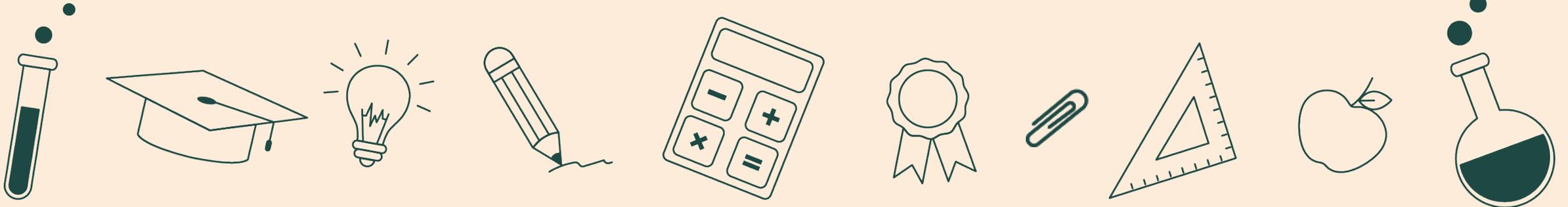




# State and Federal Employment Law

State Charter Schools Commission of Georgia

Cerrone Lockett, SCSC General Counsel



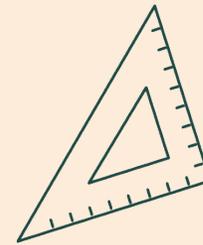
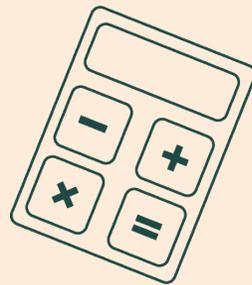
# State v. Federal Law

When federal and state law overlap or conflict, the law offering the greater protection governs.



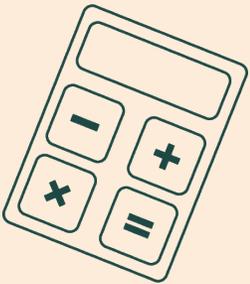


# Legal Considerations: Georgia Law



# “At-Will” Employment

An employer may discharge an employee, and an employee may resign, with or without cause.



# Exceptions to At-Will Employment

- Terms of employment contracts and, in some cases, offer letters.
- Employment decisions that violate federal and local employment laws and municipal ordinances.
- Compliance with Georgia employment laws.



# State Employment Laws

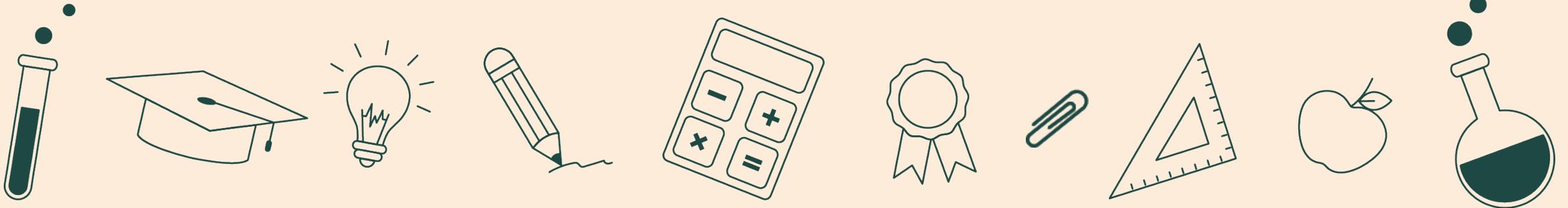


- Safety (O.C.G.A. § 34-2-10)
- Record Keeping (O.C.G.A. § 34-2-11)
- Unemployment Benefits
- Leave Requirements (Judicial Proceedings, O.C.G.A. § 34-1-3 and § 16-10-93; Voting, O.C.G.A. § 21-2-404)





# Legal Considerations: Federal Law



# Common Federal Employment Laws

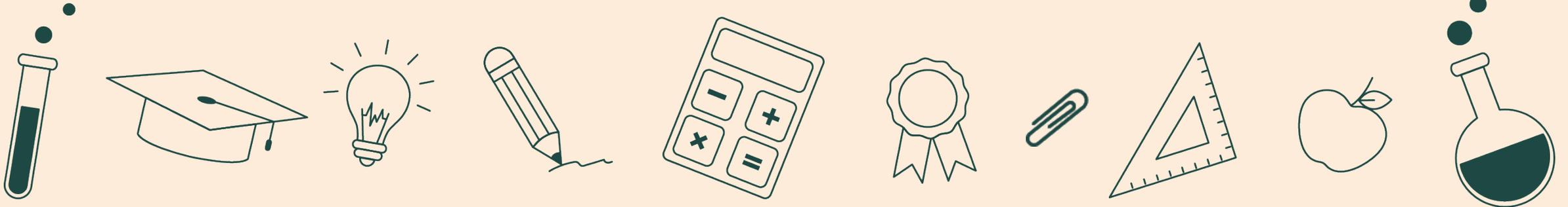


- Title VII of the Civil Rights Act of 1964
- Pregnancy Discrimination Act of 1978
- Americans with Disabilities Act of 1990
- Section 504 of the Rehabilitation Act 1973
- Family Medical Leave Act of 1993
- Age Discrimination in Employment Act (ADEA)





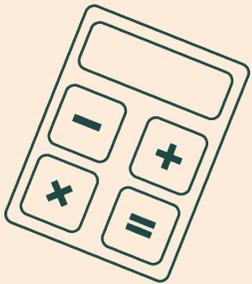
# Title VII of the Civil Rights Act of 1964



# Title VII

Title VII makes it unlawful for an employer (that employs fifteen or more employees for a certain period) . . .

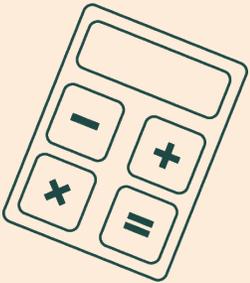
- to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, sex, or national origin; or
- to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.



# Common Allegations

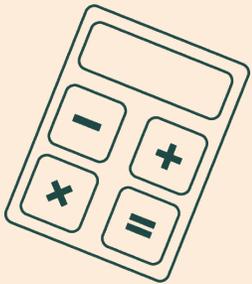
**Different Treatment:** Treating an employee less favorably than a similarly situated employee outside of the employee's protected class.

**Harassment/Hostile Work Environment:** An employer knows or should know of unwelcome harassment that is severe or pervasive enough to alter the terms and conditions of employment but fails to take prompt remedial action.



# Different Treatment Framework

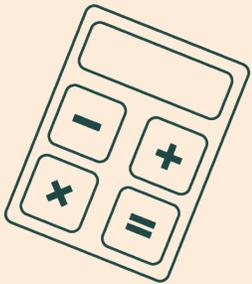
- Direct evidence of discrimination- evidence, that if believed, establishes that an employer's decision was motivated by discriminatory intent.
- Circumstantial Evidence of Discrimination - Evidence that the employee is a member of a protected class; was qualified for the job; was subjected to an adverse employment action; the employer treated similarly situated employees outside of the protected class more favorably.



# Hostile Environment Framework

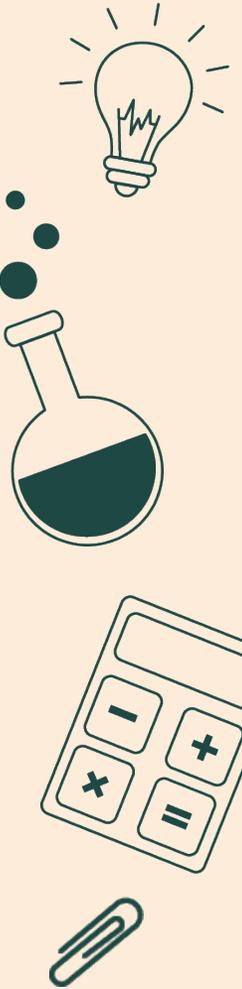
In order to establish a presumption of discrimination in hostile environment claim, a plaintiff (employee) must show that:

1. Membership in a protected class
2. Unwelcome conduct
3. Subjected to unwelcome harassment on the basis of race, color, religion, sex, or national
4. Harassment was complained of is sufficiently severe or pervasive to alter the terms and conditions of employment; and
5. (sexual harassment) the employer "knew or should have known of the harassing conduct but failed to take prompt remedial action OR (general) a basis for holding the employer liable.



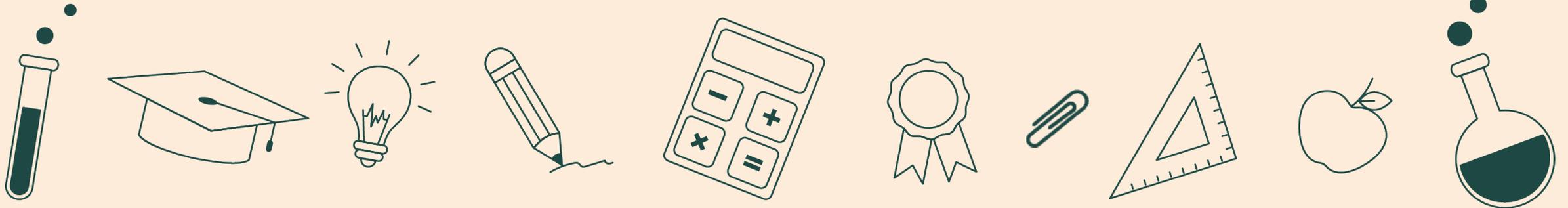
# Best Practices

- Follow your published policies
- Document and keep records of poor performance
- Keep a real-time records of employment decisions
- Avoid giving every employee a positive performance review
- Do not provide false reasons for termination to avoid hurt feelings.
- Ensure consistency in documented and oral reasons for an adverse employment action





# Fair Labor Standards Act



# Coverage



- Non-Profit organizations, including schools
- Non-exempt employees must be paid at least the federal minimum wage (\$7.25) for all hours worked and overtime pay at not less than time and one-half for all hours worked over 40 hours in a workweek.
- The FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees.



# Exclusions



- Severance, or sick pay;
- Requirements for meal or rest periods, holidays off, or vacations;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; or
- Discharge notices, reason for discharge, or immediate payment of final wages to terminated employees.



# Minimum Wage



Non-Exempt employees must be paid minimum wage for:

- Time spent engaged to wait or on call
- Time spent in required training
- Short rest breaks (20 min. or less)
- Travel between job sites during normal workday



# Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)
  
- Exclusions:
  - Gifts
  - Discretionary bonuses
  - Paid leave or leave buybacks
  - Reimbursements for business expenses



# Exempt Employee Examples



- Superintendent
- Principals and Vice Principals
- Counselors
- Teachers



# Recordkeeping



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records.
- Time clocks are not required.
- Records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers



# Notice

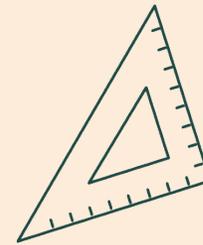
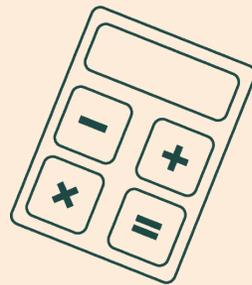


Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunchroom or employee lounge area.





# Family Medical Leave Act



# Introduction & Coverage



## Purpose:

- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity.

## Coverage:

- Educational institutions are covered by FMLA regardless of how many employees they employ.



# Employee Eligibility



- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



# FMLA Leave



Eligible employees may take up to twelve workweeks of FMLA leave:

- For the birth or placement of a child for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For their own serious health condition



# Military Family Leave



- A qualifying reason arising out of the covered active-duty status of a military member who is the employee’s spouse, son, daughter, or parent (qualifying exigency leave)
- To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (military caregiver leave)



# Substitution of Paid Leave



- “Substitution” means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
- Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave
- Employee remains entitled to unpaid FMLA if procedural requirements for employer’s paid leave are not met



# Employer Responsibilities



- Provide notice
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain records



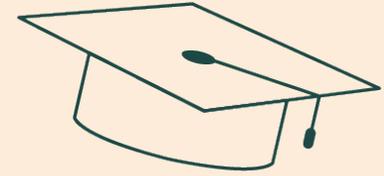
# General Notice



- Keep a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints.
- Include the required general notice in employee handbooks or other written guidance to employees concerning benefits or leave rights and distribute copies to new employees.
- Notice may be accomplished by duplicating the text of the Department of Labor prototype or may use another format containing as required content.



# Eligibility Notice



- Within five business days of leave request (or knowledge that leave may be FMLA-qualifying)
- Eligibility determined on first instance of leave for qualifying reason in applicable 12-month leave year
- New notice for subsequent qualifying reason if eligibility status changes
- Provide a reason if employee is not eligible
- May be oral or in writing



# Notice of Rights and Responsibilities



- Provided when eligibility notice required
- Must be in writing
- Notice must include:
  - Statement that leave may be counted as FMLA
  - Applicable 12-month period for entitlement
  - Certification requirements
  - Substitution requirements
  - Arrangements for premium payments (and potential employee liability)
  - Status as “key” employee
  - Job restoration and maintenance of benefits rights



# Designation Notice



- Within five business days of having enough information to determine leave is FMLA-qualifying
- Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
- Include designation determination; substitution of paid leave; fitness for duty requirements
- Must be in writing (optional WH-382)
- If leave is determined not to be FMLA-qualifying, notice may be a simple written statement



# Prohibitions



- interfere with, restrain or deny employees' FMLA rights
- discriminate or retaliate against an employee for having exercised FMLA rights
- discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- use the taking of FMLA leave as a negative factor in employment actions



# Record Keeping

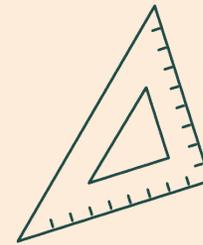
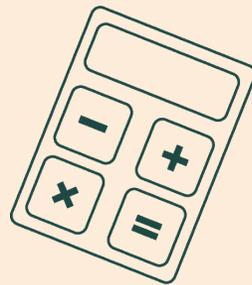


- Basic payroll information
- Dates FMLA leave is taken
- Hours of leave if leave is taken in less than one full day
- Copies of leave notices
- Documents describing benefits/policies
- Premium payments
- Records of disputes





# Retaliation

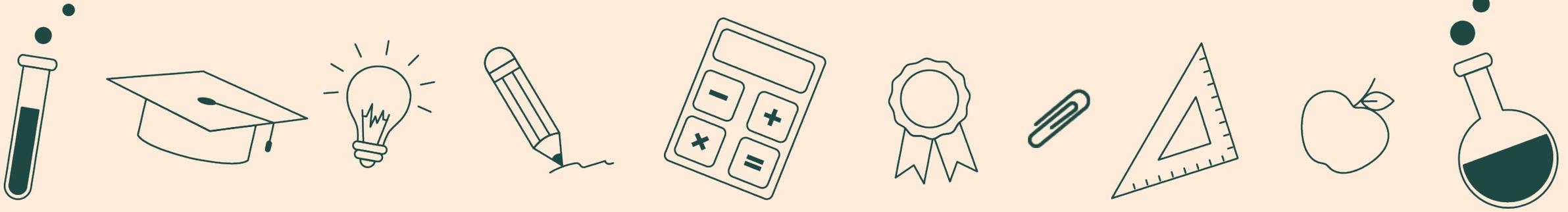


# Retaliation

Title VII, FMLA, and FLSA prohibit employers from retaliating against employees that complain about the statutory violations. A claimant-employee must initially show:

- the employee engaged in “protected activity” (complained of discrimination)
- the employer was aware of the complaint.
- the employer took an adverse action against the employee soon after the employer was aware of the protected activity.





# Contact Us

**Website:** [scsc.georgia.gov](http://scsc.georgia.gov)

**Twitter:** @SCSCGa

**Address:** 504 Twin Towers West,  
205 Jesse Hill Jr. Dr., SE,  
Atlanta, GA 30334

**Phone:** (404) 656-2837

