

New Georgia Employment Laws Change Definition of Employment, Restrict Local Laws Regulating Work Hours

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Wage and Hour

Georgia Governor Brian Kemp has signed into law two measures addressing the employment relationship. The first, Act 809 ([H.B. 389](#)), alters the definition of employment for purposes of unemployment benefits. The second, Act 823 ([S.B. 331](#)), precludes local governments from regulating the scheduling or work hours of a private business's employees.

Act 809: Classification of Employees for Unemployment Benefit Purposes

Act 809 seeks to expand the types of workers who may be able to claim unemployment benefits. It also ensures, however, that the nature of an individual's work will ultimately determine the existence of an employer-employee relationship. Act 809 will become effective on *July 1, 2022*.

In Georgia, only individuals who are deemed "employees" may be eligible for unemployment benefits. Independent contractors are not entitled to such benefits. Act 809 changes the definition of employment to include any services performed by an individual for wages. Under this definition, the majority of workers would qualify as "employees," unless the Georgia Department of Labor makes a contrary determination. Based on Act 809's expanded definition of employment, more workers may be able to obtain unemployment benefits from a business.

Under the new law, an individual will not qualify as an "employee" only if it is shown that the individual is free from control or direction over the performance of services for a company and is customarily engaged in an independent trade, occupation, profession, or business. The following seven factors are to be considered in making this determination:

- Ability to work for other companies or holding other employment at the same time;
- Freedom to accept or reject work assignments without consequence;
- Lack of a minimum number of hours to work or orders to be obtained;
- Ability to set their own work schedule;
- Lack of oversight or instructions concerning the services to be performed;
- Absence of territorial or geographic restrictions; and
- Lack of a requirement to perform, behave, or act in a certain manner related to the performance of services.

The law also provides specific standards that apply in the context of music industry professionals, ride share network services, and certain delivery services.

For Georgia businesses now, a worker's classification as an "employee" or an "independent contractor" is more crucial than ever. Act 809 creates an enforcement mechanism by implementing a civil penalty, paid to the Georgia Department of Labor, if a business incorrectly classifies its workers. Under the new law, the Commissioner sets the amount of

the civil penalty by evaluating the number of individuals who were improperly classified and the frequency of misclassifications.

Thus, Georgia businesses must be mindful of the classifications assigned to each of its workers.

Act 823: Preemption of Local Governments From Enacting Certain Laws

Act 823 precludes local governments from enacting laws regulating work hours, scheduling, or employee output of private businesses. The measure became effective on *May 5, 2022*.

Act 823 is Georgia's latest attempt at drawing businesses to the state by precluding local governments from enacting restrictive wage and hour laws. Georgia law already bars cities and local governments from adopting laws applicable to private employers. These laws govern matters such as minimum wage, overtime, employee benefits, and pay related to scheduling changes.

Act 823 amends existing law to prohibit local governments from enacting laws applicable to private employers that would govern work hours, scheduling, and employee output.

Meanwhile, in many other states, local governments have enacted local ordinances addressing these topics. Clearly, Governor Kemp and the state legislature wish to differentiate the state from the laws of these other states and local governments.

Please contact your Jackson Lewis attorney with questions regarding the new Georgia laws or on creating compliant practices and avoiding costly litigation.

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