

PBPA Podcast Transcript
Episode 16: Employment Law for Nonprofits with Less than 15 Employees
(22:32 minutes)



Sireesha ([00:01](#)):

Even before you hire your first employee, a nonprofit should be thinking about some employment considerations. If you're a small nonprofit with less than 15 employees, your organization is not subject to every employment law out there. In this episode of the PBPA podcast, Josh Joel will talk to us about what state and federal employment laws actually do apply to nonprofits.

Sireesha ([00:32](#)):

Hello and welcome to the PBPA podcast. In each episode of the PBPA podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:44](#)):

Here with us today is attorney Josh Joel, with the law firm of Stanton Law, Josh also has his own podcast, Stanton Law Podcast. So our listeners can check that out for more practical insight for employers. Thank you so much for joining us today, Josh.

Josh ([02:00](#)):

Thanks for having me. It's a pleasure to be here.

Sireesha ([02:03](#)):

So Josh, we sometimes refer to employment law as an alphabet soup. When we hear about acronyms like FLSA, DOL and NLRA and ADA to name a few. Do all of these employment laws apply to all employers?

Josh ([02:21](#)):

So the short answer to that question is no, it can be pretty confusing to look at all the alphabet soup of the employment laws that are out there. And it can be quite overwhelming. When you think about things like the FLSA, FMLA, the department of labor is DOL and what does, what does all of that mean? But it actually is simpler than it looks when you start looking at, in terms of categories of laws and where they apply. So first to start out with, small employers, people with less than 15 employees, it actually is a lot simpler than it looks.

So first is the federal laws versus the state laws. And here, we're in Georgia and Georgia, frankly, doesn't have a whole lot of state laws when it comes to implement protections. But there are federal laws that are the alphabet soup of federal laws that have to be considered.

The second in terms of narrowing down, what's important to know about is public versus private employers. And private employers have certain laws that apply to them. Public employers have other laws that apply to them. And in the context of this podcast, obviously we're not that concerned about the public employers.

And then once you get down to those categories, and we're talking about the private employers, the small private employers, and we're talking about federal law and Georgia law, then we have to start considering how many employees do they have and that's the next way to narrow it down. So for example, some of the laws only apply if you have 15 or more employees. Some only apply if, if you have 20 or more employees, and then there are some that only apply for 50 or more employees, but in the context of 15 employees or less, there really isn't a whole lot of federal law that's going to apply. But there are certainly things that need to be considered. So those are the, those, the bigger buckets in terms of narrowing down the alphabet soup, uh, to only maybe a couple of letters that are relevant to the small employer.

Sireesha ([04:04](#)):

And so today we're going to be talking about those employment laws that apply to employers one to 14 employees. And when a nonprofit hires their first employee, which is a very exciting time for an organization, what employment laws do they need to be aware of as they prepare for day one as an employer.

Josh ([04:25](#)):

The first one is restrictive covenants. I believe it or not. And that's governed by state law and restrictive covenants. Uh, we're talking about what most people know is to be non-competes and non-solicitation provisions and these kinds of things. And you would think that those might not apply in the nonprofit context, but they do. And so many employers think that, well, those aren't enforceable are they. And the answer is yes, they are in Georgia, and most states, they are very enforceable as long as they're reasonable and as long as they're designed to protect legitimate interests of the company. So when you're first hiring an employee, even in a nonprofit context, I would say the very first thing you need to be thinking about before we even get to the alphabet soup, because of the size of the company, is making sure that you have an open conversation with that employee to make sure that they don't have agreements with their previous employers that can limit the way that they work for you.

Josh ([05:14](#)):

But in my work, pro bono work that I do, for example, representing a faith-based organization, you can have ministers or people in, in a, in a position where they develop strong relationships with members of a church or members of a synagogue and those relationships are protectable interest under the law. And therefore it's possible that a restrictive covenant and non-compete is going to be applicable in that situation. Are they going to come after you for it? It's hard to know, but it's really important to have that conversation with employees when they come in. Another big mistake that we often deal with in startups is they often tell us, well, we can just hire 1099 employees. Well, first of all, the concept of a 1099 employee is inherently contradictory. There's no such thing as a 1099 employee 1099 is by definition, an independent contractor.

Josh ([06:00](#)):

And you can't choose whether or not your employee or your worker is going to be a independent contractor or an employee. And if you misclassify that employee, you can run into serious problems. And as we're going to mention a bit later, one law that does apply to employers less than 15, for example, is the wage and hour rules of a federal law, the FLSA, the fair labor standards act. And if you have a person who you classify as an independent contractor, but they're really an employee and you're not paying them overtime, but you're trying to get out of it. And so when, when a nonprofit is considering how to hire a new employee, make sure that you are careful about how to classify that employee when it comes to whether they're an independent contractor or an employee. And another thing to think about again, just for small nonprofits, you know, trying to decide whether it's appropriate to send out an offer letter versus a more robust employment agreement. You know, those things are actually a little less complicated because offer letter is an agreement and a Georgia is an at-will state on that note.

Josh ([06:59](#)):

The other mistake that we hear people say is, well, Georgia's a right to work state at-will employment. Uh, you know, I can hire and fire for any reason I want, which is true, but it's a little more complicated than that as we will probably discuss a little more as you're getting a little bigger and you're getting more employees. And again, it's about making sure your human resources policies are in place. Employee handbooks are in place, and you're compliant with all the various laws and regulations. And of course, having your expectations very clear for your employees as to what's important. And the last thing I'll say is with respect to immigration issues, you know in Georgia, that's a little, not as big of an issue as people think, but we do recommend that you make sure that you get involved with E-verify and make sure that people are legally able to work for you. So those are the, I would say the five or six things when you're hiring your first employee. I know that's a lot of information, but those are really important things that we see people making mistakes on all the time.

Sireesha ([07:53](#)):

These are all things that are kind of important in that first week when you bring in your new employee: making sure you have the correct either offer letter employment agreement, the I9, and E-verify, as needed. And let's talk a little bit about benefits. What employment laws related to benefits apply to these smaller employers?

Josh ([08:14](#)):

Yeah. So interestingly enough, it's actually, there's there isn't a lot in Georgia because most of employment law here is governed by federal law. But there's a couple of things to be aware of when it comes to benefits. First of all, is workers' comp. If you have three or more employees in Georgia, then you need to be concerned and thinking about workers' comp issues when it comes to unemployment, making sure that, that you are within the system with the Department of labor and compliant with all the regulations and laws when it comes to the unemployment benefits and paying into that, so that on the back-end, if someone applies for unemployment, uh, you're going to be covered there. A couple other small things that a lot of folks don't know about when it comes to what I would also consider benefits is jury duty, military leave. These kinds of things under Georgia law, are important to are important to take into consideration now most what we consider benefits such as PTO paid time off sick leave and these kinds of things under Georgia law, you have a lot of freedom in terms of how you do that.

Josh ([09:13](#)):

So a lot will boil down to what kind of work environment are you trying to create? What kind of benefits are you trying to provide in order to attract the right employees to come to you? So when it comes to benefits, I would say aside from just making sure you're compliant with the local rules and local laws when it comes to unemployment, workers' comp. More of it is about making sure that you have the proper policies in place so that you can attract the right employees. Because again, in Georgia, you have a lot of leeway in terms of what kind of PTO you can provide, Sick, leave, other things like that. Just be aware that a couple of things that are governed by Georgia law, like I mentioned before, making sure that you given time for jury duty makes that's in your policies, making sure that there there's a military leave policy.

Josh ([09:55](#)):

If you're hiring someone who's who, who has served in the military, uh, aside from federal law, there's also Georgia law, which gives them protections where they can leave for up to six months without really any repercussions because of an issue relating to military leave. And one interesting one, which is very recent, as of last year, but Georgia does require, now that employers provide a space appropriate space for women who are nursing, that is private. It's not a bathroom. Uh, and that's something that's just a random Georgia law that was, that was enacted, I believe last year.

Sireesha ([10:25](#)):

And a quick follow-up on the comments that you made about unemployment. There are some specific options available to nonprofits and we do have other resources. So I'll drop a link to that webcast in the transcript to this episode. What about health care or paid time off are small employers required to provide those benefits?

Josh ([10:46](#)):

Yeah, so the short answer to that question is no, unless they contractually obligate themselves to do so. So if your offer letter and employment agreement, or employment handbook creates some sort of a contractual obligation to provide PTO. So under Georgia law and federal law, but Georgia law specifically here, you are not required to provide paid time off sick leave and these kinds of things, unless you contractually obligate yourself to do it. And what we do advise our clients is to be careful about how you draft your employee handbooks and be careful about how you draft your offer letters in terms of the language that you put into your offer letter.

Sireesha ([11:21](#)):

And that's just so interesting to me that healthcare and paid time off are not, actually legally required in Georgia.

Josh ([11:29](#)):

It's just the nature of the fact that Georgia is a relatively conservative state when it comes to employment laws, uh, and, and these things. And the idea is that these things should really be governed by the private market. And what's, what's the appropriate, way to do that. But, but no, there, there are no requirements under Georgia to provide those benefits. Now, should you absolutely. How you do it, you know, speak to a lawyer, speak to an HR person. But in terms of a legal requirement, there isn't a whole lot there .

Sireesha ([11:55](#)):

Are small employers subject to anti-discrimination laws.

Josh ([11:59](#)):

Yeah. So that's, that's a very good question. And interestingly, the answer is not really. Federal discrimination laws generally are going to apply [with] over 15 employees. So for example, title seven, which is non-discrimination in the context of, gender, religion, sexual orientation now, any sort of, national origin race, all the ADA disability, that's going to, that's going to be the PDA, which is pregnancy. Those all apply, over 15 employees. So those do not apply to employers who have less than 15 employees. The federal discrimination laws that do apply if you're less than 15, is USERRA, which is the uniform services, uh, the federal military discrimination law that you cannot discriminate against someone for their, for serving in the military or going into the reserves. That's a big one. And if you have veterans who work for you be aware of that, that does apply, that applies for your less than 15, another one that applies in terms of discrimination laws, if you're less than 15 employees is what we call section 1981.

Josh ([13:04](#)):

That's a very specific law that applies to, that only applies to race discrimination. It was enacted after the civil war, during the reconstruction, which basically says that you're not allowed to commit any sort of race discrimination in the context of contracts and obviously employment agreements are contracts, and therefore section 1981 applies to employment discrimination, on the basis of race. And that does apply to employers less than 15 employees, race discrimination under section 1981. Now that's kind of a complicated issue and we don't have to get into all the details of that. Now there's one more that applies in federal law, the ADEA, which is age discrimination only applies if you're have 20 or more employees. But there's a Georgia age discrimination statute, which applies to all employers. But again, when it comes to all these things, there's, there's one piece which is which of these laws apply to you and which don't, but there's also best practices.

Josh ([13:54](#)):

And obviously we all know that whether or not the federal law applies or the state law applies, you gotta be really careful, aside to about any sort of issues around discrimination, retaliation aside for the public policy aside for being a good person and the morality of it. A creative lawyer can find ways to get you for these things, even if you're less than 15 employees. So obviously you gotta be careful about all these things and documenting things and making sure that your policies: anti-discrimination policies are in place and anti-retaliation policies are in place. Even if you're less than 15 employees, the last comment I'll make on that again is going back to not so much discrimination, but retaliation, all of the federal laws, almost all of them, have a retaliation provision. So even under the FLSA, which is wage and hour issues, uh, the NLRA, which is, which is labor issues, OSHA, which we'll talk about hopefully a little bit there is a retaliation provision, which is similar to a discrimination provision that if someone, for example, a safe work safety issue, or reports an issue relating to your wage practices or reports an issue relating to labor relations you cannot retaliate against that employee. And so be very, very careful about all of that, because those do apply for less than 15 in places.

Sireesha ([15:08](#)):

And what other employment laws are small nonprofit employers subject to? You mentioned FLSA and OSHA, for example, can you tell us a little bit more about that?

Josh ([15:19](#)):

Yeah, so, those are the big ones. When it comes to folks that are less than 15 employees, I would say that the FLSA the wage and hour provisions, making sure that you're paying, [if] they're less than 15 employees, are paying people appropriately, meaning they're paying them above minimum wage and paying time and a half for overtime. But more importantly on the FLSA is making sure that you're documenting everything. Do not rely on ADP or any of your external payroll processors to make you compliant with the FSA. They're not going to do it and they make mistakes. And so make sure that you're educated on how to document time. Very important, to make sure that people are tracking their time and you have a time tracking system if they are a non-exempt employees (meaning they're covered by these laws). So the basics of that are that you need to know about from the get-go is put a time tracking system in place where people can clock in and clock out, no matter what, uh, make sure that that time is being appropriately logged, that they're being paid over the minimum wage, which is a federal minimum wage, uh, as well as making sure that, that when they work over 40 hours a week, they're getting time-and-a-half, for, for that time as well. And that it's not just that you're paying time-and-a-half, but that you're logging it appropriately when you're submitting it to your payroll processing. That you're logging in as straight time and overtime. That's really, really important and putting policies in place to potentially make it so that folks who don't work overtime, if, if you don't want to get involved in the complications of that.

Another one, to be aware of for small employers, is OSHA that that's the occupational safety hazards act. I think I got that alphabet soup, right? Even experienced employment lawyers, forget what all these alphabet things stand for, because we just talk about them like FSA, OSHA, USERRA. OSHA is essentially keeping a safe workplace, making sure that you have workplace safety provisions that you're posting the appropriate warnings to your employees, that if folks raise issues about safety in the workplace, you're addressing them appropriately. And obviously if there is any issues relating to, and again, it depends on what kind of nonprofit you're dealing with, but, you know, people don't tend to think about OSHA outside the kind of the manufacturing space and other areas like that. But, OSHA does apply if you are even little things like the way you're cleaning your, your, your spaces, if you're using antiseptic, which has bad fumes that it's going to cause people, safety concerns. That could be covered by OSHA and making sure that you're logging that and you're compliant with those rules as well is very important.

The national labor relations act usually is probably not going to be that applicable to nonprofits that, but essentially that means that you really can't do anything to stop your employees from doing things that could potentially lead to organized labor unions and organizing collective bargaining with, with one another. I don't see that that often applies to nonprofits. And the last thing of course is, as I mentioned before, I think the most important thing is making sure that you're doing the proper classifications with independent contractors and employees. Go back to that because that does cause all sorts of other complications and issues aside from what we spoke about. And it's a really critical and fundamental aspect of your of your business.

Sireesha ([18:29](#)):

Yes, I completely agree with that last point. That's something that we to work with our clients on often. And my last question Joel has to do with how do you know how many employees you have? How do you count up those part-time employees and your full-time employees to determine how many employees you have under these laws.

Josh ([18:51](#)):

Right? So that's a great question. And this has been an issue which has actually been subject to quite a bit of a fluctuation in the law and the way the courts are handling it over the last couple of years. But the short version is the best way to do it right now. The best practices is what we call the payroll test, which is simply to look at who's on your payroll. And you have to have over the course of the most recent three-month period. I believe it is that you just look at the number basically at the end of your payroll, whether it's part-time, full-time.

And, and one area here again that I want to emphasize. I know almost like I'm sounding like a broken record over here, but independent contractors might be employees if you're exercising control, just because you classify them [as contractors doesn't mean they are.] And this is one of the areas where you can really slip up. If you have 12 employees and four independent contractors, and those independent contractors are coming to the office every day and looking like ducks and quacking like ducks. They look like employees, they're going to be considered employees for the purposes of all these things. And title seven is going to kick in a, ADA is going to kick in. You're going to be considered that you have 15 or more employees. And so anytime you're kind of hovering around the threshold of 10, 11, 12 employees, or you're kind of, you know, fluctuating up, fluctuating down with the amount of employees you have, that's when you really need to start considering having those appropriate anti-discrimination policies in place, because you never know what it's going to look like. But anyway, the basic test is that an employee is, a worker is counted as an employee, if she's worked for the employer for -look over the last 20 calendar weeks and see how many people are on your payroll during those weeks. So if you have, it doesn't matter if you're hiring or firing, if ultimately, you know, one month you have 12 a month, you have 16, one month you have, if your number is staying over 15 consistently, no matter who those employees are over the course of 20 weeks, then the law is going to apply.

The easiest thing, as I said, look at your payroll. When you get that payroll report every month of what you're paying to who what's, what's the bottom line number at the end of that report of how many people you have. And if you have more than 15, the course of the last 20 weeks, then you've got some, you got some issues,

Sireesha ([20:51](#)):

Okay, this is all such practical information, Josh. I really appreciate you taking the time to answer these questions for us. And thank you for walking us through all of these employment considerations, not just legal requirements, but also best practices.

Josh ([21:08](#)):

Yeah, and you appreciate having me on and I, and you know, I know a lot of this can be quite scary for a lot of people, but as I said in the beginning, once you start narrowing it down and start really figuring out what's out there, it can be quite simple. You just have to have somebody knows what they're talking about, whether it's a human resources, consultant someone as a professional in human resources or an employment lawyer who knows this area of the law, it can be really simple, much simpler than you think, because it does get overwhelming, as you mentioned in the beginning. And so, you know, obviously reach out to the folks in your network. You can help you work through these problems, simplify these problems, and it doesn't have to be your problem. So I appreciate you having me on and sharing what I do, and what's important for these nonprofits.

Sireesha ([21:50](#)):

We hope that you found this episode of the PBPA podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for

Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.