

House Bill 381

By: Representatives Anulewicz of the 42nd, Smith of the 18th, Holcomb of the 81st, Leverett of the 123rd, Jones of the 25th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5A of Title 34 of the Official Code of Georgia Annotated, relating to
2 sexual harassment in government workplaces, so as to provide for a right of action for
3 workplace harassment; to provide for definitions; to provide for an affirmative defense; to
4 provide for a cause of action for retaliation; to provide for a statute of limitations; to provide
5 for relief and damages; to provide for related matters; to provide for an effective date; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 5A of Title 34 of the Official Code of Georgia Annotated, relating to sexual
10 harassment in government workplaces, is amended by revising Code Section 34-5A-1,
11 relating to sexual harassment defined, as follows:

12 "34-5A-1.

13 As used in this chapter, the term:

14 (1) 'Claimant' means an employee of an employer or individual who otherwise works for
15 or provides services to an employer who brings a claim under this chapter.

16 (2) 'Coworker' means a person other than the claimant who works or provides services
17 to the employer, but who is not a supervisor.

18 (3) 'Employer' means an entity or its agent engaged in business that employs ten or more
19 individuals in this state. Such term shall not include the federal government, state
20 government, any political subdivision of this state, or a quasigovernmental entity.

21 (4) 'Protected characteristic' means a personal trait that cannot be used as a reason to
22 discriminate against a person. Such term includes race, color, religion, sex, national
23 origin, age, disability, and genetic information.

24 (5) 'Sexual harassment' means sexual advances, requests for sexual favors, sexual
25 or sex-based conduct, or any other unwelcome and offensive conduct of a sexual nature
26 where:

27 (A) Submission to the conduct involved is made, implicitly or explicitly, a term or
28 condition of work;

29 (B) Submission to or rejection of the conduct is used as the basis for a personnel
30 decision affecting the individual's work; or

31 (C) Such conduct creates an intimidating, hostile, or offensive work environment,
32 provided that an intimidating, hostile, or offensive work environment is not created
33 when the conduct does not rise above the level of what a reasonable person would
34 consider merely tactless, inconsiderate, overfamiliar, or otherwise impolite, particularly
35 with regard to the totality of the circumstances.

36 (6) 'Supervisor' means an individual that has authority to undertake or recommend
37 tangible employment decisions affecting a claimant or has the authority to direct the
38 claimant's work activities.

39 (7) 'Workplace' means any work related setting, including, but not limited to, online or
40 mobile communications by a coworker or supervisor.

41 (8) 'Workplace harassment' means any of the following:

(A) Conduct based on one or more protected characteristics that unreasonably alters an individual's terms, conditions, or privileges of work;

(B) Conduct that creates an intimidating, hostile, or offensive work environment; provided that an intimidating, hostile, or offensive work environment is not created when the conduct does not rise above the level of what a reasonable person with the same protected characteristics would consider merely tactless, inconsiderate, overfamiliar, or otherwise impolite, with regard to the totality of the circumstances. A single incident may constitute workplace harassment, and harassment may be direct or indirect, and verbal or non-verbal; or

(C) Conduct based on one or more protected characteristics where submission to the conduct is made either explicitly or implicitly a term or condition of work or where submission to or rejection of the conduct is used as a basis for an employment decision affecting the individual's work, including, but not limited to, hiring, termination, promotion, demotion, transfer, or reassignment to an inferior or less desirable position, duties, work schedule, or other unfavorable treatment.

Workplace harassment includes, but is not limited to, sexual harassment."

SECTION 2.

Said chapter is further amended by adding new Code sections to read as follows:

"34-5A-3.

(a) A claimant aggrieved by workplace harassment shall have a right of action for workplace harassment against a coworker, supervisor, or third party that has engaged in workplace harassment.

(b) A claimant aggrieved by workplace harassment shall have a right of action for workplace harassment against an employer when a coworker or third party engages in workplace harassment and the employer's negligence exposed the claimant to a risk of such harassment.

(c)(1) Except as provided for in paragraph (2) of this subsection, a claimant aggrieved by workplace harassment shall have a right of action for workplace harassment against an employer when a supervisor engaged in workplace harassment.

(2) An employer may avoid liability for workplace harassment by a supervisor that does not result in a change in employment status when the employer shows that, acting in good faith, it exercised reasonable care to prevent and promptly address workplace harassment.

(3) An employer shall be deemed to have exercised reasonable care to prevent and promptly address workplace harassment as provided for in subparagraph (2) of this subsection when it has taken all of the following steps:

(A) Adopted a written harassment policy that establishes policies and procedures concerning unlawful discrimination and harassment. Such policy shall contain at least the following items:

(i) A statement that any unlawful harassment in the workplace will not be tolerated and that discipline will be enforced against individuals engaging in unlawful harassment and against supervisory personnel who knowingly allow such behavior to continue;

(ii) A statement that any retaliation against those who disclose, report, participate in an investigation of, or otherwise challenge or oppose workplace harassment is prohibited;

(iii) A statement that the employer will promptly and impartially investigate complaints;

(iv) Definitions of protected characteristics, sexual harassment, and workplace harassment, as provided for in Code Section 34-5A-1;

(v) A description of the process for filing internal complaints about harassment;

(vi) The contact information of the person or persons to whom complaints should be made and an alternative channel, if the harasser is such person or persons; and

(vii) Types of remedial measures provided by the employer.

(B) Disseminated the policy provided for in subparagraph (c)(3)(A) to all employees, including the claimant;

(C) Followed its policies and procedures for workplace harassment;

(D) Trained supervisors on steps to prevent and correct workplace harassment when it is observed and steps to take when workplace harassment is reported to a supervisor;

(E) Promptly disciplined individuals who engaged in workplace harassment to deter future harassment;

(F) Promptly disciplined supervisors who knowingly allowed such behavior to continue; and

(G) Stopped workplace harassment it knew or should have known occurred.

(d) All facts necessary to establish liability for the cause of action set forth in this Code section or to establish the affirmative defense against liability provided for in paragraph (2) of subsection (c) shall be determined at trial by a jury.

34-5A-4.

A claimant shall have a cause of action for retaliation when an employer retaliates against a claimant because such claimant has:

(1) Opposed workplace harassment;

(2) Made a report or a charge, or filed any complaint related to workplace harassment;

(3) Instituted or caused to be instituted, assisted or participated in any manner in any investigation, proceeding, hearing, or action related to workplace harassment; or

(4) Provided information, testified, or is known by the employer to be planning to testify in any manner in any such investigation, proceeding, hearing, or action.

34-5A-5.

(a) Any claimant's action for workplace harassment as provided for in Code Section 34-5A-3 shall commence within two years from the date of the most recent incident.

(b) Any claimant's action for retaliation as provided for in Code Section 34-5A-4 shall commence within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier.

34-5A-6.

(a) A court may order any relief and shall include, but not be limited to, compensation for lost wages, front pay or reinstatement, benefits, other remuneration, compensatory damages, punitive damages, reasonable attorney's fees, court costs, and other related expenses, and a court may grant as relief any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such continuing prospective remedial action as may be appropriate.

(b) Punitive damages will not be available if a jury determines that the employer has substantively complied with Code Section 35-5A-3.

(c) The provisions of this chapter shall be construed as being in addition to, and in no way denying, altering, or amending, any other civil or criminal rights or remedies in law or in equity or notice requirements provided under any other provision of law."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 4.

141 All laws and parts of laws in conflict with this Act are repealed.