avlf saturday lawyer program

Landlord-Tenant Issues Primer

Individuals may present with a variety of landlord-tenant issues, and there may be potential claims of which the individual is unaware. The following is intended to provide only a brief overview of the various claims that may arise and some of the more common related issues that should be explored. While this primer should be useful in analyzing potential claims, *it does not constitute legal advice or research upon which any attorney or client should rely.*

Threshhold Issues: Who Is the Landlord, and Is Rent Current?

Tenants may not know whether the person they consider to be their landlord is actually the owner of the property or is simply a property manager. It is thus important to identify all parties that may be liable as "landlords," which includes managers, property owners, and other agents of the owners, as well as various legal entities – e.g. the LLCs that own versus those that manage the property, whether registered with the State as required or not. It is also important to try to distinguish between their relative roles. It is also important to get a clear picture of whether the tenant has intentionally withheld or is otherwise behind on the rent in any amount. There is a lot of misinformation about the right to safely withhold rent in response to the landlord's failures. In Georgia, doing so will get you evicted, quickly and without much hope of recourse.

Repair and Conditions Issues

Landlords have various non-delegable duties to maintain rental properties, and must comply with all relevant statutes and codes, state and local. Specifically, a landlord has a duty to keep its premises in repair and is liable "for damages arising from the failure to keep the premises in repair." O.C.G.A. §§ 44-7-13 and 14. These duties include a duty to provide locks and windows suitable for meeting safety needs, *Jackson v. Post Props*., 236 Ga. App. 701, 703 (1999), and a duty to repair *furnished* appliances and equipment. *Sixth Street Corp. v. Daniel*, 80 Ga. App. 680, 681 (1950). Landlords also have duties to tenants and others under standard tort law; for example, a landlord is required to use ordinary care in keeping the premises safe, O.C.G.A. § 51-3-1, including maintaining the common area in a reasonably safe condition. *McCullough v. Briarcliff Summit*, 237 Ga. App. 630, 631 (1999). Landlords often have additional contractual duties under a lease, but these statutory duties are incorporated into the lease in any event. A landlord also has a duty to make repairs promised as inducement to rent (a common issue in AVLF cases) or continue

TIP – "Repair & Deduct": While a tenant cannot unilaterally and safely withhold rent in response to a landlord's failings, Georgia law does provide for a "repair and deduct" remedy. A tenant must first give notice to the landlord of her intent to use this remedy if repairs are not made in a reasonable amount of time (reasonable under the circumstances), wait to see if the deadline is met, complete the repairs *before* withholding and deduct the costs from *subsequent* rent payments, including the related receipts in place of—or along with the reduced—rent payment.

occupancy, but unless the promises are in writing, they will be very hard to enforce. Finally, most municipalities will have housing code ordinances and a "Code Enforcement" mechanism of some sort that may impose more stringent requirements. Significantly, the landlord's duties to repair and maintain the premises generally cannot be waived in a lease or otherwise avoided; lease provisions containing apparent waivers for such duties may not be enforceable. O.C.G.A. § 44-7-2(b)(1)-(3).

TIP: Conditions and repair issues may be the basis for **affirmative suits** on contract or tort theories and damages can take various forms. A tenant who continues to make payments after a landlord refuses or otherwise fails to make necessary repairs may recover for the diminution of value resulting from the conditions – i.e. get some - but never all - of the rent back. Damages may also arise from increased utility expenses from faulty wiring or appliances or a failure to address leaks. Loss of or damage to personal property due to the failure to repair is also recoverable, and a tenant forced to conduct repairs herself may also be able to recover those costs. Tenants may also have tort claims against a landlord for injuries or damage resulting from failure to repair a property.

The attorney's role in a conditions case depends the tenant's goals and – often – upon the timing of first tenant contact with the attorney. If a tenant is still living in a property and facing a conditions issue, an attorney's assistance may be especially helpful in either securing needed repairs or negotiating out of an otherwise binding lease. If the tenant wishes to stay in the property, a phone call and/or demand letter from an attorney simply requesting the repairs may solve the issue. If necessary, a demand citing the landlord's duties under the law and providing notice that the tenant may either exercise the right to "Repair and Deduct" if repairs are not made or pursue damages against the landlord for his failure to repair can often expedite the repair process without resort to litigation.

If the tenant wishes to leave but is trapped in a lease, and if the conditions are severe enough that the tenant's health or safety is at issue, a "constructive eviction" argument may be possible. Even if the conditions do not approach the extremely high bar for "constructive eviction" under Georgia law (requires "grave act of permanent character by landlord with intent of depriving tenant of enjoyment of premises"), an attorney can often use leverage to negotiate a tenant safely out of a lease – and without penalty – by assertively demanding repairs and compensation for damages, but proposing a mutual lease rescission as an alternative. The desire to avoid expensive repairs and potential liability, and a tenant with strong pro bono counsel, can often lead to a settlement in the tenant's best interest.

TIP: The issue of notice is critical in repair and conditions cases. Tenants should always provide written, itemized, specific notice to landlords of conditions or repair problems and requests – and it is never too late to start. A landlord who has been notified has a duty to inspect and repair, and while she may be held to have constructive notice of conditions that should have been discovered, lack of written requests is fatal to most tenant claims. Once a landlord has notice of an issue, she still must be given a reasonable time to repair, unless the issue creates a dangerous condition. Verbal notice still triggers a landlord's duties, but may present proof issues later.

Additionally, even if the landlord will not agree to a mutual rescission or make repairs and the tenant feels she must leave, an attorney can be instrumental in reducing the chances that the landlord will ever come after the tenant for breaking the lease – i.e.

scaring the landlord away – including defending the tenant and raising counterclaims at a later date if such a landlord foolishly decides to pursue the tenant for unpaid rent and breaking the lease.

Finally, in cases involving significant damages in the form of damaged property or diminution of value over several months of paying full rent for a place worth far less, abandoning the property and notifying the landlord that the tenant has done so because conditions essentially amounted to her eviction can set the stage for an affirmative damages suit against the landlord. While it is often more prudent to move on and save those damages to serve as a defense and counterclaims in a later suit by the landlord, such affirmative suits may be warranted. Some claims may even warrant punitive damages or damages for pain and suffering. These are unlikely, but have been awarded in conditions cases. Attorney's fees may also be available depending on the lease and the landlord's conduct.

Landlord Retaliation Update: Enacted in 2019, O.C.G.A. § 44-7-24 prohibits landlord retaliation against tenants who request repairs. If a landlord files an eviction or otherwise retaliates within three months after a tenant requests repairs or takes another protected action, the landlord may be liable for one month's rent plus $500.

Security Deposit Claims

The return of security deposits is governed by clear and specific statutes in Georgia, O.C.G.A. §§ 44-7-30 through 37. Security deposits include money or other security (but almost always money) given by a tenant to a landlord that shall be held on behalf of the tenant by virtue of a residential rental agreement. Application and "hold" fees, pet deposits, and similar nonrefundable payments do not fall under the statute.

TIP: Valid grounds for withholding a deposit include withholding to cover damages to the property (*BUT not just ordinary wear and tear*), unpaid rent or fees due under the lease, abandonment of the premises, nonpayment of utility charges, repair work or cleaning contracted by the tenant with third parties, and unpaid pet fees.

Generally, security deposits must be returned to tenants within one month of the termination of the lease or the tenant's vacating the property, whichever occurs last, unless there are valid grounds for retention of all or part of the security deposit AND the landlord provides the tenant with a written statement listing exact reasons for retention of the security deposit and, if based on damages, and itemized list of the withholdings. The landlord is only required to provide notice by mail to the tenant's last known address, so it is critical that the tenant leave an address where the returned deposit can be mailed.

All landlords who fail to follow these legal requirements may be liable for violation of the Security Deposit Act, breach of contract, and unjust enrichment or conversion, and a "stubbornly litigious" landlord may face a claim for attorney's fees, even when the Security Deposit Act's statutory attorney's fees provision does not apply. In light of the clear requirements and the potential liability, many security deposit cases settle quickly after a demand and some negotiations.

TIP: "Professional landlords" who are subject to stricter requirements are: 1) Landlords that are not "natural persons" (i.e. corporations, partnerships, etc.); 2) Natural persons who own more than 10 rental units (*units,* not buildings, and those owned by spouses and minor children count); or 3) Landlords who don't fall within (1) or (2) but who hire a third-party to manage the property for a fee, including rent collection.

Moreover, the law requires more of "professional landlords." Landlords in this group must place the security deposit in an escrow account and give tenant account location and number in writing; conduct a pre-tenancy walk-through and present the tenant with a list of existing damages before the tenant tenders the security deposit; do a post-termination walk-through within 3 business days of termination, compiling a comprehensive list of damages; and give the tenant an opportunity to inspect and dissent within 5 business days.

If these landlords violate any part of the Act, they face enhanced penalties which include the recovery of treble damages (3x the deposit) plus costs and attorney's fees (the latter are mandatory in the case of an intentional violation). In addition to the increased damages, they forfeit all rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises. These enhanced penalties provide powerful leverage to force the return of the original deposit quickly and without litigation, which is often the most advisable course of action.

TIP: "Accord and Satisfaction" - A tenant must refuse to cash a partially-returned deposit and return the check, or she will likely forfeit the ability to disagree and fight for more.

Illegal Eviction

An illegal eviction (sometimes called an illegal lockout) is when a landlord removes a tenant from a property through "self-help," without going through the required dispossessory process. The summary proceedings provided by O.C.G.A. Title 44 are the only lawful manner by which a tenant may be evicted. *Ralls v. E.R. Taylor Auto Co*., 202 Ga. 107 (1947). There is no set of facts that makes "self help" permissible in the residential context and the landlord and tenant may not, in a residential lease, waive this protection. OCGA § 44-7-2(b)(4). Illegal evictions can take many forms, including the illegal cut-off of utilities, but they most often involve a landlord changing the locks while the tenant is away, or putting the tenant's belongings on the curb – physically removing the tenant from the property is not required.

TIP: For illegal evictions, O.C.G.A. § 51-10-6 creates a potentially useful civil remedy for theft or willful damage of property, providing for liquidated (double) damages when the actual damages are under $5,000 and attorney's fees. The statute should be carefully consulted, as specific notice requirements apply.

Illegal eviction suits can include not just breach of contract but also affirmative intentional tort claims. The causes of action will usually include trespass and interference with the tenant's right of quiet enjoyment, both of which may be committed by the landlord who fails to follow the required process for eviction. *See Swift Loan & Fin. Co. v. Duncan*, 195 Ga. App. 556, 557 (1990). If personal property is taken or destroyed, conversion may be an included claim, and a claim based on abuse of the dispossessory process may be appropriate, as well. Although many tenants may also wish to claim emotional distress, it is very important to manage their expectations; success with such a claim is possible, but not likely.

TIP – "Abandonment": Frequently, the only viable defense the landlord has in these cases is to claim that the tenant abandoned the premises, and it may begin to appear that way in our cases if a tenant is, for example, unable to regularly sleep there due to horrible conditions. The mere act, however, of leaving property in the unit after the expiration of the lease, or after non-payment and some absence, does NOT in and of itself render the property abandoned to the landlord. *Kurc v. Herren,* 196 Ga. App. 331 (1990). There must be BOTH non-usage of the premises AND an intention to relinquish all rights in the premises. BUT you should always check the lease, as provisions which deem property abandoned *are* enforceable. *Cho v. South Atlanta Assoc*. 200 Ga. App. 737 (1991).

Damages will likely be based on the actual costs to the tenant resulting from the unexpected eviction, such as storage costs and fees associated with securing new housing, along with the value of any personal property lost in the eviction. Proving damages will often be a challenge, so it is important to find any evidence available, such as witnesses or photographs of the property. Punitive damages for trespass and wrongful eviction may also be available. If a landlord is threatening illegal eviction but the tenant is still in possession, injunctive relief may also be a means to prevent the eviction. Finally, attorney's fees may be available under O.C.G.A. § 13-6-11 for the landlord who refuses to resolve these disputes and otherwise acts in bad faith, or is being stubbornly litigious, or has caused unnecessary trouble and expense.

WHAT ABOUT EVICTIONS? The dispossessory process, which all landlords must use to evict even a nonpaying tenant, can be summarized as follows: The landlord must file a complaint - a "Proceeding against Tenant Holding Over." Once served ("tack-and-mail" service is permissible), the tenant has seven days to file an Answer (form Answers are available at the courthouse) and, if she does so, a hearing will be scheduled. At this hearing, a tenant may argue her defense and make counterclaims based on repair issues or conditions, etc. (related counterclaims are mandatory). All Fulton County evictions go through formal mediation, which may lead to a Consent Agreement or an impasse; if the latter, there will be a hearing that day. If the landlord prevails, she can obtain the Writ of Possession on the 8th day after the hearing, after which the tenant should be prepared to be evicted any day. The Writ gives the landlord the right to remove the tenant and her possessions from the property. This must be done under the supervision of County Marshals, with whom the landlord must coordinate after receiving the Writ. During this eviction, the tenant's possessions may be moved onto the street and the locks to the property changed. Anything short of landlord compliance with this entire process may constitute an illegal eviction. **AVLF has an Eviction Defense Program** separate from the Saturday Lawyer Program to handle evictions, including Saturday Lawyer cases that become evictions – which is not uncommon.

Unpaid Wages / Wage & Hour Claims Primer

Many individuals present with what seems to be a simple wage claim because their employer failed to pay or underpaid them. Some of these individuals also have a variety of wage- and hour-related issues of which they may be unaware because they are not familiar with the various laws that protect employees. The following is intended to provide only a brief overview of the various claims that may arise and some of the more common issues that should be explored. While this primer should be useful in analyzing potential claims, *it does not constitute legal advice or research upon which any attorney or client should rely.*

Breach of Contract & Quantum Meruit Claims

Specific wage and hour laws covered herein, such as the Fair Labor Standards Act ("FLSA"), cannot be used to pursue an employee's usual or promised wages or commissions in excess of the minimum standards specifically required by those laws. In other words, if the employee simply did not receive some portion of their promised pay, she generally would not have a claim under those laws unless it resulted in her pay falling below the minimum wage or—in limited circumstances—the prevailing wage, or not being paid time and a half for overtime. However, where there is a contract for a term (exceedingly rare in AVLF cases or in general), an employee can sue for the value of the unpaid contract; in those cases, basic contract law principles would apply and the statute of limitation is six years. In interviewing the individual, the focus should be on the exact nature of the agreement between the parties and what evidence there may be of the agreement, and of the employee's claim that she performed the work in dispute.

Georgia is an employment-at-will state: Many people feel wronged and want to sue their employer for "wrongful termination." It is important to understand that, without a contract for a specified term of employment, there is generally no right to reinstatement, back pay or compensatory damages upon termination. A Georgia employer can generally terminate such an employee for good cause, bad cause or no cause at all, so long as it is not a discriminatory cause in violation of federal employment discrimination laws, or the very limited Georgia discrimination laws. The only recognized exception to the at-will doctrine is "wrongful termination" of a Georgia employee who is complying with compulsory court duty—e.g., jury duty or responding to a subpoena.

In addition to standard breach of contract claims, where an employer refuses to compensate an employee for work agreed upon and already performed, the employee is entitled to the fruits of her labor, and a claim in quantum meruit can be brought. "Quantum meruit" means "as much as he deserves," and is an equitable doctrine based on the concept that no one who benefits from the labor and materials of another should be unjustly enriched thereby. In addition, where the employer has shown bad faith or been stubbornly litigious in refusing to pay or resolve an unpaid wage claim brought to her attention, the employee may sue for attorney's fees and costs under O.C.G.A. § 13-6-11 (in both contract and quantum meruit claims).

Commissions & Bonuses

In Georgia, where the right to a commission is vested, the commission is recoverable. Commissions are often governed by contract or by policy, so one should look carefully at any applicable contract or policy to determine whether or not the right to the commission is vested. Often, employers will terminate an employee shortly before a commission vests, with the intent of keeping the commission. In this situation, suit may be brought in quantum meruit.

TIP: For a bonus to be recoverable, it must be promised as a sum certain or based on a formula that produces a sum certain, leaving no room for discretion—.e.g., a 6% bonus is recoverable, a bonus to be "between 6%-8% of salary" is not.

Under Georgia law, bonuses are not considered wages and typically are not recoverable where they are the subject of an indefinite promise. To be enforceable, a promise of future compensation must be made at the beginning of the employment and must also be for an exact amount or based upon a "formula or method for determining the exact amount of the bonus." In those cases, a breach of contract claim can be brought.

Fair Labor Standards Act ("FLSA") Claims

The FLSA sets forth certain minimum wage and overtime standards applicable to virtually all U.S. employers. Although the FLSA covers a number of different areas, including child labor laws, there are two key provisions of the FLSA that will more often be applicable to our participants' situations: (1) the minimum wage provision (currently $7.25/hour effective July 24, 2009); and (2) the overtime provision. After standard breach of contract claims, FLSA claims may be the most common claims that you will see, but they may end up just being the needed source of leverage to get a desperately needed and illegally withheld paycheck released quickly. There are a number of rules and exemptions that employers rely on in an attempt to avoid their obligation to comply with these standards. As a result, violation of these provisions—and in particular, the unpaid overtime provision—are common issues for employees.

TIP: The FLSA does not regulate vacation, holiday, severance, or sick pay; meal or rest periods, holidays or vacations; premium pay for weekend or holiday work; pay raises or fringe benefits; or require a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees. The FLSA also does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16.

What Types of Jobs/Employers Does FLSA Cover?

There are two ways in which an employee can be covered by the law: **"enterprise coverage"** and **"individual coverage."** Employees who work for certain businesses or organizations (or "enterprises") are covered by the FLSA. These "enterprises," which must have at least two employees, are: (1) those that have an annual dollar volume of sales or business done of at least $500,000 (this type of enterprise coverage applies to a very large number of employers); and (2) hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies.

Even when there is no enterprise coverage, employees who are "engaged in commerce or in the production of goods for commerce" are protected by the FLSA under the **"Individual Coverage"** prong—i.e., if their work regularly involves them in interstate commerce. Examples of employees who are involved in interstate commerce include those who produce goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of state, regularly make telephone calls to persons located in other states, handle records of interstate transactions, travel to other states on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the state. Domestic service workers (such as housekeepers, full-time babysitters, and cooks) are also normally covered.

TIP: The result of these provisions is that virtually all employees are covered by the FLSA, but if you think there is a question, these issues should be explored.

Exemptions from Minimum Wage and Overtime Pay

The threshold issue in many FLSA cases is whether or not the employee is exempt. There are three principal exemptions under the FLSA: **Executive, Administrative, and Professional**. In order for an employer to establish that the employee's work falls under one of these exemptions, the employer must prove that the employee is paid on a salary basis in an amount not less than $455 per week and that the principal duties are executive, administrative, or professional in nature. Job *duties*, not *titles*, determine whether the exemption applies.

TIP: In light of the importance of these exemptions, if the person's story suggests any of these exemptions may apply, or it appears the individual may actually be a salaried employee, you will want to further explore the exact nature of their pay arrangement and their duties—e.g., how many supervisees she has; does she have authority to hire or fire people. An employer may lead the employee to believe she is "on salary"—and therefore exempt—when, in reality, that is not the case. The title or label of the job also does not matter; the exemption turns on the nature of the work.

Typically, the jobs that that qualify for the **executive exemption** are executive level positions, high-level managers, and other individuals who manage and control some important aspect of the company's business. Specifically, for the executive exemption to apply, (1) the primary duty must consist of either managing the employer's business, or a specific department of the business; (2) the employee must customarily and regularly direct the work of at least two full-time employees: and (3) the employee must have the authority to hire or fire other employees, or have significant input into hiring, firing, and other important employment decisions.

Administrative positions typically involve non-manual work directly related to the management or general business operations of the company. For the administrative exemption to apply, the primary duty must (1) be the performance of office or non-manual work directly related to the management or general business operations of the company; and (2) involve the exercise of discretion and independent judgment with respect to important company business.

TIP: There are a few other more random or narrow exemptions (e.g. employees engaged in newspaper delivery), including those that apply to the overtime provisions only. Additional information can be found on the Department of Labor's website at: www.dol.gov/dol/topic/wages/

TIP: In addition to these exemptions, the two other common exemptions are for outside **salespeople** and **certain computer employees**.

Professional positions are predominantly intellectual in nature and require some sort of advanced knowledge and degree, and include teachers and academic administrative personnel in elementary and secondary schools. For the professional exemption to apply, (1) the primary duty must involve work that requires advanced knowledge, such as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; (2) the advanced knowledge must be in a field of science or learning; and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. There is also a related **creative professional exemption**. This exemption applies if your primary duty involves artistic or creative work.

Overview of Rights and Remedies under the FLSA

The FLSA's overtime provision states that all employees who are not exempt from the FLSA must be paid at a rate of one and one half times their regular rate of pay for all hours worked in excess of 40 hours in any workweek; the minimum-wage provision requires that covered non-exempt workers are paid not less than $7.25 per hour effective July 24, 2009.

Under the FLSA, there are **no administrative exhaustion requirements** as are applicable in a typical discrimination case; a civil action may be brought immediately. The applicable **statute of limitations** is two years for most violations and three years if the violation is willful. **Available damages** include all back wages (which includes any unpaid overtime), plus an amount equal to those unpaid back wages, interest, attorneys' fees, and court costs. If there are other employees at the company who may have been subject to the same violation, a **"collective action"** may be brought under the FLSA, often significantly increasing the employees' leverage to force changes in practices and payment of wages owed.

The FLSA's minimum standards applicable to all covered employees cannot be reduced or waived. However, state laws, contracts, and collective bargaining agreements can impose greater duties on employers than the FLSA, and in a few states—NOT Georgia—the minimum wage is higher than the federal minimum.

It should also be noted that certain individuals can be paid at wage rates below the statutory minimum, such as vocational education students, full-time students in retail or service establishments, agriculture, or institutions of higher education, and individuals whose earning or productive capacity is impaired by a physical or mental disability. Such employment, however, is permitted only under certificates issued by the Department of Labor.

TIP: "On call" time is compensable, unless the employee's freedom is only minimally engaged (e.g. merely has to leave forwarding telephone number). **Rest periods of 20 minutes or less** are compensable, as is "waiting time," where the employee is "on duty" during the wait time and is not relieved of her or his duties during that time. **Preparatory and "concluding" activities** generally are compensable where integral to the principal activity or mandated by contract, custom or practice. **Tips** can be considered part of wages, but the employer must pay at least $2.13/hour in direct wages to "tipped employees."

Wages required by FLSA—at least the minimum wage, and time and a half for overtime for all covered, non-exempt employees—are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

Other Enforcement Options and Provisions

In addition to the ability to bring a private suit, it may be important to inform the individual about the other potential consequences for a violating employer. The U.S. Department of Labor's Wage & Hour Division has investigators stationed across the U.S. The Division may investigate and supervise payment of back wages, and the Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages, and may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of minimum wage and overtime.

Atlanta District Office
US Dept. of Labor Wage & Hour Div.
61 Forsyth Street, SW, Room 7M10
Atlanta, GA 30303
Phone: (404) 893-4600
1-866-4USWAGE (1-866-487-9243)

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA. Willful violations of this provision may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to $1,000 for each violation.

Other Federal Wage & Hour Laws

While only basic descriptions are included here, you should review this list of other wage and hour laws and listen for any facts that suggest one or more of these may apply. Questions provided in your questionnaire are keyed to some of these provisions. **The Davis-Bacon and Related Acts** require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction projects. **The Walsh-Healey Public Contracts Act** requires payment of minimum wage and overtime pay on contracts to provide goods to the Federal Government. **The Service Contract Act** requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government (e.g. custodians in federal buildings). **The Contract Work Hours and Safety Standards Act** sets overtime standards for service and construction contracts.

The Migrant and Seasonal Agricultural Worker Protection Act protects farm workers by imposing requirements on agricultural employers and associations and requires the registration of crew-leaders who must also provide the same protections.

Unemployment Insurance (UI)

Possible UI claims should be flagged during the interview and brought to the attention of AVLF, as there are quick deadlines for requesting hearings and appealing (almost always 15 days from the issuance of the determination/decision), and many meritorious claims are initially denied and simply accepted by the claimant despite having good arguments to the contrary. The most important issue is whether and why the claimant was laid off, terminated, or resigned—and in particular, whether it was

"for cause." Generally speaking, if the individual was laid off, she should be eligible. If she was fired, she can still be eligible unless her actions constituted deliberate, conscious fault (the employers' given reasons for the termination are often false). If the individual resigned, she may be eligible if she had good work-related cause to quit—e.g., the conditions were intolerable or she quit to accept a better job which she subsequently lost through no fault of her own.

Equal Pay & Other Discrimination Provisions

The equal pay provisions of the FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment – most commonly, Title VII of the Civil Rights Act of 1964 – are enforced by the Equal Employment Opportunity Commission ("EEOC"). If potential discrimination issues are present, please bring this to the attention of AVLF so that we may refer the individual to the EEOC; exhaustion requirements and more complex standards will likely apply.

EEOC Atlanta Branch
Sam Nunn Federal Building
100 Alabama Street, S.W., Suite 4R30 Atlanta, GA 30303.
For questions or to file a claim:
1-800-669-4000.