

House Bill 306

By: Representatives Miller of the 62nd, Willis of the 55th, Crawford of the 89th, McClain of the 109th, Holcomb of the 101st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to provide for a cause of action for workplace harassment and retaliation; to
3 provide for definitions; to provide for certain facts to be determined at trial by a jury; to
4 provide for an affirmative defense; to provide for a statute of limitations; to provide for relief
5 and damages; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
10 is amended by revising Chapter 5A, relating to sexual harassment in government workplaces,
11 as follows:

12 "CHAPTER 5A

13 34-5A-1.

14 As used in this chapter, the term:

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15 (1) 'Adverse employment action' means a material change in the terms or conditions of
16 employment that puts a claimant in a worse position. Such term includes termination,
17 suspension, demotion, and transfer or reassignment to an inferior or objectively less
18 desirable position, duties, or work schedule.

19 (2) 'Anti-harassment policy' means a set of guidelines and procedures that an employer
20 implements to prevent and address workplace harassment and retaliation by supervisors,
21 co-workers, and third parties.

22 (3) 'Claimant' means an individual who works for salary, wages, or other remuneration
23 for an employer and brings a claim under this chapter.

24 (4) 'Co-worker' means an individual other than the claimant who works or provides
25 services to the same employer as the claimant but who is not a supervisor for such
26 employer.

27 (5) 'Employer' means an entity or its agent engaged in business that pays ten or more
28 individuals who work for salary, wages, or other remuneration in this state. Such term
29 shall not include the federal government, state government, any political subdivision of
30 this state, or a quasi-governmental entity.

31 (6) 'Protected activity' means an action that is protected by law. Such term includes
32 when a claimant has:

33 (A) Opposed workplace harassment;

34 (B) Made a formal complaint regarding workplace harassment to the employer, made
35 a report or a charge or filed a complaint related to workplace harassment with the
36 United States Equal Employment Opportunity Commission, or filed a lawsuit related
37 to workplace harassment in a court of law;

38 (C) Instituted, caused to be instituted, assisted in, or participated in any manner in an
39 investigation, proceeding, hearing, or action related to workplace harassment which is
40 undertaken by the employer, the United States Equal Employment Opportunity
41 Commission, or a court of law; or

42 (D) Provided information, has testified, or is known by the employer to be planning to
43 testify in any manner in any such investigation, proceeding, hearing, or action
44 undertaken by the employer, the United States Equal Employment Opportunity
45 Commission, or a court of law.

46 (7) 'Protected characteristic' means an individual's race, color, religion, sex, national
47 origin, age, disability, or genetic information.

48 (8) 'Retaliation' means an adverse employment action taken against a claimant as
49 punishment for the claimant engaging in a protected activity or advocating for
50 employment protections provided under this chapter.

51 (9) 'Sexual harassment' 'sexual harassment' means sexual advances, requests for sexual
52 favours, sexual or ~~sex-based~~ sex based conduct, or any other unwelcome and offensive
53 conduct of a sexual nature where:

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

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

58 (C) Such conduct creates an intimidating, hostile, or offensive work environment;
59 provided, however, that an intimidating, hostile, or offensive work environment is not
60 created when the conduct does not rise above the level of what a reasonable person
61 would consider merely tactless, inconsiderate, overfamiliar, or otherwise impolite,
62 particularly with regard to the totality of the circumstances.

63 (10) 'Supervisor' means any individual who has authority to undertake or recommend
64 tangible employment decisions affecting a claimant or to direct the claimant's work
65 activities.

66 (11) 'Workplace' means any work related setting, including, but not limited to, online or
67 mobile communications by a claimant, co-worker, or supervisor.

68 (12) 'Workplace harassment' means unwelcome and offensive conduct based on a
69 protected characteristic, including sexual harassment, at a claimant's workplace that
70 negatively impacts a claimant's employment. Such term includes conduct at a claimant's
71 workplace where:

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

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

76 (C) Such conduct creates an intimidating, hostile, or abusive work environment;
77 provided, however, that an intimidating, hostile, or abusive work environment is not
78 created when the conduct does not rise above the level of what a reasonable person
79 would consider merely tactless, inconsiderate, overfamiliar, or otherwise impolite,
80 particularly with regard to the totality of the circumstances.

81 34-5A-2.

82 (a) Any individual working for a county, municipality, or consolidated government as an
83 employee or in a similar capacity shall have a cause of action for retaliation against the
84 county, municipality, or consolidated government if such county, municipality, or
85 consolidated government has ~~discharged, suspended, demoted, or taken any other an~~
86 adverse employment action against the individual ~~in the terms or conditions of the work~~
87 relationship because the individual has:

88 (1) Opposed sexual harassment;

89 (2) Made a report or a charge; or filed any complaint related to sexual harassment;

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

92 (4) Provided information, has testified, or is known by the county, municipality, or
93 consolidated government to be planning to testify in any manner in any such
94 investigation, proceeding, hearing, or action related to sexual harassment.

95 (b) Such individual may institute such a civil action in accordance with the provisions of
96 paragraph (1) of subsection (e) of Code Section 45-1-4, and a court may order any or all
97 of the relief described in paragraph (2) of subsection (e) and subsection (f) of Code
98 Section 45-1-4.

99 (c) Nothing in this Code section shall be interpreted to prohibit the county, municipality,
100 or consolidated government from taking appropriate corrective or remedial action against
101 any individual who it determines has engaged in or facilitated sexual harassment.

102 (d) A county, municipality, or consolidated government may mitigate liability for
103 retaliation if it shows that, acting in good faith, it exercised reasonable care to prevent and
104 promptly address sexual harassment as provided in Code Section 34-5A-4.

105 (e) All facts necessary to establish liability for a cause of action as provided in
106 subsection (a) of this Code section shall be determined at trial by a jury.

107 34-5A-3.

108 (a) A claimant aggrieved by workplace harassment shall have a cause of action for
109 workplace harassment against:

110 (1) A supervisor, co-worker, or third party when such individual engaged in workplace
111 harassment of the claimant;

112 (2) An employer when a co-worker or third party engaged in workplace harassment of
113 the claimant and the employer's negligence exposed the claimant to a risk of such
114 harassment; and

115 (3) An employer when a supervisor engaged in workplace harassment of claimant.

116 (b) An employer may mitigate liability for workplace harassment if it shows that, acting
117 in good faith, it exercised reasonable care to prevent and promptly address workplace
118 harassment as provided in Code Section 34-5A-4.

119 (c) All facts necessary to establish liability for a cause of action as provided in this Code
120 section shall be determined at trial by a jury.

121 34-5A-4.

122 (a) An employer may mitigate liability for workplace harassment or retaliation when the
123 employer shows that, acting in good faith, it exercised reasonable care to prevent and
124 promptly address workplace harassment and retaliation.

125 (b) An employer shall be deemed to have exercised reasonable care to prevent and
126 promptly address workplace harassment and retaliation when it has:

127 (1) Adopted a written anti-harassment policy that establishes policies and procedures
128 concerning unlawful discrimination and harassment. Such policy shall contain at least:

129 (A) A statement that any workplace harassment will not be tolerated and that discipline
130 will be enforced against individuals engaging in workplace harassment;

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

133 (C) A statement that the employer will promptly and impartially investigate complaints
134 alleging workplace harassment or retaliation;

135 (D) Definitions of protected activity, protected characteristics, retaliation, sexual
136 harassment, and workplace harassment;

137 (E) A description of the process for filing internal complaints alleging workplace
138 harassment or retaliation;

139 (F) The contact information of the person to whom complaints alleging workplace
140 harassment or retaliation should be made and an alternative channel, if the alleged
141 harasser or retaliator is such person; and

142 (G) A statement that the employer may take remedial measures during the investigation
143 of an allegation of workplace harassment or retaliation and in the event of verified
144 workplace harassment or retaliation;

145 (2) Disseminated the anti-harassment policy to all employees, including the claimant;

146 (3) Followed policies and procedures for workplace harassment and retaliation contained
147 in the anti-harassment policy and as required by law;

148 (4) Trained supervisors on steps to prevent and correct workplace harassment and
149 retaliation when it is observed and steps to take when workplace harassment or retaliation
150 is reported to a supervisor;

151 (5) Promptly disciplined individuals who engaged in workplace harassment or retaliation
152 to deter future harassment and retaliation;

153 (6) Promptly disciplined supervisors who knowingly allowed workplace harassment or
154 retaliation to occur or continue; and

155 (7) Stopped workplace harassment or retaliation that the employer knew or should have
156 known occurred.

157 (c) All facts necessary to establish an affirmative defense against liability as provided in
158 this Code section shall be determined at trial by a jury.

159 34-5A-5.

160 (a) Except as provided for in Code Section 34-5A-2, a claimant shall have a cause of
161 action for retaliation against a supervisor or employer when such supervisor or employer
162 took an adverse employment action against the claimant because such claimant engaged
163 in a protected activity.

164 (b) An employer may mitigate liability for retaliation if it shows that, acting in good faith,
165 it exercised reasonable care to prevent and promptly address retaliation as provided in Code
166 Section 34-5A-4.

167 (c) All facts necessary to establish liability for a cause of action as provided in
168 subsection (a) of this Code section shall be determined at trial by a jury.

169 34-5A-6.

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

173 (b) Any claimant's action for retaliation as provided for in Code Section 34-5A-2
174 or 34-5A-5 shall commence within one year after discovering the retaliation or within three
175 years after the retaliation, whichever is earlier.

176 34-5A-7.

177 (a) In an action brought pursuant to this chapter, the court may order any relief it deems
178 appropriate to make the claimant whole, including, but not limited to, compensation for lost
179 wages, front pay or reinstatement, benefits, other remuneration, compensatory damages,
180 punitive damages, reasonable attorney and witness fees, court costs, and other related
181 expenses. A court may grant as relief a permanent or temporary injunction, temporary
182 restraining order, or other order, including an order enjoining the defendant from engaging
183 in such practice or ordering such continuing remedial action as may be appropriate.

184 (b) Punitive damages shall not be available if a jury determines that the employer has
185 substantively complied with Code Section 35-5A-4.

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

189 **SECTION 2.**

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

192 **SECTION 3.**

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