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Labor and Employment Law

by **W. Melvin Haas III***
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W. Jonathan Martin II***
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I. INTRODUCTION

This Article surveys revisions to the Official Code of Georgia Annotated (O.C.G.A.)¹ and decisions interpreting Georgia law from June 1, 2013

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1. Attorneys practicing labor and employment law have a multitude of reference sources for recent developments in federal legislation and case law. *See generally* BARBARA T. LINDEMAN, PAUL GROSSMAN & C. GEOFFREY WEIRICH, *EMPLOYMENT DISCRIMINATION LAW* (Julia Campins, et al. eds., 5th ed. 2012 & Supp. 2014); *THE DEVELOPING LABOR LAW* (John E. Higgins Jr. et al. eds., 6th ed. 2012 & Supp. 2013); Patrick L. Coyle et al., *Labor and Employment, Eleventh Circuit Survey*, 64 *MERCER L. REV.* 965 (2013); *Daily Labor Report*, BNA.COM, http://www.bna.com/daily_labor_report-p5449 (last visited Aug. 27,

to May 31, 2014² that affect labor and employment relations for Georgia employers.

II. RECENT LEGISLATION

A. Unemployment Benefits

Effective April 24, 2014, a change was implemented regarding unemployment benefits for workers in the educational field.³ House Bill 714⁴ excludes educational service workers and contractors from receiving unemployment benefits if they were employed in the prior year, *and* there is a contract or a reasonable assurance of returning to work upon the end of the summer vacation period.⁵ However, if an individual is denied benefits pursuant to this law, and they are not offered an opportunity to work at any educational institution, the individual is entitled to retroactive payment for each week during unemployment in which a timely claim was applied for but denied.⁶ This amendment will affect about 60,000 school workers and is expected to save the state government about \$8 million in benefits.⁷

Additionally, effective October 21, 2013, Georgia employers must comply with a new rule concerning state unemployment insurance claim notices.⁸ The rule states that an employer or employer's agent who does not "timely or adequately" respond to "three (3) individual claims" within the "current calendar year" will have its account "charged and may not be relieved of charges, regardless of whether the associated determination to pay benefits is later reversed on appeal or if an overpayment is established."⁹ While the rule does provide an exception for an employer

2014). Accordingly, this Article is not intended to cover the latest developments in federal labor and employment law. Rather, this Article only covers legislative and judicial developments arising under Georgia state law during the survey period.

2. For an analysis of Georgia labor and employment law during the prior survey period, see W. Melvin Haas III et al., *Labor and Employment Law, Annual Survey of Georgia Law*, 65 MERCER L. REV. 157 (2013).

3. See O.C.G.A. § 34-8-196 (Supp. 2014); see also *Georgia General Assembly*, LEGIS.GA.GOV, www.legis.ga.gov/legislation/en-US/Display/2013-2014/HB/714 (last visited Sept. 4, 2014).

4. Ga. H.R. Bill 714, Reg. Sess. (2014) (codified in relevant part at O.C.G.A. § 34-8-196).

5. O.C.G.A. § 34-8-196(b)(2).

6. O.C.G.A. § 34-8-196(b)(3).

7. Kristina Torres, *Georgia Senate Votes to Bar Some Workers From Unemployment Benefits*, ATLANTA J.-CONST. (Mar. 20, 2014), <http://www.ajc.com/news/news/state-regional-govt-politics/georgia-senate-votes-to-bar-some-workers-from-unem/nfHcp/>.

8. GA. COMP. R. & REGS. 300-2-3.05 (2014).

9. GA. COMP. R. & REGS. 300-2-3.05(2).

that can show “substantial good cause,” this standard is an onerous one.¹⁰ The practical effect of this rule is that Georgia employers will have their account with the Georgia Department of Labor charged if they do not respond timely and adequately (meaning completely) to every unemployment claim.¹¹

B. Georgia’s New Gun Laws

Effective July 1, 2014, licensed weapon holders had their right to carry expanded.¹² Before House Bill 60¹³ was passed, the law allowed both private property owners and “persons in legal control of property” through a lease or other type of agreement to control access to such property and to prohibit licensed gun owners from entering with weapons.¹⁴ Businesses that operate on private property still enjoy the right to exclude or eject a licensed gun owner who enters private property carrying a gun.¹⁵ However, businesses that are housed in *government buildings* will no longer be able to exclude or eject licensed gun owners from carrying weapons on the property if certain statutory requirements are met.¹⁶ The statute authorizes licensed individuals “to carry a weapon in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel.”¹⁷ A government building is defined as a building in which a government entity¹⁸ is housed or meets in its official capacity, or the portion of any building that is not publicly owned but is occupied by a government entity.¹⁹

This statute has yet to be interpreted by the courts. Many essential terms have not been defined in the statute. For example, the statute is silent on the definition of the terms “restricted” and “screened.”²⁰ Businesses will not know the degree to which they can restrict ingress to comply with the law until further explanation is provided by either

10. *See id.*

11. *See id.*

12. *See* O.C.G.A. § 16-11-127 (Supp. 2014).

13. Ga. H.R. Bill 60, Reg. Sess. (2014) (codified at O.C.G.A. § 16-11-127).

14. O.C.G.A. § 16-11-127(c) (2011).

15. O.C.G.A. § 16-11-127(c) (Supp. 2014).

16. O.C.G.A. § 16-11-127(e)(1).

17. *Id.*

18. O.C.G.A. § 16-11-127(a)(3) defines a “government entity” as “an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or any county, municipal corporation, consolidated government, or local board of education within this state.” O.C.G.A. § 16-11-127(a)(3).

19. O.C.G.A. § 16-11-127(a)(2)(A)-(C).

20. *See* O.C.G.A. § 16-11-127(a).

the legislature or the courts.²¹ For example, should employers in government buildings provide metal detectors and have security officers at every entrance, or would having security personnel at the main entrance suffice? There are no civil penalties for non-compliance;²² however, businesses in governmental buildings may be subject to lawsuits, or other causes of action, for enforcing a ban on guns that violates the new law.²³

III. WRONGFUL TERMINATION

A. *Employment At Will*

“At-will employment” refers to employment that either an employer or an employee may terminate at any time with or without cause.²⁴ While employment at will in other jurisdictions may be weakening,²⁵ the presumption in Georgia remains that all employment is at will unless a statutory or contractual exception exists.²⁶ “[T]his bar to wrongful discharge claims in the at-will employment context ‘is a fundamental statutory rule governing employer-employee relations in Georgia.’”²⁷ Particularly, O.C.G.A. § 34-7-1²⁸ provides that “[a]n indefinite hiring” is at-will employment.²⁹ The definition of an indefinite hiring includes contract provisions specifying “permanent employment, employment for life, [and] employment until retirement.”³⁰ Further, a contract specifying an annual salary does not create a definite period of employment.³¹

21. See O.C.G.A. § 16-11-127(c).

22. See O.C.G.A. § 16-11-127.

23. See generally *Georgia Dad Files Lawsuit to Bring Gun to Daughter's Elementary School*, FOXNEWS.COM (Aug. 23, 2014), <http://www.foxnews.com/us/2014/08/23/georgia-dad-files-lawsuit-to-bring-gun-to-daughters-elementary-school/>.

24. BLACK'S LAW DICTIONARY 641 (10th ed. 2014).

25. Haas et al., *supra* note 2, at 161 & n.26 (“[T]he employment at-will doctrine is weakening in many jurisdictions.” (alteration in original) (quoting W. Melvin Haas III et al., *Labor & Employment Law, Annual Survey of Georgia Law*, 64 MERCER L. REV. 173, 175 n.14 (2012))).

26. *E.g.*, *Wilson v. City of Sardis*, 264 Ga. App. 178, 179, 590 S.E.2d 383, 385 (2003) (“In the absence of a contractual or statutory ‘for cause’ requirement, however, the employee serves ‘at will’ and may be discharged at any time for any reason or no reason . . .”).

27. *Reid v. City of Albany*, 276 Ga. App. 171, 172, 622 S.E.2d 875, 877 (2005) (quoting *Reilly v. Alcan Aluminum Corp.*, 272 Ga. 279, 280, 528 S.E.2d 238, 240 (2000)).

28. O.C.G.A. § 34-7-1 (2008).

29. *Id.*

30. *Ga. Power Co. v. Busbin*, 242 Ga. 612, 613, 250 S.E.2d 442, 443-44 (1978) (internal quotation marks omitted).

31. *Ikemija v. Shibamoto Am., Inc.*, 213 Ga. App. 271, 273, 444 S.E.2d 351, 353 (1994).

However, if an employment contract does specify a definite period of employment, any employment beyond that period becomes employment at will subject to discharge without cause.³²

Regardless of an employer's motives, the general rule in Georgia allows the discharge of an at-will employee without creating "a cause of action for wrongful termination."³³ Oral promises between an employer and employee will not modify the relationship between the two; absent a written contract, an employee's status remains at will.³⁴

1. Due Process. An employee is only entitled to procedural due process where the governmental action would impair the employee's protected interest in life, liberty, or property.³⁵ "Under Georgia law, a public employee has a property interest in employment when that employee can be fired only for cause."³⁶ Given Georgia's strict adherence to the doctrine of employment at will, only employees that have a contract for employment for a definite time, or have job security through a statute, will be entitled to procedural due process.³⁷

In *City of St. Marys v. Brinko*,³⁸ the Georgia Court of Appeals reaffirmed that a due process claim has no legal merit when the employment relationship is at will because there is no legitimate property interest in the employment.³⁹ Janet Brinko was an employee of the Convention and Visitors Bureau of the City of St. Marys. Brinko was fired, and the next day she requested a hearing to appeal her termination. The hearing was ultimately denied.⁴⁰ After being denied,

32. *Schuck v. Blue Cross & Blue Shield of Ga., Inc.*, 244 Ga. App. 147, 148, 534 S.E.2d 533, 534 (2000).

33. *H&R Block E. Enters., Inc. v. Morris*, 606 F.3d 1285, 1294 (11th Cir. 2010) (quoting *Nida v. Echols*, 31 F. Supp. 2d 1358, 1376 (N.D. Ga. 1998)); *Fink v. Dodd*, 286 Ga. App. 363, 365, 649 S.E.2d 359, 362 (2007) ("The employer[] with or without cause and regardless of its motives may discharge the employee without liability." (alteration in original) (quoting *Jellico v. Effingham Cnty.*, 221 Ga. App. 252, 253, 471 S.E.2d 36, 37 (1996))).

34. *Balmer v. Elan Corp.*, 278 Ga. 227, 228-29, 599 S.E.2d 158, 161 (2004).

35. *City of St. Marys v. Brinko*, 324 Ga. App. 417, 419, 750 S.E.2d 726, 728 (2013) ("A party is not entitled to procedural due process where the interest which would be impaired by governmental action does not involve that party's protect[ed] interest in life, liberty, or property." (alteration in original) (footnote omitted) (quoting *West v. Dooly County School Dist.*, 316 Ga. App. 330, 331, 729 S.E.2d 469, 471 (2012))).

36. *Id.* at 420, 750 S.E.2d at 728 (quoting *Wilson*, 264 Ga. App. at 179, 590 S.E.2d at 385).

37. *Id.*

38. 324 Ga. App. 417, 750 S.E.2d 726 (2013).

39. *Id.* at 421, 750 S.E.2d at 729.

40. *Id.* at 418-19, 750 S.E.2d at 727-28.

Brinko filed suit alleging “that the city had violated her due process rights by denying her request for a post-termination hearing.”⁴¹

Brinko argued that she had job security because she and the city had an oral agreement for a definite term of fifty years.⁴² Georgia law requires that all contracts for employment for a definite term must be written; otherwise they are void.⁴³ Therefore, even if her statement about an oral agreement for a term of fifty years was true, absent a written contract, her status would remain at will.⁴⁴ Furthermore, her employee manual specifically stated that she was an at-will employee.⁴⁵ As an at-will employee, she did not have a protected property right; thus, her due process claim was denied.⁴⁶

2. Breach of Contract (Other than At-Will Contracts). The basic rules of contract law apply in creating a valid employment contract: competency to contract, offer, acceptance, and valid consideration.⁴⁷ Furthermore, for an employment contract to be valid, the terms must define the following: the nature and character of the services to be performed; the place of employment; the time period for which the employee is to work; and the compensation to be owed to the employee.⁴⁸ In addition, the enforceability of an employment contract requires sufficient definitiveness in the terms of the contract.⁴⁹

In *Walker v. City of Homerville*,⁵⁰ the United States District Court for the Middle District of Georgia determined that an employee could only be terminated “for cause,” even if the employment contract does not state that the employee could only be fired “for cause.”⁵¹ The Homerville City Council elected Walker as the chief of police. He was elected on March 22, 2010, and was terminated on January 4, 2011.⁵² There was never a written contract, but Walker was told that if he were elected “he would serve on a year-to-year basis subject to reappointment by the city council.”⁵³ The Homerville City Charter also stated that the chief of

41. *Id.* at 417, 750 S.E.2d at 727.

42. *Id.* at 418, 750 S.E.2d at 727.

43. *See Balmer*, 278 Ga. at 228-29, 599 S.E.2d at 161.

44. *See City of St. Marys*, 324 Ga. App. at 420, 750 S.E.2d at 729.

45. *Id.* at 420, 750 S.E.2d at 728-29.

46. *Id.* at 421, 750 S.E.2d at 729.

47. *See* JAMES W. WIMBERLY, JR., *GEORGIA EMPLOYMENT LAW* 45 (4th ed. 2008).

48. *Id.* at § 1:2.

49. *Id.*

50. No. 7:12-cv-137, 2014 U.S. Dist. LEXIS 16094 (M.D. Ga. Feb. 10, 2014).

51. *Id.* at *11-12.

52. *Id.* at *1-2, *6.

53. *Id.* at *2.

police would serve on a year-to-year basis subject to annual approval by the city council, and required a fair and impartial trial prior to termination. After he was hired, the mayor and a councilmen disagreed with Walker regarding citations that he issued. After Walker refused to dismiss the citations, he was terminated. Walker brought an action against the city and the council alleging, among other claims, breach of contract. The defendants moved for summary judgment on the grounds that there was no provision stating that Walker could only be fired for cause and that no oral agreement could require that result in Georgia.⁵⁴ However, the district court held that even if a contract does not state an employer can only fire an employee for just cause, the duty of good faith and fair dealing requires just cause.⁵⁵ The district court held, "In Georgia if an employer hires an employee for a definite term, then the employer must meet its 'duty of good faith and fair dealing in the performance and completion' of the contract."⁵⁶

3. Whistleblower Act. Under the Georgia Whistleblower Act,⁵⁷ "[n]o public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency"⁵⁸ To make out a prima facie case, the plaintiff must prove four elements:

- (1) [T]he employer falls under the statute's definition of "public employer";
- (2) [T]he employee disclosed "a violation of or noncompliance with a law, rule, or regulation to either a supervisor or government agency";
- (3) [T]he employee was then discharged, suspended, demoted, or suffered some other adverse employment decision by the public employer; and
- (4) [T]here is some causal relation between (2) and (3).⁵⁹

In *McKnight v. Dougherty County*,⁶⁰ the court held that the protected "disclosure" by an employee does not have to be a matter that was previously unknown to a large group of people; rather, the causal-link

54. *Id.* at *3-7, *11.

55. *Id.* at *11-12.

56. *Id.* (quoting *Toncee, Inc. v. Thomas*, 219 Ga. App. 539, 543, 466 S.E.2d 27, 31 (1995)).

57. Ga. H.R. Bill 642, Reg. Sess. (2012) (codified at O.C.G.A. § 45-1-4 (Supp. 2014)); see also *Colon v. Fulton Cnty.*, 294 Ga. 93, 93, 751 S.E.2d 307, 308 (2013).

58. O.C.G.A. § 45-1-4(d)(2).

59. *McKnight v. Dougherty Cnty.*, No. 1:12-cv-13, 2014 U.S. Dist. LEXIS 41685, at *1, *8 (M.D. Ga. Mar. 28, 2014) (quoting *Forrester v. Ga. Dep't of Human Servs.*, 308 Ga. App. 716, 722, 708 S.E.2d 660, 666 (2011)).

60. No. 1:12-cv-13, 2014 U.S. Dist. LEXIS 41685 (M.D. Ga. Mar. 28, 2014).

element only requires proof “that the protected activity and the negative employment action are not completely unrelated.”⁶¹ Dougherty County hired Xavier McKnight as a procurement specialist on April 25, 2011. Barbara Engram was McKnight’s supervisor, and the two had problems almost immediately. In July 2011, it became apparent that a car had been purchased without authorization by the procurement department. Assistant County Administrator Mike McCoy discovered the unauthorized purchase when talking to a vender. Shortly thereafter, McKnight also discovered the unauthorized purchase and reported it to McCoy. Engram entered into McKnight’s office and questioned him about his conversation with McCoy. The very next month Engram fired McKnight, stating that he should not start fights with people in different departments. McKnight brought suit claiming he was fired for disclosing the violation to his supervisor.⁶²

Dougherty County first argued that McKnight did not meet the disclosure requirement because McCoy discovered the violation prior to McKnight reporting it.⁶³ The court rejected this argument, explaining that the statute does not require the disclosure to be previously unknown, and reasoning that “[s]uch a rule would . . . thwart the legislative purpose of protecting those who disclose public offenses.”⁶⁴ Dougherty County also challenged the causation element.⁶⁵ However, the court reaffirmed that causation could be proved by circumstantial evidence, including temporal proximity.⁶⁶ Thus, the court denied the county’s motion for summary judgment.⁶⁷

IV. NEGLIGENCE HIRING OR RETENTION

Under O.C.G.A. § 34-7-20,⁶⁸ “[t]he employer is bound to exercise ordinary care in the selection of employees and not to retain them after knowledge of incompetency.”⁶⁹ The Georgia Court of Appeals held that this statute imposes a duty on the employer to “warn other employees of dangers incident to employment that ‘the employer knows or ought to

61. *Id.* at *9-10 (quoting *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001)).

62. *Id.* at *2-5.

63. *Id.* at *8-9.

64. *Id.* at *9-10.

65. *Id.* at *10.

66. *Id.* at *10-11.

67. *Id.* at *13.

68. O.C.G.A. § 34-7-20 (2008).

69. *Id.*

know but which are unknown to the employee.”⁷⁰ To sustain an action for negligent hiring, the plaintiff must prove the employer hired an employee whom “the employer knew or should have known posed a risk of harm to others where it [was] reasonably foreseeable from the employee’s tendencies or propensities that the employee could cause the type of harm sustained by the plaintiff.”⁷¹ Typically, “the determination of whether an employer used ordinary care in hiring an employee is a jury issue,”⁷² and is only a question of law “where the evidence is plain, palpable and undisputable.”⁷³

During the survey period, the court of appeals affirmed, in *Dougherty Equipment Co. v. Roper*,⁷⁴ that an employer could not be held liable for negligent hiring when an employee injures a member of the general public in an automobile accident unless the employee is acting in the scope of his employment at the time of the accident.⁷⁵ *Dougherty* hired Garland as a forklift technician and assigned him a company vehicle. Although Garland had a fully restored license, it had been previously suspended because of a DUI. On his way to work in the company vehicle, Garland caused an accident involving Roper.⁷⁶

Roper sued *Dougherty*, claiming the company was liable for negligent hiring because it hired Garland with the knowledge that he had a bad driving record.⁷⁷ The court held that, absent a special relationship with Roper, *Dougherty* could not be held liable unless Garland was “acting within the scope of his employment and on the business of the master” at the time the injury occurred.⁷⁸ Merely traveling to work, even in a company vehicle, is not acting in the scope of employment.⁷⁹

In *O’Dell v. Mahoney*,⁸⁰ the court of appeals affirmed that the causes of action of negligent hiring and negligent retention do not apply to

70. *Tecumseh Prods. Co. v. Rigdon*, 250 Ga. App. 739, 740, 552 S.E.2d 910, 912 (2001) (quoting O.C.G.A. § 34-7-20).

71. *Munroe v. Universal Health Servs., Inc.*, 277 Ga. 861, 863, 596 S.E.2d 604, 606 (2004) (internal quotation marks omitted).

72. *Tecumseh*, 250 Ga. App. at 741, 552 S.E.2d at 912.

73. *Munroe*, 277 Ga. at 864, 596 S.E.2d at 607.

74. 327 Ga. App. 434, 757 S.E.2d 885 (2014).

75. *Id.* at 438, 757 S.E.2d at 889.

76. *Id.* at 435, 757 S.E.2d at 887-88.

77. *Id.* at 434, 438, 757 S.E.2d at 887, 889.

78. *Id.* at 436, 757 S.E.2d at 888 (quoting *Hicks v. Heard*, 286 Ga. 864, 865, 692 S.E.2d 360, 361 (2010)).

79. *Id.* at 436-37, 757 S.E.2d at 888 (“When a servant causes an injury to another, the test to determine if the master is liable is whether or not the servant was at the time of the injury acting within the scope of his employment and on the business of the master.” (quoting *Hicks*, 286 Ga. at 865, 692 S.E.2d at 361)).

80. 324 Ga. App. 360, 750 S.E.2d 689 (2013).

independent contractors.⁸¹ There, the purchasers of a house sued the vendors, the listing agent, and the brokerage company for problems with the septic system and flooding, asserting numerous claims including negligent hiring and retention.⁸² The trial court granted summary judgment, and the court of appeals affirmed.⁸³ Nevertheless, employers should carefully analyze independent-contract status since litigation may arise in several different contexts and under several different laws.⁸⁴ Under Georgia law, however, the test for determining the employment status of individuals is as follows:

[W]hether the employer, under the contract, whether oral or written, has the right to direct the time, the manner, the methods, and the means of the execution of the work, as contradistinguished from the right to insist upon the contractor producing results according to the contract, or whether the contractor in the performance of the work contracted for is free from any control by the employer of the time, manner, and method in the performance of the work.⁸⁵

V. RESPONDEAT SUPERIOR

Under the doctrine of respondeat superior, an employer may be held vicariously liable for the negligence or intentional torts of employees that are committed within the scope of their employment.⁸⁶ To hold an employer vicariously liable for the torts of an employee, the following two elements must be established: (1) the employee was acting in furtherance of the employer's business; and (2) the employee was acting within the scope of the employer's business.⁸⁷

A. Independent Contractors

In *Miller v. City Views at Rosa Burney Park GP, LLC*,⁸⁸ the court of appeals addressed liability in the context of an employer hiring an off-duty police officer to perform security functions.⁸⁹ There, an apartment complex hired an off-duty police officer to patrol the complex. In that

81. *Id.* at 367, 750 S.E.2d at 695.

82. *Id.* at 363-64, 750 S.E.2d at 693.

83. *Id.* at 363, 750 S.E.2d at 692.

84. *See, e.g.*, Timothy M. McConville, *Don't Misclassify Workers as Independent Contractors*, NAT. L. REV. (May 20, 2014), <http://www.natlawreview.com/article/don-t-misclassify-workers-independent-contractors>.

85. *Glenn v. Gibbs*, 323 Ga. App. 18, 20, 746 S.E.2d 658, 661 (2013).

86. CHARLES R. ADAMS III, *GEORGIA LAW OF TORTS* § 7:2 (2012-2013 ed.).

87. *Id.*

88. 323 Ga. App. 590, 746 S.E.2d 710 (2013).

89. *Id.* at 590-91, 746 S.E.2d at 711.

role, the police officer shot the plaintiff, who sued.⁹⁰ The trial court granted summary judgment, and the court of appeals reversed in part, finding a jury question as to respondeat superior.⁹¹ In doing so, the court reminded businesses that there is generally no respondeat-superior liability for the acts of independent contractors; furthermore, “[i]n cases involving off-duty police officers working for private employers, . . . the employer escapes liability if the officer was performing police duties which the employer did *not direct when the cause of action arose*.”⁹²

Nevertheless, the court cautioned, “[A]n officer ‘may occupy a dual position of exercising functions for the public and the company; in which case, where he is in the discharge of duties for the company, and the tort is committed under such circumstances as not to justify it, the company is liable.’”⁹³

The court relied upon testimony that the police officer not only enforced an ordinance and limited parking in a handicapped spot to permit holders (“arguably a police function”), but also determined the resident who the plaintiff was seeing (in furtherance of an apartment complex policy), and thus the court of appeals concluded that summary judgment was not appropriate.⁹⁴

B. Personal Torts

In *Carter v. Riggins*,⁹⁵ the court of appeals addressed respondeat-superior liability for a fight in a restaurant.⁹⁶ There, a restaurant patron filed suit against the restaurant’s co-owners, asserting vicarious liability and statutory premises-liability claims in connection with a physical attack at the restaurant by the co-owner’s sons. The superior court granted summary judgment to the owners, and the patron appealed.⁹⁷ Affirming the result, the court of appeals held vicarious liability was not proper since the attack carried out by the restaurant co-owner’s sons was motivated by purely personal reasons rather than in furtherance of a business purpose.⁹⁸ In so holding, the court reminded practitioners that “the employer is not liable under respondeat superior for an employee’s tort committed not in furtherance of the employer’s

90. *Id.* at 591-92, 746 S.E.2d at 712.

91. *Id.* at 592, 595, 746 S.E.2d at 712-13, 714.

92. *Id.* at 593, 746 S.E.2d at 713.

93. *Id.* at 594, 746 S.E.2d at 713 (quoting *Pounds v. Central of Ga. Ry. Co.*, 142 Ga. 415, 418, 83 S.E. 96, 97 (1914)).

94. *Id.* at 594, 750 S.E.2d at 713-14.

95. 323 Ga. App. 747, 748 S.E.2d 117 (2013)

96. *Id.* at 747, 748 S.E.2d at 117.

97. *Id.*

98. *Id.* at 750, 748 S.E.2d at 119-20.

business, but rather for *purely personal reasons* disconnected from the [employer's] authorized business."⁹⁹

In *Dougherty Equipment Co. v. Roper*, discussed in Part IV, the court of appeals examined an employer's vicarious liability for a car accident caused by an employee in an employer-owned vehicle.¹⁰⁰ Generally, under Georgia law, when a tort arises out of an employee driving a company vehicle, there is a presumption that the employee was acting in the scope of employment.¹⁰¹ However, it is a rebuttable presumption.¹⁰² In *Dougherty Equipment Co.*, the presumption was rebutted because the employee was merely driving to work when the accident occurred.¹⁰³ Driving to work, absent any other evidence that the employee is acting at the direction of the employer, is deemed personal and not within the scope of employment.¹⁰⁴

VI. RESTRICTIVE COVENANTS

In the past few years, the law in Georgia regarding restrictive covenants has undergone major changes. Prior to the constitutional amendment, courts would only uphold non-compete agreements that replaced a partial restraint on trade; consequently, any covenants that placed general restraints on trade were void.¹⁰⁵ Now, the determining factor is whether a covenant restricts future employment in a *reasonable manner*.¹⁰⁶ The court of appeals has also recognized that the new amendment does not apply to restrictive covenants that predate the amendment and will not allow the courts to blue pencil pre-2011 restrictive covenants.¹⁰⁷ For these prior covenants, a non-compete agreement is valid as a partial restraint on trade only when the

99. *Id.* at 750, 748 S.E.2d at 120 (alteration in original) (quoting *Piedmont Hosp., Inc. v. Palladino*, 276 Ga. 612, 612, 580 S.E.2d 215, 216 (2003)) (internal quotation marks omitted).

100. *Dougherty Equip. Co.*, 372 Ga. App. at 434, 757 S.E.2d 887.

101. *Id.* at 436, 757 S.E.2d at 888.

102. *Id.*

103. *Id.* at 436-37, 757 S.E.2d at 888.

104. *Id.* at 437, 757 S.E.2d at 889.

105. See O.C.G.A. § 13-8-2(a) (2010 & Supp. 2014).

106. GA. CONST. art. III, § 6, para. 5(c)(3); see also O.C.G.A. § 13-8-50 (2010 & Supp. 2012). For a more in-depth legislative and political history of the restrictive-covenant constitutional amendment, see Haas et al., *supra* note 2, at 171-74.

107. *Cox v. Altus Healthcare & Hospice, Inc.*, 308 Ga. App. 28, 30-31, 706 S.E.2d 660, 663-64 (2011); *Lapolla Indus. Inc. v. Hess*, 325 Ga. App. 256, 265-66, 750 S.E.2d 467, 475-76 (2013).

agreement is specific and reasonable in regard to duration, territorial coverage, and the scope of activities prohibited.¹⁰⁸

VII. CONCLUSION

The dynamic relationship between the employer and the employee is constantly changing with every new law and legal proceeding. The complexities of employment law continue to rise as federal law and Georgia law continue to overlap each year. Regardless of whether a practitioner specializes in state, federal, administrative, or other pertinent areas of labor and employment law, it is important to stay fluent in the ever-changing trends, policies, cases, and state and federal guidelines that affect labor and employment law.

108. *Cox*, 308 Ga. App. at 31, 706 S.E.2d at 664; *see also* *W.R. Grace & Co., Dearborn Div. v. Mouyal*, 262 Ga. 464, 465, 422 S.E.2d 529, 531 (1992).
