

House Bill 1389

By: Representatives Anulewicz of the 42nd, Nguyen of the 89th, Boddie of the 62nd, Allen of the 40th, Oliver of the 82nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 34 of the Official Code of Georgia Annotated, relating to sex
2 discrimination in employment, so as to enact the "Georgia Safe Workplaces Act"; to provide
3 for a short title; to provide for definitions; to provide for a right of action; to provide for
4 affirmative defenses; to provide for determining factors regarding workplace harassment; to
5 provide for a statute of limitations; to provide for exceptions; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 5 of Title 34 of the Official Code of Georgia Annotated, relating to sex
10 discrimination in employment, is amended by adding a new Code section to read as follows:

11 "34-5-8.

12 (a) This Code section shall be known and cited as the 'Georgia Safe Workplaces Act.'

13 (b) As used in this Code section, the term:

14 (1) 'Claimant' means an individual who experiences workplace harassment or related
15 retaliation who brings a claim under this Code section.

16 (2) 'Employer' means any of the following, or their agents, which employ one or more
17 individuals who perform services within this state:

18 (A) An organization; or

19 (B) A corporation, limited liability company, limited liability partnership, partnership,
20 association, trustee, estate, insurance company, or legal representative, whether
21 domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof;

22 (3) 'Sexual harassment' includes a sexual advance, a request for sexual favors, or any
23 other conduct of a sexual nature where:

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

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

28 (C) Such conduct unreasonably alters an individual's terms, conditions, or privileges
29 of work, including by creating an intimidating, hostile, or offensive work environment.

30 (4) 'Supervisor' means:

31 (A) A manager, director, or administrator of a claimant; or

32 (B) Any individual who in any capacity has supervision or authority over:

33 (i) A claimant; or

34 (ii) Any activity for which a claimant is employed or contracted to do implicitly or
35 explicitly.

36 (5) 'Workplace harassment' means conduct based on protected characteristics of race,
37 color, religion, national origin, sex, a sex stereotype, sexual orientation, gender identity,
38 pregnancy, childbirth, a medical condition related to pregnancy or childbirth, disability,
39 or age, regardless of whether such conduct is direct or indirect or verbal or nonverbal,
40 that unreasonably alters an individual's terms, conditions, or privileges of work, including
41 by creating an intimidating, hostile, or offensive work environment. The term 'workplace
42 harassment' includes sexual harassment.

43 (c) A claimant shall have a right of action for workplace harassment:

44 (1) Against an employer when a supervisor employed by the employer engages in
45 workplace harassment;

46 (2) Against an employer that knows or should have known that either a nonsupervisor
47 employed by the employer or a third party, such as a contractor, subcontractor, vendor,
48 consultant, or other individual providing services to the employer pursuant to a contract
49 has engaged in workplace harassment; or

50 (3) Against a nonsupervisor or supervisor employed by the employer, or against a third
51 party as described in paragraph (2) of this subsection, who engages in workplace
52 harassment.

53 (d) A claimant shall have a right of action for retaliation when an employer retaliates
54 against a claimant because such claimant has opposed workplace harassment or because
55 the individual has made a charge, filed any complaint, or instituted or caused to be
56 instituted any investigation, proceeding, hearing, or action under or related to this Code
57 section, including an investigation conducted by the employer, or has testified or is
58 planning to testify, or has assisted or participated in any manner in any such investigation,
59 proceeding, hearing, or action under this Code section.

60 (e) In determining whether conduct constitutes workplace harassment, the following
61 criteria shall apply:

62 (1) That determination shall be made on the basis of the record as a whole, according to
63 the totality of the circumstances. A single incident may constitute workplace harassment;

64 (2) Incidents that may be workplace harassment shall be considered in the aggregate,
65 with:

66 (A) Conduct of varying types, such as expressions of sex based hostility, requests for
67 sexual favors, and denial of employment opportunities due to sexual orientation, viewed
68 in totality, rather than in isolation; and

69 (B) Conduct based on multiple protected characteristics, such as sex and race, viewed
70 in totality, rather than in isolation;

71 (3) The factors specified in this paragraph are among the factors to be considered in
72 determining whether conduct constitutes workplace harassment and are not meant to be
73 exhaustive. None of the following factors shall be determinative in establishing whether
74 conduct constitutes workplace harassment:

75 (A) The frequency of the conduct;

76 (B) The duration of the conduct;

77 (C) The location where the conduct occurred;

78 (D) The number of individuals engaged in the conduct;

79 (E) The nature of the conduct, which may include physical, verbal, pictorial, or visual
80 conduct, and conduct that occurs in person or is transmitted, such as electronically;

81 (F) Whether the conduct is threatening;

82 (G) Any power differential between the alleged harasser and the individual allegedly
83 harassed;

84 (H) Any use of epithets, slurs, or other conduct that is humiliating or degrading; and

85 (I) Whether the conduct reflects stereotypes about individuals in the protected class
86 involved; and

87 (4) Conduct may be workplace harassment regardless of whether or not:

88 (A) The claimant is the individual being harassed;

89 (B) The claimant acquiesced or otherwise submitted to or participated in the conduct;

90 (C) The conduct was also experienced by others outside of the protected class
91 involved;

92 (D) The claimant was able to continue carrying out duties and responsibilities of the
93 claimant's job;

94 (E) The conduct caused a physical or psychological injury; or

95 (F) The conduct occurred outside of the workplace.

96 (f) A claimant may commence a civil action in any court having jurisdiction over the
97 person who allegedly committed workplace harassment in violation of this Code section.
98 Any such action shall be brought within three years from the date of the alleged workplace
99 harassment.

100 (g) It shall be an affirmative defense to liability for creating an intimidating, hostile, or
101 offensive work environment when:

102 (1) The harassing conduct does not rise above the level of what a reasonable victim of
103 harassment with the same protected characteristic would consider petty slights or trivial
104 inconveniences; and

105 (2) Acting in good faith, the employer exercised care to prevent and promptly address
106 workplace harassment when it occurs.

107 Evidence of the mere existence of a policy or program to prevent and address harassment
108 is not alone sufficient for an employer to show it is entitled to the affirmative defense.

109 (h)(1) If the court or jury finds that workplace harassment or retaliation has occurred, the
110 court or jury may award relief to the plaintiff as the prevailing party, including but not
111 limited to compensatory and punitive damages, without limitation otherwise imposed by
112 law, and the court may award reasonable attorney fees and costs and may grant as relief
113 any permanent or temporary injunction, temporary restraining order, or other order,
114 including an order enjoining the defendant from engaging in such practice, or order such
115 affirmative action as may be appropriate.

116 (2) The provisions of this Code section shall be construed as being in addition to, and in
117 no way to deny, alter, or amend, any other civil or criminal rights or remedies in law or
118 in equity, or notice requirements provided under any other provision of law.

119 (i) This Code section shall not be construed to preempt, limit, diminish, or otherwise affect
120 any other provision of law relating to discrimination or harassment or in any way to
121 diminish the coverage for harassment under any other provision of this title."

122

SECTION 2.

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