contracts.

Georgia[1] – What Does The Law Say?

Where are the laws regarding sex discrimination in GA found?

In GA, claims of sex discrimination can be brought under federal law or state tort law.

Where is the federal law regarding sex discrimination in employment found?

The federal law regarding sex discrimination is Title VII of the Civil Rights Act of 1964. Title VII prohibits any discrimination in the workplace based on sex.[2] Title VII has been amended by the Pregnancy Discrimination Act of 1978, which guarantees equal employment treatment to pregnant women.[3] Leave time, including maternity leave, is also included as part of Title VII as part of the Family Medical Leave Act.[4]

To whom does the federal law apply?

Title VII applies to public and private employers with 15 or more employees for each working day in each of twenty or more calendar weeks in the current or proceeding year.[5] This includes state and local governments.[6] Under Title VII, there are some employers who are exempt from the act and thus their employees are not covered under Title VII.[7] The United States is one example, as it is wholly owned by the Government of the United States.[8] Indian tribes and the District of Columbia are also exempt.[9] Most private membership clubs, other than labor organizations, are also exempt.[10]

Under the federal law, what is illegal?

Under Title VII, an employer is not allowed to fire or refuse to hire a woman, or otherwise discriminate against an employee in regards to compensation, terms, conditions, or privileges of employment, because of her sex.[11]

What constitutes sex or gender discrimination under federal law?

Under Title VII, an employer is not allowed to limit, segregate, or classify female employees in any way which would deprive them of any employment opportunities or otherwise negatively affect their employee status because of her sex.[12] Specific employment practices which may be considered sex discrimination include: failure to hire, failure to promote, sexual harassment, wage discrimination, pregnancy discrimination, discriminatory termination, and retaliatory termination.

What is an "employee" under this law?

The term "employee" means any individual employed by an employer.[13]

Are women a "protected class"?

Yes, under Title VII, women are a protected class.[14]

Is it ever okay for my employer to treat or impact women differently because of their sex?

Your employer can only treat women differently on the basis of their sex if they can prove that the discrimination was a bona fide occupational qualification. This means that the qualification was substantially job related and necessary for the operation of the business. [15]

What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will attempt to show a legitimate, non discriminatory reason for their behavior.[16] If your employer offers legitimate reasons for the action taken against you, you then need to show that the reasons offered by your employer are just superficial excuses to act discriminatorily.[17] It is always your responsibility to prove that sex discrimination was the reason for your employer's actions.[18]

What are examples of legitimate, non discriminatory reasons for discharge?

As mentioned, once you have shown that you were qualified for the job and performed at an acceptable level, your employer will then provide a legitimate, non discriminatory reason for discharge. Examples of legitimate, non discriminatory reasons for discharge include; whether you were not qualified and were hired for reasons unrelated to your experience (such as having an affair with your supervisor),[19] whether you were a problem employee through continual tardiness,[20] or whether you had difficulty working with supervisors and peers.[21] Furthermore, if your replacement is female, your employer has effectively negated your wrongful discharge suit, unless you can prove the claim under a different protected class. [22] Finally, the employer may provide general statistics proving they have fired more men than women in the last year to counter any claims of discriminatory behavior.

Does it matter when the discrimination occurred?

An employee has 180 days to file a claim with the EEOC. If the claim is not brought within the 180 days, the opportunity to file the claim is lost.[23]

What options do I have if I my employer has fewer than fifteen employees?

In order to file a claim under Title VII, your employer must have 15 or more employees.[24]

Who enforces the law?

The Equal Employment Opportunity Commission (EEOC) enforces Title VII. To contact the EEOC, see the "How to file a claim" page or visit their website at the EEOC website.[25]

How do I file a claim of sex discrimination with the EEOC?

For more information on filing a claim in Georgia, please see "How Do I File A Claim?"

If I prove my sex discrimination claim, what kind of remedies am I entitled to?

For more information on available remedies, please see "What Am I Entitled To If I Win?".

Where is the state law regarding sex discrimination in employment found?

With the exception of wage discrimination, there are no state laws in GA that deal directly with sexual discrimination. However, depending on the type of discrimination that has occurred, lawsuits may be filed under tort claims such assault, [26] battery, [27] and intentional infliction of emotional distress. [28] Sexual Harassment is an example of a type of discrimination that can be brought under state tort law.

To whom does the state tort law apply?

Under state law in Georgia, the size of the business and the number of employees have no affect on your ability to bring a claim of sexual harassment. Therefore, tort claims of this sort can be brought against any employer.

Under state tort law, what is illegal?

There are a variety of claims that can be brought under state tort law in GA. The most frequent of these is sexual harassment.

Does it matter when the discrimination occurred?

Generally speaking, claims must be brought within two years after the sexual harassment occurs.[29] If the claim is filed after the two years have elapsed, the claim will essentially be lost.

Georgia – Unequal Pay

Does Georgia law cover wage discrimination?

Your wages include income and benefits, such as health insurance, that you are receiving through your employer.[30] Under the Georgia Equal Pay Statute, O.C.G.A 34-5-1, it is illegal to pay someone less for doing "comparable work" because of their sex.[31]

What is comparable work?

Comparable work does not mean you have to be doing the exact same work as a man in the same position. It means you are doing an equal amount of work in a job that requires "equal skill, effort, and responsibility."[32]

What exactly does "equal skill, effort, and responsibility" mean?

No cases have been brought to court under the Georgia Equal Pay Statute, so the courts have not elaborated on how to define "equal skill, effort and responsibility."

Why haven't any cases been brought under the statute?

Many people prefer the alternatives to actually bringing a lawsuit as they are laid out in the statute.

One option is to report the possible wage discrimination to the Commissioner of Labor, who has the power to request all pertinent witnesses and records from your employer and to eliminate any problems he or she discovers.[33]

Another option is arbitration, where you and your employer each choose an official arbitrator (usually an attorney) and the court appoints a third arbitrator. This arbitration committee will reach a binding agreement regarding the pay discrimination that both you and your employer will be legally required to follow.[34] The arbitration committee will ensure that the final decision is fair.[35]

I work in a small business, does that matter?

Yes. The Georgia Equal Pay statute only applies to businesses with 10 or more employees.[36]

I work in Georgia, but my company has branches in other states too, can I still use the Georgia law?

No. This law only applies to businesses that operate only in the state of Georgia."[37]

Is there any way my employer can justify paying me less?

Yes. An employer could pay you less based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or on a differential based on any factor other than sex.[38]

What if my boss just lowers everyone's pay so they aren't violating the law?

The law specifically forbids employers from lowering any person's pay in order to eliminate discrimination.[39] If your employer tries to do this, it will still be in violation of the statute.

How do I find out if I'm getting paid less?

This is tricky since many people do not like to talk about money and some companies forbid it. However, the only way to learn if you are getting paid less is to find out how much the men are making. Whether you can just ask will depend on your situation and relationship with your coworkers.

Public agencies, such as universities, are legally required to publish their pay scales. The Georgia Department of Audits and Accounts makes this information available online at their website[40]

Georgia- Sexual Harassment

It Happened To Me: A Real Story

Erica Splunge worked in food preparation at Captain D's, a division of Shoney's, Inc., from September 1991 until January 1992. During that time, she was subjected to several instances of sexual harassment from her supervisors. Her store manager, Freddie Johns, made sexual comments about her body and showed her explicit pictures at work. Ron McClellan, the area manager, also made explicit comments about Splunge's body as well as rubbing up against her while she was doing her job. McClellan once cornered Splunge in a freezer at the restaurant and tried to restrain her there until she would kiss him. Another time he attempted to seduce her into going to a motel with him, getting more persistent when she refused to go with him.

Ms. Splunge and other Captain D's employees filed a claim of sexual harassment with the EEOC against Johns and McClellan. The court felt that Splunge had satisfied all of the elements of an initial case of sexual harassment because her testimony revealed that she did not welcome the harassment because she emphatically objected to McClellan's ultimatum, i.e., that she had to kiss him before leaving the freezer; she told him not to touch her buttocks; she went home crying after McClellan offered her money to go to his hotel room; and she testified that while she tried not to let her supervisors' behavior bother her, she was embarrassed and offended. For these reasons, the case survived summary judgment and was allowed to go forward in the court system.

Splunge v. Shoney's, Inc., 874 F. Supp 1258 (M.D. Ala., 1994).

What is sexual harassment?

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature.[41]

What are the laws?

The federal law dealing with sexual harassment is found in Title VII of the Civil Rights Act of 1964.[42]

There are no state laws in Georgia that deal directly with sexual harassment. Instead, lawsuits may be filed under the tort claims of assault, [43] battery, [44] and intentional infliction of emotional distress. [45] Additionally, certain state laws allow employers to be held responsible for sexual harassment that occurs in the workplace.[46]

Where is the law regarding Title VII sexual harassment found?

Title VII of the Civil Rights Act of 1964 does not specifically address sexual harassment as a type of discrimination.[47] However, the Supreme Court expanded the application of Title VII to include sexual harassment lawsuits.[48]

To whom does the federal law apply?

Title VII of the Civil Rights Act of 1964 is applicable to all public and private employers with at least 15 employees.[49] There are a few exceptions, such as the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, any department or agency of the District of Columbia subject by statute to procedures of the competitive service, and a bona fide private membership club (other than a labor organization).[50]

What is an employee under this law?

The term "employee" means any individual employed by an employer.[51]

What is an employer under this law?

The term "employer" means a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.[52]

Are women a protected class under Title VII?

Yes, women are a protected class under Title VII.[53]

What must I show in order to bring a claim under Title VII?

To establish sexual harassment under Title VII, an employee must prove that she belongs to a protected group, she was subjected to unwelcome sexual harassment, the harassment was based on her sex, the harassment altered the terms and conditions of her employment, and there is a basis for holding her employer vicariously responsible. [54]

The standard for determining whether the harassment affected a term, condition or privilege of employment amounts to a two-part test: The harassment must be "sufficiently severe or pervasive" to create a work environment that a reasonable person would find hostile or abusive and the employee must have actually found the work environment to be hostile or abusive. [55] Hostile or abusive work environments can stem from physical and verbal harassment.

It is important to recognize that a mere insult which provokes offensive feelings in an employee does not sufficiently or necessarily implicate Title VII.[56] Previous case law has said that the behavior must be outrageous and “so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group

workers."[57] Although there is not a set standard for what qualifies as sufficiently severe or pervasive, there must be a showing of extraordinarily outrageous behavior.

Courts have established a "reasonable woman" standard for sexual harassment cases because women, who are more often the victims of sexual crimes, have good reason to be more concerned with sexually charged words and actions.[58] In sexual harassment cases, the judge would use separate standards to compare the response of female victims to male victims. [59]

What can my employer do to deny my allegations?

Your employer will attempt to show a legitimate, nondiscriminatory reason for their allegedly discriminatory behavior.[60]

Does it matter when the discrimination occurred?

Yes. A claim must be filed with the EEOC within 180 days after the sexual harassment occurred.[61] The EEOC recommends contacting them promptly when discrimination is suspected.[62]

Who enforces the law?

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964.

How do I file a claim?

Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with the EEOC. A charge may be filed by mail or in person at the nearest EEOC office.[63] The complaint must include:

(1) the complaining party's name, address, and telephone number;

(2) The name, address, and telephone number of the employer, employment agency, or union against which the claim is being made and the number of employees (or union members), if known;

(3) A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated);

(4) and The date(s) of the alleged violation(s).[64]

If the individual bringing the charge receives a notice of "right to sue" from the EEOC, they may then file a lawsuit within 90 days. Also, 180 days after the charge was initially filed with the EEOC, the individual bringing the charge can request a notice of "right to sue" and may then bring suit within 90 days after receiving this notice.[65]

Where is the law regarding sexual harassment in GA found?

There are no state laws that directly deal with sexual harassment. Instead, lawsuits can be brought under Georgia's tort laws that address assault and battery and intentional infliction of emotional distress.

What claims can sexual harassment charges be brought under?

With regards to sexual harassment, claims can be brought under assault and battery for lewd and obscene comments and gestures, sexual advances, and offensive touching.[66]

How long do I have to bring a sexual harassment claim in the state?

Generally speaking, claims must be brought within two years after the sexual harassment occurs.[67] If the claim is filed after the two years have elapsed, the claim will essentially be lost.

Does the size of my place of business matter? Does it matter how many employees there are?

Under state law in Georgia, the size of the business and number of employees have no affect on your ability to bring a claim of sexual harassment.

What must I prove to bring a claim Intentional Infliction of Emotional Distress in GA?

You may bring a claim of intentional infliction of emotional distress arising out of sexual harassment incidents. To show a claim of intentional infliction of emotional distress, you must show that:

(1) the defendant's behavior was willful and wanton or intentionally directed to harm the victim;
(2) the actions of the harasser must be sufficiently outrageous so to naturally humiliate, embarrass, frighten, or outrage the victim;
(3) the conduct caused mental suffering or wounded feelings or emotional upset or distress to the victim.[68]

This can be difficult to prove. For example, in one case, an employee was not able to recover emotional distress damages for an employer's suspected negligence in allowing a co-worker's alleged sexual harassment of the employee to continue. This was because the employee alleged no physical injury or resulting monetary loss.[69]

What is willful and wanton behavior?

Behavior is considered willful or wanton when there is an absence of care, proof of conscious indifference, or when a person acts with the knowledge that his conduct will result in injury to another person.[70]

What is sufficiently outrageous conduct?

This does not include insults, threats, indignities, or annoyances, but must be regarded as atrocious and utterly intolerable.[71] Mere tasteless, rude or insulting social conduct will not give rise to such a claim.[72] Whether the conduct is sufficiently outrageous will be decided by a jury, but some factors to take into consideration include the existence of a relationship in which one person has control over another, such as a supervisor-employee relationship,[73] the actor's awareness of the victim's particular susceptibility,[74] and the severity of the resultant harm.[75]

What is emotional distress?

Emotional distress includes all highly unpleasant mental reactions such as horror, fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea.[76]

What must I prove to bring a claim of battery in GA?

Women may also bring a claim of battery arising out of sexual harassment incidents. Any unlawful touching is a physical injury to the person and is actionable. Generally speaking, an "unlawful" touching is one that is "offensive."[77] "Offensive" touching is defined as that which proceeds from anger, rudeness, or lust and would be offensive to an ordinary person.[78] A cause of action "can be supported by even minimal touching."[79] Even if the defendant did not touch any "private area" of the woman's body, courts may still conclude that the touching was offensive when the touching occurred within the context of an employee-supervisor relationship, where it is especially difficult for the plaintiff to protect herself.[80]

I told my boss about the harassment and he did nothing. Can I hold him liable?

Yes, there are laws that victims of sexual harassment can use to hold their employer responsible for harassment that occurred in the workplace.

The state statute relevant to employer liability is the Official Code of Georgia, Section 51-1-12, otherwise referred to as O.C.G.A § 51-1-12. Specifically, O.C.G.A. § 51-1-12 states that an employer is responsible for the conduct of his employees if he knew or should have known about his employees' actions. [81]

Furthermore, O.C.G.A. § 10-6-1 holds employers accountable for the actions of their employees. An employer is responsible for actions that he expressly or implicitly authorizes, meaning he legally approved the harassment.[82]

My employer has to "approve" the harassment to be liable? How do I prove that?

O.C.G.A. § 10-6-52 says that the employer's after-the-fact approval of the harassment counts as though it was originally authorized. Written authorization is the obvious example of express consent.[83] Payment or reimbursement related to the harassment can also be considered approval.[84] Approval of the harassment may even be implied through the silence of the employer.[85] An employer cannot retract his approval.[86]

O.C.G.A. § 10-6-61 holds your employer liable if he directly assents to or orders the harassment[87] as long as it damages your health, reputation or property.[88] Once again, the order can be implied[89] or inferred from his conduct, especially when the harassment occurs within the "scope of the business."[90]

I was harassed at work. Does that count as being "in the scope of employment"?

The idea behind 'scope of employment' is that your employer is in some way benefiting from the harassment. This expands his liability to acts he should have known about.[91]

An employer cannot, even with approval, be held liable for an employee's harassment if it is entirely disconnected from the business.[92] For example, in one case, an employer was not held responsible for the alleged sexual harassment by the employee's co-worker, given that the co-worker's alleged actions were committed for purely personal reasons unrelated to the employer's business.[93]

The general rule is that sexual harassment by a supervisor is not within the scope of employment.[94] In one case, the employer could not be responsible for the suspected sexual harassment of the plaintiff because the alleged acts of sexual harassment were not committed in order to further the employer's business and hence, were outside the scope of the supervisor's employment. In a case where the employer was found responsible, it was because he fired the plaintiff and retained the supervisor after learning about the harassment.[95]

Although a supervisor's sexual harassment is outside the scope of employment when the conduct was for personal reasons, employers can be held responsible, when their own negligence is the cause of harassment. The employer is considered negligent if he knew or should have known about the conduct and failed to stop it.[96]

Georgia- Pregnancy Discrimination

It Happened to Me: A Real Story
Pregnancy Discrimination

Anita Kay Hargett was first employed by Delta Automotive in 1983 as a telephone salesperson. She was considered by Delta to be a valuable and successful salesperson until she became pregnant in 1988 while unwed. Prior to pre-trial, Delta's only attempt to justify Ms. Hargett's dismissal was its assertions that she had a poor attitude, that she slept on the job, that her sales declined despite verbal warnings, and that she was warned in writing by the sales manager, C.R. Taylor, that she must produce $31,000 in August sales or be terminated. She was terminated on August 30, 1988 after her August sales amounted to only $28,114.04. The written "termination report" under "reason for separation" said nothing more than "quality of work causing drop in sales."

It was not until the trial began that Delta first claimed that Ms. Hargett was terminated because she had violated an unwritten company rule against unladylike conduct resulting in a customer loss. When defending Ms. Hargett's charge before the EEOC, Delta had never mentioned or even suggested this charge. Delta never informed the EEOC that Ms. Hargett had had an affair with a customer who, after Ms. Hargett became pregnant by him, discontinued doing business with Delta.

The court stated that it could not determine all of the factors which motivated Delta to fire Ms. Hargett or which of those factors predominated the decision to fire her. It did find, however, that the alleged legitimate, non-pregnancy reasons for the termination, as articulated by Delta, could not protect Delta from the fact that her pregnancy was related to the decision to fire her. The court then decided that Ms. Hargett's pregnancy constituted a part of the motivation for the decision to fire her, and thus she was awarded damages for her pregnancy discrimination claim.

Hargett v. Delta Automotive, Inc., 765 F. Supp. 1487 (N.D.Ala. 1991).

What is pregnancy discrimination and is there a law in GA that covers it?

There is no state specific law in GA under which a female employee can bring a claim of pregnancy discrimination. However, female employees in GA may bring a claim for pregnancy discrimination under the Pregnancy Discrimination Act of Title VII.[97] The Pregnancy Discrimination Act provides that the language of Title VII includes discrimination because of or on the basis of pregnancy.[98] This means that pregnant women are to be treated the same as non-pregnant people who are similar in their ability or inability to do work.[99]

I think I was discriminated against because I was pregnant. How do I prove it?

An employee who wishes to bring a claim of pregnancy discrimination can do so in two ways; either with direct evidence or with circumstantial evidence.[100]

If you bring a claim supported by direct evidence, the court will use a test originally presented in *Price Waterhouse v. Hopkins*.[101] Once you have presented evidence establishing that your pregnancy was a motivating factor in the challenged employment action, your employer is then given an opportunity to show that they would have made the exact same employment decision even if you were not pregnant.[102]

If you bring a claim supported by circumstantial evidence, the court applies a test originally presented in *McDonnell Douglas Corp v. Green*.[103] The first step of the test is for you to produce evidence which allows you to advance your claim. Specifically, the evidence produced should include the following:

(1) that you are a member of a protected class or minority (e.g that you are a pregnant woman);
(2) that you were qualified for the position held;
(3) that despite your qualifications, you were subjected to an adverse employment decision (see definition below); and
(4) that non pregnant employees were treated more favorably than you were.[104]

Once you have provided the aforementioned evidence, your employer must then provide legitimate, non discriminatory reasons for their actions.[105] Once this has happened, you must come forward with evidence which shows that the reasons the employer gave were not the real reasons for their actions.[106] Under this test, it is always your responsibility to show that you were the victim of discrimination.[107]

What is direct evidence?

Direct evidence will show that pregnancy was obviously the reason for the challenged employment action.[108] Direct evidence can include statements by decision makers clearly showing that your pregnancy was a motivating factor in their employment decisions.[109] Direct evidence may also include comments by an employer which reflect a discriminatory attitude or comments by individuals closely involved in employment decisions indicating the same.[110] Direct evidence does not include random comments in the workplace, comments by coworkers/non decisions makers, or statements made unrelated to the discriminatory action.[111]

What is an adverse employment action?

An adverse employment action is an ultimate decision made by your employer, such as firing or refusing to hire.[112] Adverse employment actions can also include conduct that "alters the employee's compensation, terms, conditions or privileges of employment,

deprives him or her of employment opportunities, or adversely affects his or her status as an employee."[113]

What might my employer provide as legitimate, non discriminatory reasons for their actions?

When you bring a discrimination claim, the next step is for your employer to provide a legitimate non discriminatory reason for their actions. More specifically, your employer must provide specific evidence that shows that their actions were not based on any sort of discrimination.[114] The legitimate reasons that an employer will provide will vary in each individual case. One example is a case where a woman claimed that she had suffered an adverse employment action because of her pregnancy. The court found that her failure to attempt to return to work after the birth of her baby, as well as her failure to obtain medical clearance to do so, were legitimate, non discriminatory reasons for her employer to fill her position with someone else.[115]

Is my employer required to make special accommodations for pregnant employees?

The Pregnancy Discrimination Act does not require that an employer make special accommodations for its employees.[116] The act only guarantees that pregnant employees are given the same opportunities and benefits as non pregnant women who are similarly limited in their ability to work.[117] If your pregnancy prevents you from fulfilling your job responsibilities, your employer is not required to make any special accommodations. [118]

Is my abortion or miscarriage covered under the Pregnancy Discrimination Act?

The basic intention of the Pregnancy Discrimination Act is to ensure that women affected by pregnancy and related conditions are treated the same as other employees on the basis of their ability or inability to work.[119] Therefore, you are protected against such practices as being fired merely because you are pregnant or had an abortion.[120] However, your employer is not required to pay for any health insurance benefits for your abortion, except if your life would be endangered if you carried the fetus to term or if medical complications arise as a result of the abortion. [121]

Can my employer fire me or refuse to hire me because I may become pregnant?

No. Women are a protected class and the Pregnancy Discrimination Act makes it illegal for your employer to take any adverse action against you because you are or may become pregnant [122]

If I want to bring a claim of pregnancy discrimination under the Pregnancy Discrimination Act, does it matter how many employees my employer has?

The Pregnancy Discrimination Act requires companies employing 15 or more people to treat pregnant workers the same way they treat other workers who have medical

disabilities and cannot work. If there are fewer than 15 employees, you are not able to bring this claim.

Can my employer require that I take maternity leave?

Mandatory maternity leave policies are unconstitutional.[123] However, in recognizing that the ability of any pregnant woman to continue working past any fixed date is specific to every individual, employers are allowed to place employees on maternity leave based on that individual's circumstances.[124]

Can I challenge my employer's maternity leave policy on the grounds that it is discriminatory?

Yes. If your employer has a leave policy "limiting" maternity leave to a certain amount of time, while still providing a leave of absence for an illness for an unlimited time, that maternity leave policy will be found discriminatory.[125] An obviously discriminatory leave policy is considered to be direct evidence of unlawful discrimination on account of pregnancy.[126]

When should I tell my employer I am pregnant?

Under the Family and Medical Leave Act, you must provide at least 30 days notice to your employer before you plan to take maternity leave.[127]

For what amount of time can I take leave because of pregnancy?

Under the Family and Medical Leave Act, employers are required to give you up to 12 weeks of leave if you have worked for your employer for 12 months or for at least 1,250 hours .[128] However, the FMLA only applies to employers who employ more than 50 employees.[129] For more information about the FMLA, please see "Famil Medical Leave Act" under the Federal Laws section.

What happens to my job while I am on pregnancy leave?

When you return from your pregnancy leave, under the Family and Medical Leave Act, you are entitled to your same position if it still exists or to another position if your position was eliminated. You also have the right to return to the same or equivalent position, pay, and benefits at the conclusion of your leave.[130]

Is my employer required to pay me while I am on pregnancy leave?

No. Under the Family Medical Leave Act, employers are only required to provide 12 weeks of unpaid leave.[131]

Is there a way for me to bring a pregnancy discrimination claim in GA under state law?

An individual can bring this type of claim under GA tort law. A tort, in its most basic sense, is a wrongful act that causes harm to another person. Specifically, if you want to bring a pregnancy discrimination under GA tort law, you will likely claim Intentional Infliction of Emotional Distress.[132] In order to state such a claim, you must show that your employer's behavior was so extreme or outrageous that no reasonable person could be expected to tolerate it. [133] It is important to recognize that mere insults and annoyances do not rise to the level of extreme and outrageous.[134]

Can I bring a claim for Intentional Infliction of Emotional Distress because I was fired?

GA law does not recognize wrongful discharge of an at will employee.[135] An at-will employee is someone that can be terminated for any reason by their employer. This means that if your claim of intentional infliction of emotional distress arises out of your termination, your claim will be dismissed. [136]

Georgia- Discriminatory Hiring

It Happened to Me: A Real Life Story

In 1975, Bessemer City hired a 24-year-old recent college graduate, Donnie Kincaid, as its new Recreation Director. Ten years later, the Supreme Court ruled that Phyllis Anderson, one of the other applicants, was denied the job because she was a woman.

At the time of the interviews, Phyllis was a 39-year-old teacher with degrees in Social Studies and Education. The only woman who applied for the position, she was asked questions about how her husband felt about her taking this job. Donnie Kincaid and the other male applicants were not asked if their wives wanted them to take the position. The hiring committee, made up of four men and one woman, all verified this in later court proceedings. One of the men even testified that he "wouldn't want his wife doing this job" and that it would be "real hard" for a woman to handle it. The final vote of the hiring committee was even divided on gender lines, with the female member voting to hire Phyllis Anderson and the men choosing Kincaid.

The EEOC investigated for 5 years before deciding Ms. Anderson had enough evidence to prove discrimination under Title VII. The district court ruled in favor of Phyllis because of the gender biases expressed by the male committee members and Phyllis' superior credentials. In 1983 the Appeals court overruled, saying that Kincaid's degree in Physical Education provided enough qualifications. The Supreme Court eventually decided that Phyllis had, in fact, been discriminated against, and reinstated the District Court's ruling. Luckily, that court held that her damages included attorney's fees.

Anderson v City of Bessemer City, N.C. 470 US 564 (1985)

I think I wasn't hired/promoted because I'm a woman, how do I prove it?

First, you must show the following 4 things:

1) that you are a member of a protected class (i.e. that you are a woman);
2) that you applied for and were qualified for a job for which the employer was seeking applicants;
3) that despite your qualifications, you were rejected; and
4) that after this rejection the position remained open or was filled by a person not within the protected class.[137]

Once you have established those four elements, the burden shifts to the employer, who will offer a legitimate, non-discriminatory reason for failing to hire you.[138] The employer will present evidence to show that there were other factors that motivated the decision not to hire you.[139] After the employer has made its rebuttal, the burden will shift back to you. At this point, you must show that the employer's legitimate reasons are false and are not the true reason you were not hired.[140] You will need to persuade the court that there was

an underlying discriminatory reason for the employer's behavior or that the employer's supposed legitimate, non-discriminatory reason is not credible.[141]

How do I prove I belong to a protected group?

Women are a protected class under Title VII.[142]

How do I prove I was qualified for the position?

To prove you were qualified for the job, you only have to prove that you did not have an absolute lack of qualifications for the position.[143] In the end, it comes down to proving you were just as qualified as the person who was hired.

Even the actual qualifications for a position can be discriminatory, such as a previous experience requirement that is not universally enforced.[144] This is best shown through statistical evidence.

How do I prove I was not hired because I am a woman?

There are different methods of proof depending on whether you are claiming the employer refuses to hire women in general, or just did not hire you because you are a woman. For either type of case, it is essential that the person or people actually hired are members of a different protected class (i.e. men, single women, childless women).

Use statistics to prove a generally discriminatory hiring policy. They can show a low number of women working in the position compared to the number of qualified women in the area.[145] In some cases the statistics alone are enough to prove the discriminatory hiring policy.[146]

Anecdotal evidence is the basis for an individual case. One woman successfully proved her discriminatory hiring case because she was asked if her husband approved of her applying for the job. One of the men on the hiring committee even mentioned that he would "not want his wife" to do such work.[147]

My employer has fewer than 15 employees, is there anything I can do?

No. In Georgia you must bring a discriminatory hiring claim under Title VII, which requires that your employer have 15 or more employees.[148]

Does it matter when the discrimination occurred?

Charges must be filed with the EEOC within 180 dates from when the discrimination occurred.[149]

What options do I have if my employer has fewer than fifteen employees?

In order to bring a claim of this sort under Title VII, your employer must have 15 or more employees.

Georgia- Discriminatory Firing

It Happened to Me: A Real Story
Discriminatory Firing

Ms. Wallace, an employee at Johnson Products Company, was part of a class action alleged retaliation, discriminatory hiring, discriminatory promotion, and discriminatory firing decisions made by a company executive, Jack Johnson. Johnson Products had no company termination policy and Johnson would often order his managers to fire workers without providing a reason. Ms. Wallace was a victim of this treatment when she was visited at her home by her immediate supervisor and arbitrarily fired. He told her he had no reason for her discharge except that Johnson had just ordered to him to "get rid of her." He told her he suspected she was fired because she had so firmly established distribution of the company's cosmetics in Louisiana and Mississippi that lower level employees could maintain the accounts. This job was given to a man. The court ruled that this instance and many others proved a pattern of discrimination in violation of Title VII and that all the plaintiffs were entitled to monetary relief.

Perryman v Johnson Products Co., 580 F. Supp 1015 (N.D. Georgia, 1983)

How do I bring a discriminatory firing claim in GA?

Discriminatory firing claims, also referred to as wrongful termination claims, cannot be brought under state law in GA. Therefore, it is necessary to bring a discriminatory firing claim under Title VII of the Civil Rights Act of 1964.

What constitutes wrongful termination on the basis of gender?

Wrongful termination on the basis of gender occurs when an employer fires a female employee because she is a woman.[150] Section 703(a)(1) of Title VII of the Civil Rights Act reads, "It shall be an unlawful employment practice…to discharge any individual…because of such individual's…sex…" [151]

How do I prove I was fired because I am a woman?

There is a three step test to infer intentional discrimination under Title VII.[152]

The first step is for the employee to show the following factors in order to advance the claim of discrimination:

(1) You are a member of a protected class (i.e. women);
(2) You were qualified for your job and performed at a satisfactory level; and,
(3) You were fired and replaced by a man with equal or lesser qualifications.[153]

If these factors are met, the second step in this test is for the employer to provide a legitimate, non-discriminatory reason for firing you.[154] If your employer provides a

legitimate non-discriminatory reason for discharge, you then have a chance to show that the employer's excuses are untrue.[155] Once you have countered the employer's allegedly legitimate, non-discriminatory reasons, you must go on to persuade the judge or jury that the employer intentionally discriminated against you.[156]

How do I prove that I belong to a protected group?

Women are a protected class under Title VII.[157]

How do I prove that I was qualified for the job and performed at an acceptable level?

The employer's performance records and any prior disciplinary history may be considered to establish whether you were qualified or not.[158] You should keep copies of your prior evaluations and reports, so as to help establish a solid employment history. The best-case scenario would be one where records show a positive history of work performance. The court will also look to whether you had the background and skills necessary to carry out the position and whether you applied those skills in a satisfactory manner.[159] It is important to keep in mind that even if you are able to produce evidence that you were qualified for the job, there are other factors that may hurt your case.

What if I wasn't discharged, but resigned or quit my job instead?

If you resigned or quit your job because of sexual harassment or discrimination that violated Title VII, it is considered "constructive discharge."[160] If you have quit your job without satisfying the requirements, the cause of action for constructive discharge will not be met.

What is constructive discharge and how do I prove it?

Courts have recognized a claim for what is referred to as constructive discharge. Constructive discharge occurs when an employee involuntarily resigns in order to escape intolerable and illegal conduct by her employer, which she is subject to because of her sex.[161] The intolerable and illegal employment requirements must be the sole reason you resigned.[162]

What are examples of legitimate, non-discriminatory reasons for discharge?

As mentioned, once you have shown that you were qualified for the job and performed at an acceptable level, your employer will then provide a legitimate, non-discriminatory reason for discharge. Examples of legitimate, non-discriminatory reasons for discharge include whether you were qualified and were fired for reasons unrelated to your experience (such as having an affair with your supervisor),[163] disobedience, or difficulty working with supervisors.[164]

Furthermore, if your replacement is female, your employer has effectively negated your wrongful discharge suit, unless you can prove the claim under a different protected class. [165] Finally, the employer may provide general statistics proving they have fired more men than women in the last year to counter any claims of discriminatory policies. [166]

Does it matter when the discrimination occurred?

For all claims under Title VII, you must file a complaint with the Equal Employment Opportunity Commission within 180 days of the date of the last incident of discrimination. Georgia does not have a law that will cover a discriminatory claim, and therefore it is not possible to have the time limit extended to 300 days, as is the case with some other states.[167] The case must be brought within 180 days or the chance to bring the case is lost. For more information on filing a claim, please see "How Do I File A Claim?"

What options do I have if my employer has fewer than fifteen employees?

Because Georgia does not have a state law under which an employee can bring a discriminatory firing claim, in order to bring a claim of this sort under Title VII, your employer must have 15 or more employees.

Georgia- Retaliation

It Happened to Me: A Real Story
Retaliation

Ms. Donnellon worked as a secretary for Fruehauf Corporation from 1963 through 1980, when she applied for a Sales Representative position. When the job was given to the other applicant, a man who had worked in the company for six years, she filed a discrimination complaint with the EEOC. Exactly one month after filing the complaint, Ms. Donnellon was fired. She then filed a retaliation charge with the EEOC and, upon receiving a right-to-sue notice, filed charges in the district court.

The court ruled that Ms. Donnellon did not have a discriminatory hiring claim against Fruehauf because the man was actually better qualified. However, the court did find that Ms. Donnellon had been illegally retaliated against for filing the claim in the first place. Fruehauf was required to provide her with 6 years of back pay and reinstate her in her old position.

Donnellon v Fruehauf Corp 794 F.2d 598 (11th Cir., 1986)

What is retaliation or reprisal?

Under Title VII, retaliation is when you are fired, demoted, reassigned, denied benefits, denied promotion or not hired solely because they opposed an unlawful employment practice, such as discrimination or sexual harassment.[168] This “adverse action” only qualifies as retaliation if it makes you worse off in your employment due to the protected activity.[169]

Under Title VII, any conduct that alters an employees’ compensation, terms, conditions or privileges of employment can constitute an adverse action.[170] It is important to keep in mind that not everything that makes you unhappy at work is retaliation.[171] The question of whether you have suffered an adverse action will normally depend on the facts of each individual case.[172]

What are “protected activities”?

Protected activities include either opposing an act of discrimination made unlawful by Title VII, or participating in an investigation under Title VII.[173] This includes acting as a witness in a co-worker’s trial.[174]

However, every complaint about conditions in the workplace does not constitute a protected activity. Retaliation in response to an activity that is not protected does not support a retaliation claim.[175]

What is an example of retaliation in the workplace?

An actual example of retaliation can be found in *Harris v. Fulton-Dekalb Hospital Authority*.[176] In that case, a female employee filed a sexual harassment claim against her employer.[177] The employer then requested certain information from her that was related to her discrimination claim.[178] She refused to provide the information to her employer and the employer again requested the information. When she refused again to provide the information to the employer, she was subsequently fired.[179] A court in Georgia found that her case was sufficient for a retaliation claim.[180]

How do I show that my legally protected conduct led to my discharge?

There are three basic steps to prove a retaliation case:[181]

(1) You took part in investigating or opposing a discriminatory act;
(2) You suffered negative employment action, such as firing or demotion; and
(3) There is a causal connection between the two (a short time span between the original complaint and firing or demotion is sufficient proof of causation.)[182]

After making your case, it will always be your responsibility to disprove your employer's excuses.[183]

Are my co-workers protected if they support my claim?

Yes. Male and female coworkers are protected from all forms of retaliation under Title VII.[184] This applies whether your coworkers encourage you to file a suit or testify on your behalf. [185]

Your spouse can also make a retaliation claim if targeted for negative employment action because of your EEOC discrimination suit.[186]

Your coworker's retaliation claim will be held to the same standards and procedures as one stemming from personally filing a discrimination claim.[187]

What kind of excuses will my employer use? How do I get around those?

Once you have stated the initial requirements of your case, your employer will attempt to show a legitimate reason for the adverse action.[188] Some common reasons employers use to fight a retaliation claim include the poor job performance,[189] lack of qualifications for the position,[190] violation of work rules, such as being excessively absent, or insubordination, [191] or an inability to get along with co-workers or supervisors, as evident threats or actual violence towards co-workers.[192]

If your employer offers legitimate reasons for the action taken against you, you then need to show that the reasons offered by your employer are just superficial excuses to act discriminatorily.[193] To do this, you can use direct evidence to show that a discriminatory motive more likely than not motivated your employer in the employment decision.[194] If you have no direct evidence of the retaliation, you should then try to show that the employer's excuse is not credible. To do this, you need to prove one of the following:

(1) The employer's explanation had no basis in fact; or
(2) The explanation was not the real reason; or
(3) The action was disproportionate to the excuse given.[195]

However, it is important to keep in mind that your employer will not be held liable if he or she presents a legitimate non-discriminatory reason for the action, even if your participation in a protected activity influenced the decision.

My employer has fewer that 15 employees, is there anything I can do?

No. In Georgia you must bring a retaliation claim under Title VII, which requires that your employer have 15 or more employees.[196]

Is there a time limit for when I can file a claim with the EEOC?

An employee has 180 days to file a retaliation claim with the EEOC. If the claim is not brought within the 180 days, the opportunity to file the claims is lost.[197] For more information about filing a claim, please see "How Do I File A Claim?"

Georgia – How do I file a claim?

How do I file a claim in the state of Georgia?

To file a claim of discrimination in Georgia, you will need to file a complaint with the Clerk of Court.[198] The Clerk of Court is located at the courthouse where you will file your complaint.[199] The complaint should be written, filed and date stamped by the Clerk of Court, and a copy of the complaint must be provided to the employer.[200] In most cases, you must file your complaint in the county where your employer's business is located.[201] There will be a fee for filing your claim in state court.[202] This fee varies depending on where you file your complaint.[203]

Against whom can I file a claim?

You may file a claim against any person who discriminated against you at work, as well as your employer.

How much time do I have to file a claim?

The statute of limitations in Georgia for these types of claims is two years.[204]

If I choose to file a claim, what is expected of me?

You will be expected to respond to the court's requests and your employer's requests, as well as appear in court for all hearings and for the trial.[205]

How long will the process take?

Once you file your complaint with the Clerk of Court, your case will be put on a trial schedule.[206] Depending on how busy the court is, this could take months or even years.

Do I need an attorney?

The decision to hire an attorney is up to you.[207] By law, all Georgia citizens are entitled to represent themselves in court.[208] However, it is common for people who represent themselves in court to lose because they do not understand the courtroom procedures.[209] For this reason, it is recommended that an individual seek advice or representation from an attorney, as it could make the difference between winning and losing a case.[210]

What if I can't afford an attorney?

In some cases, you may qualify for free or reduced-fee legal assistance.[211] This assistance may come from organizations such as the Atlanta Legal Aid, Georgia Legal Services, or a local Pro Bono Project.[212] It is also possible that you may be able to find a list of attorneys willing to provide services based on a sliding scale related to your income. [213] If you are interested in finding such a list, contact the court clerk.[214]

What happens after I submit my claim?

This will vary depending on where you file your claim (which is called a "complaint.) It is best to ask the Clerk of Court about the process in the district where you filed your complaint. In some courts, statutes dictate the timeframe in which cases are placed on a trial calendar.[215] In other courts, cases are scheduled for trial in relation to when your employer files a response to your claim.[216] Furthermore, a case may be scheduled for trial following a request by one or more of the parties for a certain date.[217] It is advised that you contact the clerk of court to determine how your case will be scheduled.[218]

You and your employer will be notified of the scheduled dates either by mail from the court or by the opposing party.[219] Another notification method is for the court to publish a trial calendar in a particular newspaper to ensure that all involved parties are notified.[220] In this type of situation, you may not receive a mailed notice.[221] Contact the clerk to learn how you will receive notification.[222]

Can I file a federal claim of employment discrimination as well?

Yes, you can also file a federal claim of employment discrimination under Title VII of the Civil Rights Act of 1964. These claims are filed with the EEOC.

How do I file a claim with the EEOC?

A claim of employment discrimination must be filed within 180 days of the last incident of discrimination.[223] It can be filed in person or by mail with the Equal Employment Opportunity Commission:[224]

U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507
Phone: (202) 663-4900
TTY: (202) 663-4494
To be connected to your nearest Field Office, call:
Phone: 1-800-669-4000
TTY: 1-800-669-6820

Against whom can I file a claim?

A claim under Title VII can be filed against your employer.

If I choose to file a claim, what is expected of me?

Be prepared to include the following information with your claim:
(1) your name, address, phone number;
(2) a brief description of the events, including dates;

(3) name, address, phone number of your employer;
(4) number of employees.[225]

How long will the process take?

The process can be lengthy, although it depends on the facts and circumstances of your case. Together with the investigation period and the court proceedings, the process can take anywhere from a few months to a few years.

Do I need an attorney?

You do not need an attorney to file a claim with the EEOC.[226]

Where do I find an attorney?

If you decide to file a claim in court, you can contact your local bar association to find an attorney. The State Bar of Georgia can be found at their website.[227] This website can direct you to a local bar association.

Do I have to contact the EEOC?

If you are filing a claim under Title VII, you must go through the EEOC first. For an Equal Pay Act claim, however, you do not need to file with the EEOC first. You can go straight to court.

What happens after I submit my claim?

After you file your claim, the EEOC will investigate the claim. The investigation will include an examination of written files, requests for information, interviews, and visits to the site of the alleged discrimination.[228]

What happens if the investigators determine that no "reasonable" or "probable" cause exists on which to base a claim?

If the investigators determine that there is no “reasonable” or “probable” cause on which they can base a claim of discrimination, they will notify you of this and they will then issue a notice that closes the case and gives you 90 days to file a lawsuit on your own behalf. [229]

What happens if the investigator determines that "reasonable" or "probable" cause exists on which to base a claim?

If the investigation does determine that enough evidence exists to sustain a claim, the EEOC will make an attempt at conciliation, mediation, or settlement with your employer. If this is successful, neither party can go to court unless the agreement is breached.[230] If

this is unsuccessful, you will receive a "right to sue" letter, which means you can file a claim in court on your own, or where evidence is ample, the EEOC may file a suit.[231]

What is a "right to sue" letter?

A "right to sue" letter is your notification that you have exhausted the administrative procedures, meaning that you have gone through the EEOC and, for whatever reason, an agreement was not reached.[232] The letter gives you 90 days to file a claim in court to sue your employer directly. [233]

Can I appeal a decision of the Commission?

Yes. Once the EEOC administrative judge has made a ruling, the agency has 40 days to issue a final order.[234] This means they will either agree or disagree with the judge's ruling. If you disagree with the final order, you can file an administrative appeal.[235] More information about your right to appeal will be included in the final order. You need to file your appeal within 30 days, unless you can show circumstances that prevented you from filing.[236]

What if I don't want to sue?

An alternative to suing is arbitration, a form of mediation that is enforced by the courts.[237] You are required to submit the application for arbitration to the Superior Court in your county. [238] After receiving your application, the Court will appoint an arbitrator to oversee the agreement on the court's behalf.[239] Both you and your employer will also choose at least one arbitrator (usually your attorney) to represent your interests.[240]

These individuals will, in essence, have an informal trial, complete with witnesses, depositions and other evidence, until they can come to an agreement.[241] This agreement, once signed by all parties and submitted to the Court, is binding on you and your employer.[242]

Georgia-What Am I Entitled to If I Win?

What am I entitled to if I prove my claim under Georgia State Tort Law?

Under tort law in Georgia, you may be entitled to equitable relief and/or monetary damages.

What is equitable relief?

Equitable relief is any non-monetary remedy ordered by the court when money is deemed insufficient to address the harm done to you. It can be any remedy that the court chooses to grant, based on what it deems fair and within its powers to enforce.[243]

What is injunctive relief?

Injunctive relief is a form of equitable relief, where the court orders an injunction. An injunction is a court order that restrains your employer from continuing their discriminatory behavior.[244]

What is the difference between compensatory and punitive damages?

Compensatory damages are damages sufficient in amount to cover the injured person for the loss suffered.[245] Punitive damages are damages awarded in addition to actual damages in order to punish the defendant for the wrongdoing.[246]

What am I entitled to if I prove my claim under federal claim Title VII?

The "relief" or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include: back pay (money your employer owes you from not paying you what it should have), hiring, promotion, reinstatement, front pay (pay you would have received in the future if reinstatement is not practical or reasonable under the circumstance),, reasonable accommodation, or other actions that will make an individual "whole" (in the condition s/he would have been but for the discrimination).[247] Remedies also may include payment of: attorneys' fees, expert witness fees, and court costs.[248]

Am I entitled to monetary damages if I win under federal claim Title VII?

Damages in discrimination cases take two forms: compensatory damages and injunctive relief.[249] Under most EEOC-enforced laws, compensatory and punitive damages also may be available where intentional discrimination is found.[250] Damages may be available to compensate for present or future monetary losses and for mental anguish and inconvenience.[251]

Am I entitled to back pay under federal claim Title VII?

Under Title VII, you are entitled to back pay (payable by your employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.[252]

Am I entitled to my old job back?

Under Title VII, reinstatement is another form of equitable relief that the courts can order, although they are not required to.[253]

Am I entitled to attorney's fees?

Yes, Title VII does provide for reasonable attorney's fees to be awarded if you win the case.[254]

If I am not satisfied with the result, can I appeal?

Yes. If you are unhappy with the results of a trial or mediation you can challenge it just like any other charge.[255]

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