

# Library Law Salad: Legal Update for Ga. Public Library Directors

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# Disclaimer

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- These materials are provided as general information only.
- No legal advice is being given by the Georgia Public Library Service, the Board of Regents of the University System of Georgia, or any other person.
- You should consult with you attorney on all legal matters.



# Overtime Eligibility

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What's the status of Obama-era Final Rule?



# Obama Administration's Rule to Increase Those Eligible for Overtime Compensation

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- In May 2016, Obama's DOL announced revisions to OT regulations, to become effective December 1, 2016.
- Purpose of increasing number of employees eligible to earn OT to be accomplished by upping the salary level component of the white collar exemptions.
- September 2016 Directors' Meeting Presentation: U.S. Department of Labor's Overtime Final Rule: How Does it Affect Public Libraries as Employers?

# Update



- Implementation of the Final Rule was halted a few days prior to its effective date by a district court judge in Texas. Court held that the rule exceeded the authority delegated to the DOL by Congress.
- DOL appealed the ruling but has continually put off briefing the issue (likely the result of changes of political philosophy within the agency as Trump appointees come on board). Briefs are due June 30, 2017.
- Believing that Trump's DOL will abandon the appeal, other entities including the AFL-CIO have sought to intervene in the suit to support the rule.



# What does this mean for employers?



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- The new requirements never took effect, therefore, no changes in the salary level for the white collar exemptions occurred. To qualify for white collar exemption, employee must earn at least \$455/week or \$23,660/year.
  - Employers who raised salaries in anticipation of the rule are free to return to previous pay levels; employers who did nothing may continue to wait.
  - If the appellate court reverses the district court's injunction, the final rule would go into effect and could be changed by the Trump administration only through new rulemaking or by working with Congress to pass new laws.

# Background Checks

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# In December 2015 . . .



- Bill in U.S. Senate to prohibit credit checks by employers. This bill died in committee and thus never became law.
- EEOC was litigating a number of suits filed against private employers. Nine states Attorneys General (including GA) have opposed the EEOC's guidance with respect to the use of criminal background checks in hiring decisions. The Dollar General case remains in litigation.
- Georgia's governmental employers remain bound by 2015 Executive Order prohibiting use of criminal record as an automatic disqualifier.



# Guns in Public Libraries

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# Georgia's Gun Law



- Went into effect July 2014
- Gave affirmative right to permit holders to bring guns “in a government building when [it] is open for business and . . . is not restricted or screened by security personnel.” O.C.G.A. § 16-11-127(e)(1).
- Any public library policy or practice prohibiting guns in the library would be in direct contravention of the law.





## Other States ...

- Alabama: 2 public libraries refused to remove signs prohibiting guns on the premises; the Attorney General issued a statement that signs violated the law and threatened legal action by the state.
- Missouri: public library refused to change its signs banning weapons; a private individual threatened suit. As a result, the library changed the signs and the library policy to state that guns are allowed.



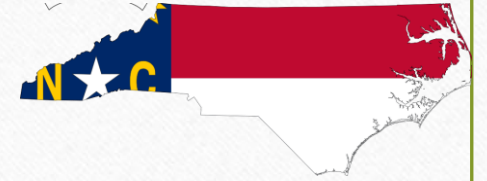


# Bathroom Legislation

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# It all started in N.C.



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- 2016 NC General Assembly passed the now infamous Bathroom Bill requiring public entities to monitor restroom usage to ensure that individuals use restrooms consistent with biological sex.
  - Bowing to economic pressure by businesses, performers, and sports organizations, and in the face of a narrow victory by a Democratic governor, the General Assembly modified the law significantly in Spring 2017. The modification removes the rule on transgender bathroom use, but maintains control of policy with the State, not local governments or school officials.



# What does the Federal Government say?

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- In spring 2016, US Dept. of Education (Obama Administration) issued guidance for public schools directing that a student may use the restroom matching gender identity regardless of biological sex.
- In August 2016, guidelines were stayed by a Federal Court in Texas.
- In February 2017, President Trump revoked the guidelines.

# Other States



- About a dozen state legislatures debated bathroom legislation this year, but no state has passed a law similar to the Bathroom Bill.
- In Georgia, some legislators discussed introducing a similar bill, but no formal proposal was ever introduced.



# Recent Lawsuits Involving Public Libraries

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# Can a public library be sued?

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- Middle District of Georgia—In a lawsuit by a former employee alleging discrimination on the basis of race, a federal court held that a public library system in Georgia is not an entity that can be sued. *Moore v. Thomas Co. Public Library System*, No. 7:16-CV-28 (M.D. Ga. 2016).
  - But this is not cart blanche to ignore legal considerations
  - Really just a pleading technicality that most courts would allow a plaintiff to correct.
  - Case is in discovery, dispositive motions are due July 2017.



# Using witchcraft against library patron. . .

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- Southern District of Georgia—Pro se plaintiff alleged that library employees used witchcraft to add Facebook friends to a patron’s account. As relief, the patron requested that the court remove all use of internet service from the public library. *West v. Augusta Richmond County Public Library System*, No. 1:16-CV-0008 (S.D. Ga. 2016). Dismissed as frivolous.



# Banning Patron



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- District of South Carolina—patron banned from library after a number of run-ins with library staff. Library administrators and library board issued trespass warrant under SC law. Patron sued alleging civil rights violations (First Amendment, Equal Protection, Due process) and ADA violations (excluded from a benefit on the basis of a mental disability). *Grant-Davis v. Bd. of Trustees of Charleston Co. Public Library*, No. 2:15-CV-2676 (2015). The library moved to dismiss, it was denied. The parties are going to mediation in July 2017.
  - Meanwhile, the Board voted to readmit Mr. Grant-Davis to the library.



# Library Worker Arrested & Charged Criminally

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- Kansas City Librarian arrested while defending patron's right to free speech
  - <http://www.ala.org/news/member-news/2016/11/free-webinar-what-happened-kansas-city-free-speech-library-programs-and-law>



# Recent Questions from Directors

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# Policy & Procedure Re: Trustees

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- Unexpired trustee terms: does new appointee serve until the end of the original term or a full term beginning from step-in date?
  - O.C.G.A. § 20-5-42(c) requires staggered board member terms.
  - Best practice would be to keep the terms static and allow fill-in trustee to serve no more than the original term
- Trustee vote by proxy
  - O.C.G.A. § 20-5-43 sets forth duties and responsibilities of trustees; no mention of proxy—so this would be a matter of policy.
  - Best practice would be detailed procedure with clear instructions on use of proxy

- Amendment to Ga's Registered Sex Offender Statute
  - SB 250 amends O.C.G.A. § 42-1-15 to include sex offenders registered in other states or countries; does not modify the portion of the law restricting where RSO can reside, work or loiter. Loitering is more than simply being present; Georgia law defines loitering as:
    - being in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. O.C.G.A. § 16-36-11.
- ADA implications of food allergies
  - Is food allergy a disability as defined by the ADA? After amendments to ADA in 2008, the answer is moving toward yes.
  - A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination against an individual with a disability.



# Required Posting

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- Effective July 1, 2017: An amendment to Georgia law adding county buildings with public access to places where notice must be posted to enable persons who are the subject of human trafficking to obtain help and services.
- Model Notice is available at:  
[http://gbi.georgia.gov/sites/gbi.georgia.gov/files/related\\_files/document/human%20trafficking%20post.pdf](http://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/human%20trafficking%20post.pdf)

# Upcoming Topics

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- Privacy issues, including confidentiality of donors, operation policy.
- Meeting Rooms
  - Lipinski, Tomas A, Gretchen McCord, and Mary Minow. *The Library's Legal Answers for Meeting Rooms and Displays.* , 2016. Internet resource.
- Update on Constitutions & Bylaws
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# Who are the difficult people??

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- *Disarming the Narcissist: Surviving and Thriving with the Self-Absorbed*, 2d ed. by Wendy Behary (2013).
- *Rethinking Narcissism: the Bad—and Surprising Good—about Feeling Special* by Craig Malkin (2016).

