

# TENNESSEE EMPLOYMENT LAW

## I. At-Will Employment

A. Tennessee is an at-will state. Employee can be fired for any reason or no reason, so long as it is not an illegal reason. This is a “bedrock of Tennessee common law.” *Franklin v. Swift Transp. Co.*, 210 S.W.3d 521, 527 (Tenn. Ct. App. 2006) *perm. app. denied* (Tenn. Nov. 20, 2006). Tennessee is also a right-to-work state. Tenn. Code Ann. § 50-1-201.

B. For overview, see *Williams v. City of Burns*, 465 S.W.3d 96, 108 (Tenn. 2015).

C. Below, this outline will cover some of the illegal reasons to fire someone.

## II. Discrimination, Harassment, and Retaliation Laws

### A. Common law retaliatory discharge

1. Example public policy claims: jury service, Tenn. Code Ann. § 22-4-106; responding to a subpoena, *Willard v. Golden Gallon-TN, LLC*, 154 S.W.3d 571, 573 (Tenn. Ct. App. 2004); filing workers' compensation claim, *Reed v. Alamo Rent-A-Car, Inc.*, 4 S.W.3d 677, 684 (Tenn. Ct. App. 1999); rescuing someone from imminent death/serious bodily harm, *Little v. Eastgate of Jackson, LLC*, No. W2006-01846-COA-R9-CV, 2007 Tenn. App. LEXIS 242, at \*25-26 (Tenn. Ct. App. Apr. 24, 2007) no app. perm. appeal filed.

2. Burden of proof for common law claim now codified at Tenn. Code Ann. § 50-1-801.

### B. Tennessee Public Protection Act (TPPA):

1. effective 7/1/14, exclusive remedy for whistleblower claims. Tenn. Code Ann. § 50-1-304(g).

2. Tenn. Code Ann. § 50-1-305 provides that employers must accommodate breastfeeding mothers.

### C. Tennessee Human Rights Act (THRA), Tenn. Code Ann. § 4-21-101 et seq., protects employees from discrimination, retaliation, and harassment.

1. What are the protected classes/what categories of coverage? Per Tenn. Code Ann. § 4-21-401(a), § -407(b):

(1) Race

(2) Creed

(3) Color

(4) Religion

(5) Sex

(6) Age (40 or over)

(7) National origin

2. Per Tenn. Code Ann. § 4-21-408, leave is allowed for (but there is not necessarily explicit protection against discrimination): expectant parents (birth or adoption)

3. Who are covered workers? Any person except for an individual employed by the individual's parent, spouse, or child, or an individual employed in the domestic service of the employer. Tenn. Code Ann. § 4-21-401(a),(b).

4. Who are covered employers?

a) Under Tenn. Code Ann. § 4-21-102(5), “employer” means:

(1) the state and its political subdivisions

(2) anyone employing eight or more persons

(3) anyone acting directly or indirectly as the agent of a covered employer

b) Under Tenn. Code Ann. § 4-21-405, the following employers are exempted from the law: “religious corporations, associations, educational institutions, or societies, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society, of its religious activities.”

c) For pregnancy/adoption leave, employer must have more than 100 full-time employees on permanent basis at a job site or location. Tenn. Code Ann. § 4-21-408(d)(2).

D. Tennessee Disability Act (TDA), Tenn. Code Ann. § 8-50-103 to 8-50-104, prohibits disability discrimination in employment.

1. Who is covered? Employee or applicants with “any physical, mental or visual disability,” and “no blind person shall be discriminated against” simply for the use of a guide dog. Tenn. Code Ann. § 8-50-103(b). *See also Bennett v. Nissan N. Am., Inc.*, 315 S.W.3d 832 (Tenn. Ct. App. 2009).

2. Who are covered employers? Under Tenn. Code Ann. § 8-50-103(d); Tenn. Comp. R. & Regs. R. 1500-01-02-.01(h):

a) State and its political subdivisions

b) Any private employer with eight or more employees

E. Tennessee Equal Pay Act (TEPA)

1. Protects employees from discrimination on the basis of sex in the payment of compensation.
2. Who is covered? Under Tenn. Code Ann. § 50-2-201(3):
  - a) "Employee" means individual employed by any employer in the state, including state employees
  - b) "Employee" does not include:
    - (1) Local gov't employee
    - (2) individual covered by the equal pay provisions of the Fair Labor Standards Act of 1938
  - c) Who are covered employers? "Employer" is any person acting in the interest of any employer, directly or indirectly, including the state, but not its political subdivisions. Tenn. Code Ann. § 50-2-201(4).

### III. Wage and Hour

- A. No minimum wage statute; no overtime statute; no paid leave statutes
- B. Unpaid leave:
  1. THRA provides leave related to pregnancy, childbirth, adoption.
  2. Military leave has scattered provisions throughout code, including state military service members leave in Tenn. Code Ann. § 8-33-110.
  3. Volunteer rescue workers. See, e.g., Tenn. Code Ann. § 50-1-307(b); Tenn. Code Ann. § 50-1-309; Tenn. Code Ann. § 4-21-404(d).
  4. Jury duty leave. Tenn. Code Ann. § 22-4-106(d)(1)
  5. Time off for voting. Tenn. Code Ann. § 2-1-106(a)
- C. See, generally Tenn. Code Ann. § 50-2-103.
  1. Wages must be paid at least one per month
  2. Okay for employer to pay via prepaid debit card.
  3. Meal break requirements
- D. Tip Pooling/Tip Statute (dealing with automatic gratuities—no private right of action) Tenn. Code Ann. § 50-2-107(a)(1); *Hardy v. Tournament Players Club at Southwind, Inc.*, 513 S.W.3d 427, 440 (Tenn. 2017).
- E. Wage discrimination protection—Tennessee Equal Pay Act (See, II.E., above)

#### IV. Mini-WARN Act: Tenn. Code Ann. § 50-1-601, et seq. Differences from federal law:

##### A. Employer size:

1. Federal: 100 employees or more
2. Tennessee: 50 employees or more

##### B. Notice requirement differs from federal

1. Federal: 500 workers at a worksite in 30 day period
2. Tennessee: 50 or more employees affected during any three-month period

#### V. Restrictive Covenants—Covenants Not to Compete

A. Generally governed by common law. Official word is disfavored as restraint on trade and narrowly construed, but your experience may vary. Reasonable covenants will be enforced, including against independent contractors. *See Thuy-T-Tlam v. Tuan Ngoc Bui Le*, No. E2008-02491-COA-R3-CV, 2009 WL 2047290, at n3 (Tenn. Ct. App. July 15, 2009) no Tenn. S. Ct. R. 11 app. filed (citing *Baker v. Hooper*, 50 S.W.3d 463, 467 (Tenn. Ct. App. 2001)).

##### 1. Factors to consider include:

###### a) Consideration supporting covenant

- At-will employment or continued at-will employment will generally satisfy as consideration. *Central Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d 28, 35 (Tenn. 1984).

###### b) Protectable interests of employer. *See, e.g., Hasty v. Rent-A-Driver, Inc.*, 671 S.W.2d 471, 473 (Tenn. 1984).

(1) unique knowledge and skill imparted by employer-provided special training

(2) need of employer to protect goodwill, trade secrets, and confidential info.

###### c) Reasonableness of restriction

(1) Time not greater than necessary to protect interest. *Thuy-T- Lam v. Tuan Ngoc Bui Le*, 2009 Tenn. App. LEXIS 437 (Tenn. Ct. App. July 15, 2009).

(2) Reasonable geographic scope. *Hamilton-Ryker Group, LLC v. Keymon*, 2010 Tenn. App. LEXIS 55 (Tenn. Ct. App. Jan. 28, 2010).

##### 2. Statutory provisions relating to healthcare providers. Tenn. Code Ann. § 63-1-148,

##### 3. Ethically prohibited for attorneys in most cases. Tenn. Sup. Ct. R. 8, RPC 5.6.

4. Tennessee is a blue pencil jurisdiction, but an overly broad agreement could be at risk of being voided entirely. *Vantage Tech., LLC v. Cross*, 17 S.W.3d 637, 647 (Tenn. Ct. App. 1999).

## **VI. Trade Secrets**

A. Tennessee has adopted the Uniform Trade Secrets Act. Tenn. Code Ann. § 47-25-1701 et seq.

B. Differences between Tennessee version and uniform version include (not necessarily limited to):

1. Slightly expanded definition of trade secret. Tennessee's definition:

a) Trade secret means information, without regard to form, including, but not limited to, technical, nontechnical or financial data, a formula, pattern, compilation, program, device, method, technique, process, or plan that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Tenn. Code Ann. § 47-25-1702(4).

2. Written contract not required to maintain action. Tenn. Code Ann. § 47-25-1708(c)

3. Reasons supporting a continuing injunction are slightly expanded. Tenn. Code Ann. § 47-25-1703(a)

## **VII. Guns at Work**

A. Employer may allow or prohibit possession of weapons by otherwise authorized employees on the employer's premises if detailed notice provisions are followed. Tenn. Code Ann. § 39-17-1315(b), §1359(a)(1)(A)-(B).

B. Employer may not prohibit employee who is otherwise authorized to have a gun from storing gun in parking lot at work if gun is

1. out of sight while permit owner is in the car or

2. if locked in trunk, glove box or other attached locked container while permit owner is not in vehicle. Tenn. Code Ann. § 39-17-1313(a).

## **VIII. Smoking**

A. Can't fire someone for smoking or drinking so long as they otherwise follow the law and employer policies. Tenn. Code Ann. § 50-1-304(d)

B. Non-Smoker Protection Act – limits smoking in most workplaces. Tenn. Code Ann. § 39-17-1801.

## IX. Miscellaneous

A. Tennessee Child Labor Act--Tenn. Code Ann. § 39-17-1313(a) et seq. Generally must be 14 to work; some jobs prohibited for minors.

B. Anyone bringing a frivolous retaliatory discharge claim can be liable for defendant's attorney fees. Tenn. Code Ann. § 50-1-304(e)(2).

C. There is no claim for retaliatory failure to hire. *Yardley v. Hospital Housekeeping Sys., LLC*, 470 S.W.3d 800 (Tenn. 2015).

D. Negligent hiring and retention are recognized tort claims. *Doe v. Catholic Bishop for Diocese of Memphis*, 306 S.W.3d 712, 717 (Tenn. Ct. App. 2008).

E. The Tennessee Employee Online Privacy Act prohibits employers from requesting or requiring access to the personal internet accounts of job applicants or employees. Tenn. Code Ann. § 50-1-1001 et seq.

F. Employers are prohibited from knowingly employing an undocumented immigrant. The Tennessee Lawful Employment Act requires all employers to verify the work eligibility of newly-hired employees. Tenn. Code Ann. § 50-1-701 et seq.

G. The Polygraph Examiners Act, Tenn. Code Ann. § 62-27-101 et seq., prohibits employers from taking personnel action, including employing or discharging employees, based solely upon the results of a polygraph examination.