

The Alphabet Soup of Labor & Employment Law

taylor | english

the purpose-built law firm®

Mission of Pro Bono Partnership of Atlanta:

To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

Enforcement Agencies

Department of Labor (DOL)

- Administers:
 - ✓ Fair Labor Standards Act
 - ✓ Family Medical Leave Act
 - ✓ Occupational Health & Safety Act
 - ✓ Uniformed Services Employment and Reemployment Rights Act
 - ✓ Federal Contractor Compliance
- Labor Statistics

Equal Employment Opportunity Commission (EEOC)

➤ Administers:

- ✓ Americans with Disabilities Act of 1990
- ✓ Rehabilitation Act of 1973
- ✓ Age Discrimination in Employment Act of 1967
- ✓ Title VII of the Civil Rights Act of 1964
- ✓ Equal Pay Act of 1963

Other Agencies

- Dept. of Justice (DOJ)– enforces federal statutes re: discrimination, including race & citizenship
- Nat'l Labor Relations Board (NLRB) enforces the Nat'l Labor Relations Act (NLRA)
- Dept. of Homeland Security (DHS)– immigration issues through Customs & Immigrations Services (CIS)

Discrimination Law & Issues Primer

- “Disability” is defined as:
 1. A physical or mental impairment that substantially limits a major life activity
 2. A perception that an individual has an impairment
 3. A record of an impairment that substantially limited a major life activity

- Major Life Activities can be:
 1. Basic activities that most people can perform with little or no difficulty (sitting, eating, working, concentrating, interacting with others)
 2. The operation of major bodily functions (digestive, bowel, and immune systems, normal cell growth, reproductive functions)

- Can include impairments that are episodic and in remission.

- The Employer has an affirmative duty to engage in the interactive process with the
- Requires that employers reasonably accommodate to allow employees to perform the essential functions of the job
- Basically, if some one requests something because of an illness or impairment, treat it as a request for an accommodation

- Protects persons over the age of 40
- Cannot discriminate or otherwise treat less favorably those persons in the protected category
- Cannot discriminate or otherwise treat less favorably those within the group who are substantially older. (i.e. cannot fire some one who is 64 because they are about to retire and/or in favor of someone who's 45.)
- Watch for age-based comments and discussions with employees about their retirement plans

Genetic Information Nondiscrimination Act (GINA)

- Prohibits the use of genetic information in making decisions relating to terms, conditions, or privileges of employment
- Restricts employers from requesting, requiring or even having genetic information
- “Genetic information” include medical information about family members (up to 4th-degree relative or a dependent of the employee) even if the condition is not hereditary
- “Water cooler” exception – do not probe & walk away....

- Protects employees from discrimination based on race, sex, religion, national origin, and color with regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.
- Prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of protected individuals.
- Prohibits both intentional discrimination (disparate treatment) and neutral practices that disproportionately exclude individuals on the basis of the protected characteristics and that are not job related (adverse impact).
 - ✓ Quid Pro Quo
 - ✓ Impact claims becoming more common

- Discrimination based on pregnancy, childbirth, and related medical conditions qualifies as sex discrimination. (Pregnancy Discrimination Act (PDA))
- There is a religious accommodation requirement.
- Caregiver discrimination. Can easily turn into gender discrimination claim.
- Client-directed employment actions

- Ensures pay equity for male and female employees in positions with substantially equal job duties and responsibilities
- “Equal pay for equal work”
- If there’s a violation of the EPA, it’s probably also a violation of Title VII gender discrimination (However, Title VII doesn’t require that the jobs are substantially equal)

Nat'l Labor Relations Act (NLRA)

- Statute that governs all union activity.
- Applies to non-union employers
- Protects nonunion employees who, as a group, engage in certain protected activities related to their terms and conditions of employment
- Cannot prohibit employees from discussing their pay as pay is a term and condition of employment
- Use of email and bulletin boards for solicitations (solicitation & distribution policy)
- Logos on their clothing (dress code policy)

- Harassment based upon any protected characteristic is prohibited.
- Policy includes more than just those items protected by federal law (i.e. sexual orientation)
- Quid Pro Quo
- Hostile Work Environment -- speech or conduct that is
 - ✓ “severe or pervasive” enough
 - ✓ to create a “hostile or abusive work environment”
 - ✓ based on race, religion, sex, national origin, age, disability, veteran status, sexual orientation, political affiliation, citizenship status, marital status, or personal appearance, etc.
 - ✓ for the plaintiff and for a reasonable person

- It is unlawful to take an adverse action against someone because
 - ✓ he/she opposed a practice that he/she reasonably and in good faith believed to be an unlawful, discriminatory practice participated in the complaint process and/or
 - ✓ participated in the complaint process (i.e. testify or assist in an investigation, administrative process, or lawsuit)
- Adverse actions can be anything that deters employees from coming forward to report or assist in an investigation into alleged unlawful activity

Georgia-specific Issues

- City of Atlanta prohibits discrimination on the basis of sexual orientation and perceived sexual orientation (“preference”)
- Georgia Fair Employment Practices Act -- FEPA was designed to eliminate all forms of discrimination in public employment based on race, color, religion, national origin, sex, handicap, or age. It also provides public employees with an option to submit claims of discrimination to a state agency, rather than the EEOC.

EEOC Administrative Process

1. Employee files charge.
2. Parties are offered internal EEOC mediation.
3. Employer notified and requested to provide information to the investigator.
 - ✓ Position statement – employer’s response to the charge
 - ✓ Request for Information (RFI) – request for supplemental documents and evidence (i.e. personnel files, comparator data, etc.)
4. Investigator proceeds to investigate the charge.
5. Investigator may request an “on-site” investigation and/or witness interviews.

- “No cause” determination
- “Cause” determination with a request to conciliate
- “Right to sue” notice is issued without a determination

➤ Pros:

- ✓ Early and inexpensive resolution
- ✓ Gives CP a chance to vent/“be heard”
- ✓ Opportunity to gather information from CP

➤ Cons:

- ✓ Requires a willingness to make an offer (monetary) despite often baseless claims
- ✓ Time and resources required to participate
- ✓ May require you to also give information (free discovery)

- Conduct thorough Investigation
- Collect ALL relevant documentation
- Prepare Position Statement
- Cooperate with Investigator
- Involve Counsel as needed

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the Workshops Page on our website

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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