



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

GEORGIA EMPLOYERS WHO HIRE EX-OFFENDERS ARE PROVIDED NEW PROTECTION AGAINST NEGLIGENT HIRING AND RETENTION CLAIMS

All employers have a duty to exercise a reasonable level of care in hiring and retaining employees. This duty of care is breached when an employer fails to conduct an appropriate investigation into the past conduct of an employee whose work duties or position may pose risks of injury or damage to third parties. Where an employer knew, or should have known, of potential risks posed by one of its employees, the employer may be found liable for harm caused by that employee. An employer who fails to exercise this reasonable care in selecting or retaining its employees may face what is known as a claim for “negligent hiring” or “negligent retention.”

However, Georgia employers who hire former criminal offenders are now given some protection against claims of negligent hiring and retention through the Fair Business Practices Act, which took effect on July 1, 2014. Under this Act, employers are presumed to have exercised due care in hiring and retaining employees with prior criminal convictions if such employees received a pardon or earned a certificate issued by the Department of Corrections for successful completion of a re-entry assistance program.

The Fair Business Practices Act extends protection for employers only to the hiring, retention or interaction with those ex-offenders who have either received a pardon from the Georgia Board of Pardons and Paroles or earned a Program and Treatment Completion Certificate from the Georgia Board of Corrections. The Act tasks the Board of Corrections with developing offender re-entry assistance programs, including the requirements for successful completion of the programs, as well as

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factors to consider in issuing the program certificate. The Act does not provide protection in hiring serious violent offenders as defined under Georgia law, which include those convicted of murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy or aggravated sexual battery. Any ex-offender who was convicted of a serious violent felony is not eligible to receive the program certificate.

Employers are not afforded complete or unchallenged protection against negligent hiring or retention claims. Under the Act, employers are presumed to have exercised due care in hiring ex- offenders who receive a pardon or program certificate; however, this presumption may be rebutted. Claims of negligent hiring and retention still may be supported by evidence outside the scope of the pardon or program certificate of which the employer knew or should have known. For example, the presumed due care in hiring an employee pardoned for a prior assault conviction may be rebutted by evidence that the employee had been fired by previous employers for harassment or assault against co- workers.

The Fair Business Practice Act does not negate an employer's responsibility to consider additional factors concerning the employee and the particular workplace, job duties or position. As an example, where an employee is hired to work with children or fragile individuals, the employer must consider whether the employee's prior conviction could impact his or her suitability to work safely within such an environment. Employers still must continue to exercise the reasonable care expected or required within their industry in hiring, retaining and interacting with employees, including conducting criminal background checks. For example, an employer who hires delivery drivers is expected to have examined potential employees' driving records for potential risks, such as a suspended license.

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Pro Bono Partnership of Atlanta offers resources including information on background checks for [Nonprofits](#) and screening for [Volunteers and Employees](#), as well as a [Webinar](#) on conducting criminal background checks in compliance with the Fair Credit Reporting Act and guidance on [how employers may use criminal records](#) in making hiring decisions.

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