

Federal Employee Leave Laws vs. Georgia Employee Leave Laws

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Over time, federal law has expanded in both the variety and scope of situations where employees may have the right to seek leave from work. Georgia, however, has not enacted state laws that mirror or meaningfully expand upon federal employee leave laws. As a result, in Georgia, the only laws which provide substantial employee leave periods are the federal leave laws, including the Family Medical Leave Act (“FMLA”), the Americans With Disabilities Act (“ADA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Uniformed Services Employment and Reemployment Rights Act (“USERRA”).

Federal and Georgia Leave Laws, Generally:

Upon receiving an employee’s request for leave, an employer should review the employee’s requested basis for the leave and determine whether federal leave laws apply. Employees may have an entitlement to leave where the request involves disability, the employee’s own serious medical condition, including pregnancy-related medical conditions, childbirth or adoption and newborn care, serious medical conditions of a close family member, the observation of a religious holiday or practice, and/or military deployment. However, while these federal leave laws apply nationally, most of these laws apply only to large employers with a substantial number of employees, leaving a “coverage gap” for employees of small businesses in Georgia.

While Georgia state law does not provide leave comparable to federal law, Georgia does have some provisions requiring leave under certain conditions. For instance, Georgia recently enacted a sick leave law expanding the permitted uses of employer-provided sick leave. However, the new law did not create a right to leave for employees without employer-provided sick leave. Georgia law also provides for a minimal amount of employee leave in other, narrow situations. For example, O.C.G.A. § 34-1-3 provides employees with the right to take leave if the employee is subpoenaed or summoned for jury service. Another example is O.C.G.A. § 24-2-204, which, in most cases, provides employees with two hours of leave to vote.

The Family and Medical Leave Act

The FMLA is the primary source of job-protected leave for Georgia employees, and all covered employers should be familiar with its provisions. However, the FMLA does not apply to all employees in Georgia. This is because the FMLA only applies to employers who employ 50 or more employees within a 75-mile radius of the worksite of the employee seeking leave. Moreover, not all employees of covered employers are eligible for FMLA leave. In order to be eligible for FMLA leave, an employee must have been employed for 12 months and must have worked for the employer for at least 1,250 hours during the past 12 months. As such, many part-time and small business employees in Georgia may not qualify for FMLA coverage.

For eligible employees of covered employers, the FMLA provides for up to 12 weeks (within a 12-month period) of unpaid, job-protected leave, during which the employer must ensure the continuation of the employee’s group health insurance. Under the FMLA, employees may take leave for: (1) an employee’s serious health condition that makes the employee unable to perform his or her duties; (2) the care for the employee’s spouse, child, or parent who has a serious health condition; (3) childbirth and the care for the newborn child within one year of birth; (4) the placement of an adopted or foster child with the employee and the care for that child; (5) exigencies due to an employee’s spouse, child, or parent’s status as a military member on “active duty;” and (6) the care of a service member with a serious injury or illness where the employee is the spouse, child, parent, and/or next of kin. Employees under this last provision are provided with up to 26 weeks of leave during a 12-month period.

Georgia Laws Similar to the FMLA

Unlike some other states, such as California, there is no state law equivalent to the FMLA in Georgia. In 2017, however, Georgia enacted a new “sick leave” provision, codified at O.C.G.A. § 34-1-10. The provisions of § 34-1-10 only apply *where employers already grant sick leave* to employees. In other words, the new law does not create any right to sick leave but only expands the permissible uses of existing, employer-provided sick leave. Employers that do not provide sick leave are not required to initiate a sick leave plan under the new law. Moreover, the new law applies only to those employees who work at least 30 hours or more per week for an employer with at least 25 employees and to employers who have a sick leave plan and employ at least 25 employees.

The new law requires that employers who already provide sick leave permit employees to use up to five days of that sick leave per year to care for the illness of a child, spouse, parent, grandparent, grandchild, or anyone that the employee claims as a “dependent.” If an employer provides less than five days of sick leave per year, the employer must allow the employee to use all of his or her sick leave for the purposes set forth in the new law.

Thus, while Georgia law does provide some expanded leave rights for employees who already enjoy employer-provided sick leave, it falls well short of providing a state law equivalent to the FMLA.

Federal and Georgia Law on Pregnancy Leave

Pregnancy is not considered a “disability” under the ADA or a “serious medical condition” under the FMLA. However, pregnancy-related medical conditions may be substantial enough to trigger leave rights under one or both of these Acts. For example, an employee who has a pregnancy-complication “disability” may be eligible for leave under the ADA as a reasonable accommodation. Likewise, to the extent that pregnancy-related illnesses would qualify under the FMLA as a serious medical condition allowing leave, leave may be required. In addition, the FMLA provides leave rights to eligible employees for childbirth and post-natal care.

Georgia state law does not provide pregnancy leave for private employees (public employees may qualify for leave). Thus, pregnancy-related leave in Georgia is limited to the ADA or the FMLA, where they are applicable.

Federal and Georgia Law on Disability Leave

The federal ADA requires employers with 15 or more employees to provide reasonable accommodations to workers with disabilities. Reasonable accommoda-

tions may include modifying work schedules or providing periods of leave. The length of leave potentially allowed under the ADA varies based on the employee's specific circumstances. Georgia does not have a corollary state-law version of the ADA applicable to private employees. Thus, private employees in Georgia must look to the ADA for disability-related leave rights.

Federal and Georgia Law on Religious Leave

Title VII generally requires employers with fifteen or more employees to provide employees with religious accommodations (including leave to observe religious holidays or attend services), unless doing so would create an undue hardship for the employer. In contrast, Georgia has no specific laws that require employee leave to accommodate an employee's religion.

Federal and Georgia Law on Domestic Violence Leave

Under the FMLA, victims of domestic violence do not qualify for leave unless they suffer an injury or trauma that itself constitutes a "serious medical condition." In other words, the FMLA does not specifically permit leave for domestic violence. Many states have enacted laws which provide leave for employees that have suffered domestic violence. Yet, Georgia has not followed this trend. However, O.C.G.A. § 34-1-3 does provide victims of domestic violence with leave to attend court hearings related to the underlying incidents.

Military Leave

USERRA applies to all employers and provides protected leave to members of the U.S. Armed Forces who are called for military duty during their employment. Employers must provide leave to employees who are summoned to military duty and reinstate employees at the end of the period of duty. The employee must report to work within a specified period of time following the end of the period of duty to qualify for reinstatement under USERRA.

Georgia Laws on Military Leave

Employee military leave is perhaps the single type of leave where Georgia's state law provides similar or greater protection to employees than federal law. Under O.C.G.A. § 38-2-280, employees called to military duty are entitled to essentially unlimited unpaid leave during active service, and up to six (6) months of leave within any (4) four-year period for required training. A deployed employee is entitled to reinstatement with full benefits unless the employer's circumstances have significantly changed, making reinstatement unreasonable.

Conclusion

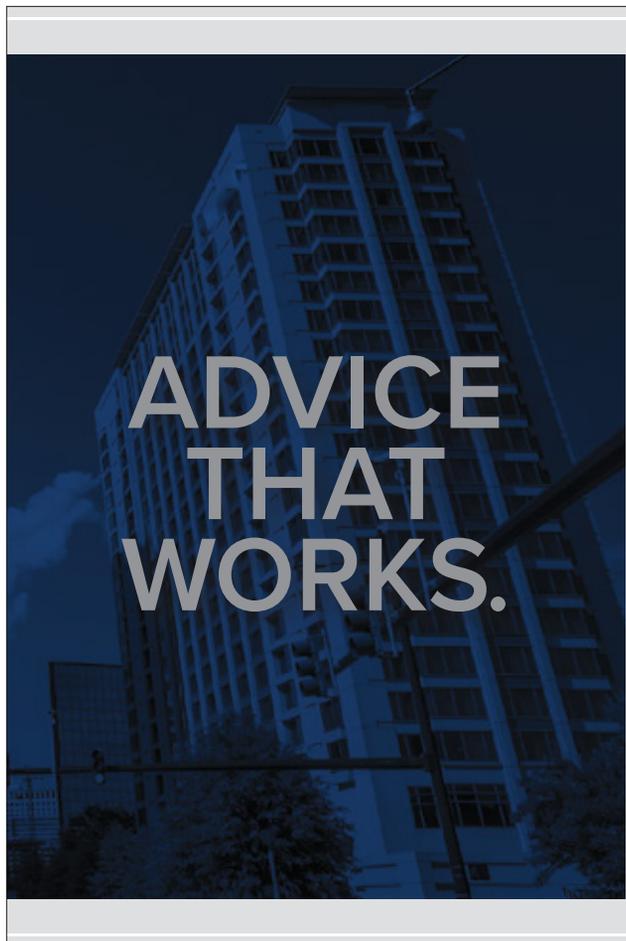
Georgia's reluctance to adopt laws that mirror or enhance federal employees leave laws means that Georgia employees must continue to rely on federal law for meaningful leave rights. While these federal laws cover many Georgia employees and employers, employees working for small businesses may find themselves in a "coverage gap" where the federal leave laws do not apply and where Georgia provides no corollary state law right to employee leave.



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