

Overview: Tennessee Online Employee Privacy Act of 2014 and Legislative Developments

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Tennessee Online Employee Privacy Act of 2014

- Effective January 1, 2015.
- Limits an employer's ability to gain access to personal Internet accounts.
- "Employer" means any person or entity, including the state and local governments, with *one or more* employees.
- "Personal Internet account" means an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer; it includes emails, messages, instant messages, text messages, blogs, podcasts, videos, or user-created profiles.

An Employer May Not

- Request or require an employee or applicant to disclose a password that allows access to a personal Internet account.
- Compel an employee or applicant to add the employer or an employment agency to his or her list of contacts associated with a personal Internet account.



An Employer May Not

- Compel an employee or applicant to access a personal Internet account in the presence of the employer in a manner that enables the employer to observe the contents of the personal Internet account.
- Take adverse action, fail to hire, or otherwise penalize an employee or applicant because of a failure to disclose information or comply with a request for one of the above prohibited actions.



An Employer May

- Request or require the employee to disclose a user name and password required only to gain access to:
 - An electronic device supplied or paid for in whole or in part by the employer; or
 - An account or service provided by the employer that is obtained by virtue of the employee's employment relationship with the employer or the employer's business.
- Discipline or discharge an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal Internet account without the employer's authorization.

An Employer May

- Restrict or prohibit an employee's access to certain web sites using an electronic communications device supplied by or paid for in whole or in part by the employer or while using an employer's network or resources, in accordance with state and federal law.
- Monitor, review, access, or block electronic data stored on an electronic device supplied by or paid for, in whole or in part, by the employer.
- View, access, or use information about an employee or applicant that can be obtained without violating the prohibitions.

An Employer May

- Conduct an investigation or require an employee to cooperate in an investigation if:
 - There is specific information on the employee's personal Internet account regarding compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or
 - The employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's personal Internet account.

An Employer May

- Comply with a duty to screen employees or applicants before hiring or to monitor or retain employee communications:
 - That is established under federal law or by a “self-regulatory organization” as defined in the Securities and Exchange Act of 1934;
 - For purposes of law enforcement employment; or
 - For purposes of an investigation into law enforcement officer conduct performed by a law enforcement agency.

Remedies Under the Act

- The Attorney General can bring a lawsuit against an employer for violating the Employee Online Privacy Act, or the employee may file a personal lawsuit.
- Penalty of \$1,000 for each violation.
- Injunctive relief is available.
- Reasonable attorneys fees and court costs.



Changes to the THRA, TDA, and TPPA

- HB 1954/SB 2126 made significant amendments to these Tennessee employment laws.
- The changes place Tennessee law more in line with federal nondiscrimination laws.
- New laws took effect on July 1, 2014.



Caps on Compensatory Damages

- The caps on compensatory damages for claims under the THRA, TDA, and TPPA range from \$25,000 to \$300,000, depending on the number of employees.
 - 8-14 employees: \$25,000
 - 15-100 employees: \$50,000
 - 101-200 employees: \$100,000
 - 201-500 employees: \$200,000
 - 501+ employees: \$300,000
- Caps do not limit front pay or back pay.

Supervisor/Manager Liability

- Eliminates individual liability of supervisors or managers in discrimination claims.
- Only the “employer” can be sued for discrimination.



Elimination of Common Law “Whistleblower” Claims

- Employees are barred from bringing common law whistleblower claims, and any claim against an employer for retaliation must be brought under the TPPA.
- Under the TPPA, an employee can prevail on a retaliation claim only if he shows that his protected activities were the *sole cause* of his termination, rather than a substantially motivating factor under the common law.

Concurrent State and Federal Actions Eliminated

- Employees are now prohibited from bringing two cases (one in state court and one in federal court) based on the same set of facts.
- An employer can move to dismiss the state court action if the same case is also filed in federal court, and the state court action must be dismissed.



Tennessee Employment Legislation - Enacted

- Authorizes a court restoring a person's rights of citizenship following conviction for a crime to also grant a certificate of employability; provides certain immunity to employers who hire a person who has been issued a certificate; enacts other provisions related to the certificate of employability.

Tennessee Employment Legislation - Enacted

- Prohibits any employer from introducing the results of a voice stress analysis performed on an employee to prove misconduct by the employee at any hearing or other employment procedure in which the employee is entitled to due process.

Tennessee Employment Legislation - Enacted

- Clarifies that employees, contractors and agents are entitled to relief under the Tennessee Medicaid False Claims Act for employment discrimination due to any effort of such person to stop a violation of the Act.

Tennessee Employment Legislation - Failed

- Prohibits employers from using the credit report or credit history of an employee or applicant for employment to deny employment, discharge an employee or determine compensation of the terms, conditions or privileges of employment, but allows the credit report or history to be used if information in the credit report is substantially job-related and disclosed in writing to the employee or applicant.

Tennessee Employment Legislation - Failed

- Requires governmental entities and private employers with six or more employees to verify new hires using the E-Verify program.

Tennessee Employment Legislation - Failed

- Sets minimum wage at \$8.25 per hour for certain employers who do not offer health benefits to employees and employees' dependents, subject to exceptions for certain types of employment.

Tennessee Employment Legislation - Failed

- Excludes diseases of the heart or brain as an injury, personal injury or occupational disease under workers compensation.

Tennessee Employment Legislation - Failed

- Prohibits public and private employers from terminating an employee based solely on the results of a lie detector test; provides penalties and sanctions for employers in violation; and allows for the termination of certain employees based on the results of a lie detector test.

Tennessee Employment Legislation - Failed

- Prohibits employers from inquiring about an applicant's lawful ownership of a firearm; prohibits an employer from conditioning employment on lawful ownership of firearm; confers immunity on businesses when permit holders store firearms in vehicle on business parking lot.

Tennessee Employment Legislation - Failed

- Adds sexual orientation and gender identity or expression to the list of characteristics protected from discrimination or harassment under THRA.

Questions?

