

## City of Atlanta Non-Discrimination in Public Accommodations Ordinance and Fair Private Employment Ordinance

The City of Atlanta enacted the Non-Discrimination in Public Accommodations Ordinance in 2000 and the Fair Private Employment Ordinance in 2001. The Non-Discrimination in Public Accommodations Ordinance makes it unlawful for any place, legal entity, or establishment that falls under the broad definition contained in the City Ordinance to discriminate against an individual based on that individual's domestic relationship status, parental status, familial status, sexual orientation, or gender identity. Similarly, the Fair Private Employment Ordinance makes it unlawful to discriminate against an employee based upon these enumerated factors and also makes it unlawful to discriminate based on familial status. As of you may have seen on the news, the City has been seeking to aggressively enforce the Non-Discrimination in Public Accommodations Ordinance against the Druid Hills Country Club. As the Fair Private Employment Ordinance is closely linked to the Non-Discrimination in Public Accommodations Ordinance increased enforcement of both ordinances may greatly affect your business.

In passing the Non-Discrimination in Public Accommodations Ordinance ("Public Accommodations Ordinance"), the Atlanta City council provided that discrimination against any person on the basis of race, color, creed, religion, sex, **domestic relationship status, parental status, sexual orientation**, national origin, gender identity, age, disability, or the use of a trained dog guide by a blind, deaf, or otherwise physically disabled person in places of public accommodation is unlawful. Although federal law has made it unlawful to discriminate based upon many of these factors for quite some time, the City ordinance expands the prohibited factors to include several new ones, specifically including domestic relationship status, parental status, familial status, sexual orientation, and gender identity. While we recommend awareness of the other unlawful discrimination factors under state and federal law, this article will only address the five new factors identified in the Ordinances that may have an impact on your business.

According to the Non-Discrimination in Public Accommodations Ordinance, "public accommodation" is broadly defined as any place, legal entity, store, or other establishment which supplies goods or services to the general public. The Public Accommodations Ordinance then provides a laundry list of certain types of establishments that are included within the scope of the Ordinance. One group that is included is any club, institution, or membership organization with greater than fifty members which provides regular meal service or regularly receives payment for

dues or fees. As is apparent from the Druid Hills Country Club complaint, public accommodations can be construed very broadly. It is unlawful for anyone acting on behalf of these businesses to deny, refuse, or reject an individual privileges, services, or goods or to segregate or distinguish based on the enumerated discrimination factors.

The Fair Private Employment Ordinance (“Employment Ordinance”) may also have a significant impact on many businesses. Although federal law makes it unlawful to discriminate against an employee or future employee based upon certain discriminatory factors, the City Employment Ordinance extends this protection in the City of Atlanta to several new factors that were not previously protected. Specifically, employers in the City of Atlanta are now prohibited from discriminating based on domestic relationship status, parental status, familial status, sexual orientation, and gender identity.

### **To Whom the Employment Ordinance Applies:**

The Employment Ordinance specifically pertains to employers, employment agencies, labor organizations, and joint labor management committees located in the City of Atlanta. Under the Employment Ordinance, an employer includes any non-government entity or person with **ten or more employees**. An employment agency is defined as any entity or person who regularly procures employees for an employer or procures employees opportunities to work for an employer.

### **Prohibited Acts:**

The Employment Ordinance makes it unlawful to refuse to hire or terminate any protected individual or to otherwise discriminate against any individual with respect to his or her compensation terms, conditions, or privileges of employment based on the prohibited factors. Other prohibited conduct includes limiting, segregating, or classifying the employee or employee applicant in any way to deprive him or her of employment opportunities or otherwise adversely affects his or her status as an employee. Employment agencies are similarly prohibited from not referring an employee or employee applicant for employment based on the above factors. The Employment Ordinance also forbids discriminating against protected individuals in training programs. Similarly, printing or publishing notices or advertisements indicating a prohibited preference or preferred classification is unlawful.

### **Enforcing Both Ordinances**

While the Ordinance does not provide a private right of action by an individual who alleges to be aggrieved by an alleged violation of the Ordinance, the City may take action that could be detrimental to your business. An aggrieved person may file a complaint with the City of Atlanta Human Relations Commission and/or may seek prosecution of the alleged violations in the Atlanta Municipal Court.

Once an aggrieved individual has filed a complaint, the Director of the Mayor's Office of Constituent Services is required to conduct an initial investigation and report the findings to the Commission. The Commission is then required to receive the report and attempt to eliminate any unlawful discriminatory practice by further investigation, conference, facilitation, and/or persuasion. If the aggrieved party files an objection to the conciliation, or if the employer or establishment demands a hearing on the charges, the Commission is required to hold a hearing on the merits of the complaint.

### **Process of the Hearing and Possible Repercussions**

At the hearing, the chair is not bound by any strict rules of evidence, and is to have access to all premises, records, documents, individuals, and other evidence or possible sources of evidence. After the hearing, the Commission is required to set forth the findings of fact and its determination. The chair has the discretion to issue an opinion stating the reasons for the determination. Once the Commission has issued its findings, the Mayor has thirty days in which to respond. In her response, the Mayor is authorized to take various degrees of action ranging from a simple letter asking the employer or establishment to desist, up to initiating an investigation into whether the employer's business license, liquor license, or contracts with the City should be revoked.

In sum, both Ordinances greatly expand the scope of discrimination protection within the city limits of Atlanta. While the penalties for violating the ordinance are not monetary, a violation can possibly lead to serious business repercussions for your business.

For more specific information, the Atlanta City Council has posted the exact wording of the Ordinances online at:

[http://library3.municode.com/gateway.dll/GA/Georgia/719?f=templates&fn=default.htm&nusername=10376&npassword=MCC&nac\\_credentialspresent=true&vid=default](http://library3.municode.com/gateway.dll/GA/Georgia/719?f=templates&fn=default.htm&nusername=10376&npassword=MCC&nac_credentialspresent=true&vid=default)

*Please note that this update is intended to advise you of some recent legal developments and is merely provided for informational purposes. Nothing herein is intended to constitute a legal opinion or advice. If you have particular questions, or if you have concerns about how the Non-Discrimination in Public Accommodations or the Fair Private Employment Ordinances might impact your business, please contact one of the attorneys at Berman Fink Van Horn P.C. to assist you.*