



# TENNESSEE

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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## At-Will Employment

The employer/employee relationship in Tennessee is governed by the at-will employment doctrine. This means that either party may terminate the relationship at any time, with or without cause, and with or without notice. *Franklin v. Swift Transp. Co., Inc.*, 210 S.W.3d 521, 527 (Tenn. Ct. App. 2006). There is, however, a public policy exception that an employer shall not discharge an employee solely for refusing to participate in or refuse to remain silent about illegal activities. Tenn. Code Ann. § 50-1-304. Other exceptions to the at-will doctrine are that an employer may not terminate an employee for being called to military service, voting in elections, exercising the right of association, wage garnishments, filing a workers' compensation claim, or being called to jury duty. In addition, an express agreement (e.g., employment contract) or statute could narrow or limit the at-will doctrine. Further, under Tennessee law, an employee may maintain a claim for tortious interference with their at-will employment relationship against a third party. *Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994).

## Immigration Verification

The Tennessee Lawful Employment Act (TLEA) applies to all employers who have six or more employees. Tenn. Code Ann. §§ 50-1-701, *et seq.* As of January 1, 2023, the TLEA requires all employers who have 35 or more full-time equivalent employees to verify work authorization status of employees using the E-Verify program and maintain E-Verify case results. §50-1-703(b). Employers with fewer than 35 employees may either utilize the E-Verify program or request and maintain a copy of any of the documents listed in §50-1-703(a)(1)(A). The TLEA applies to employees working in or outside the state of Tennessee, as well as "non-employees" who are paid directly by the employer.

To comply with the TLEA's E-Verify requirements, an employer must:

1. Enroll in the E-Verify program prior to hiring an employee;
2. Verify the work authorization status of the employee hired by using the E-Verify program; and
3. Maintain an E-Verify case result for each employee that shows that the employee is authorized to work, whether on the E-Verify Quick Audit Report, the E-Verify User Audit Report, or the individual employee's E-Verify case verification result. The E-Verify case result must be visible, showing the work authorization status.

**NOTE:** By requiring compliance with respect to "non-employees" as well, the TLEA essentially imposes a new documentary requirement for users of self-employed vendors because the I-9 is completed only for employees under federal law.

Failure to comply will result in the enforcement of monetary fines of increasing severity. The TLEA requires the same retention of documents as I-9s: one year after termination or three years after hire, whichever is later. To simplify compliance, it is recommended that an employer keep both the TLEA verification document and the I-9 for at least three years after an employee's departure.

## Drug Testing

Employers may discharge an at-will employee who tests positive on a random drug test, and it is misconduct for an employee to refuse to take a drug or alcohol test. In addition, the Tennessee Drug-Free Workplace Act, Tenn. Code Ann. § 50-9-101, *et seq.*, provides certain benefits to certified employers, including a five percent discount on the employer's workers' compensation insurance premium for implementation of a drug-free workplace program. Tenn. Code Ann. § 50-6-418. Moreover, if an employee working in a certified Tennessee Drug-Free Workplace tests positive on a post-accident drug screen, the employee forfeits eligibility for workers' compensation benefits unless the employee proves that intoxication did not cause the accident. An employee fired for a positive drug screen is presumed ineligible for unemployment compensation.

Covered employers must notify applicants in a position's vacancy announcement if the position requires drug and alcohol testing. Employers must likewise post a notice of their drug and alcohol testing policy in their workplace and allow employees or applicants to review copies of the policy during regular business hours.

An amendment to the law enacted in 2017 requires a covered employer "who has employees who are healthcare practitioners for the purposes of Tenn. Code Ann. 63-1-126 [to] report a healthcare practitioner who tests positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test, or who refuses to submit to a drug test, to the [D]epartment of [H]ealth and the practitioner's licensing or certifying board" if the practitioner fails to produce a lawful prescription for the drug or a valid medical reason for using the drug, or to report to the state's substance abuse peer assistance or treatment program of the health care provider's board. Tenn. Code Ann. § 50-9-115.

### **Jury Duty Leave**

Employers shall excuse the absence of an employee summoned to jury duty. For the absence to be excused, the employee must exhibit the summons to the employer on the next day the employee is engaged in employment. The employee must exhibit the summons to their immediate supervisor, and the employer will then excuse the employee from work for each day their service exceeds three hours. For such excused absences, employers with five or more employees must pay the summoned employee their "usual compensation," minus, at the employer's discretion, the jury service fee for such time spent serving on jury duty. The employer is not required to compensate an employee for more time than was actually spent serving and traveling to and from jury duty. Employers with fewer than five employees on a regular basis are not required to compensate employees for jury duty. The employer is also not required to compensate an employee who has been employed on a temporary basis for less than six months. The employee does not have to return to work on the day or days on which the employee's responsibility for jury duty exceeds three hours.

Employees who work the night shift should be excused from working the shift immediately preceding their first day of jury duty. After the first day of service, when the person's jury duty responsibility lasts more than three hours, that person will be excused from their next scheduled work period within 24 hours of that day of service. Employers must not discriminate against or discharge an employee for serving on jury duty if the employee gives the required notice. Tenn. Code Ann. § 22-4-106.

### **Voting Leave**

An employer must provide an employee with a reasonable period of time, not to exceed three hours, necessary to vote during the time the polls are open in the county where the employee is a resident. If the work hours of an employee commence at least three hours after the opening of the polls or end at least three hours prior to the closing of the polls, the time off for voting is not available.

To be eligible for this time off, an employee must notify the employer before 12:00 p.m. on the day before the election. A voting employee who is properly absent from work so that they may vote may not be subjected to any penalty or reduction in pay for such absence. Employers may specify the hours during which the employee may be absent. Tenn. Code Ann. § 2-1-106.

### **Parental and Adoption Care Leave**

An employee who works for an employer with 100 or more full-time employees at the job site or location and who has been employed for at least 12 consecutive months as a full-time employee may be absent from employment for a period not to exceed four months for the purpose of adoption, pregnancy, childbirth, and nursing of an infant, where applicable. Tenn. Code Ann. § 4-21-408.

This leave may run concurrently with the Family and Medical Leave Act (FMLA) and may be with or without pay at the discretion of the employer. The FMLA entitles eligible employees to take 12 workweeks of unpaid, job-protected leave in a 12-month period. Eligible employees are entitled to such leave for the birth of a child within one year of birth and the placement of a child for adoption or foster care within one year of placement. The FMLA also provides leave for specified medical reasons.

An employee who gives at least three months' advance notice of their anticipated date of departure, the length of leave, and their intention to return to full-time employment after leave, will be restored to the previous or similar position with the same status, pay, length of service credit, and seniority. An employee who does not give three months' advance notice because of a medical emergency that necessitates that the leave begins earlier than originally anticipated, or because their notice of adoption was received less than three months in advance, does not forfeit the right to parental leave. If an employee's job position is so unique that the company cannot, after reasonable efforts, temporarily fill the position, then the employer shall not be liable for failure to reinstate the employee at the end of the leave period.

An employee taking parental or adoption care leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, benefits, plans, or programs for which the employee was eligible on the date of their leave.

If an employer finds that the employee has used the period of leave to actively pursue other employment opportunities or has worked part-time or full-time for another employer during the period of leave, the employer shall not be liable for failure to reinstate the employee at the end of the period of leave.

### **Tennessee Pregnant Workers Fairness Act**

Every employer with at least 15 employees must make a reasonable accommodation for an employee's or prospective employee's medical needs arising from pregnancy, childbirth, or related medical conditions unless such accommodation would impose an undue hardship on business operations. Possible accommodations include but are not limited to, making existing facilities used by employees readily accessible and usable; providing more frequent, longer, or flexible breaks; providing a private place, other than a bathroom stall, for the purpose of expressing milk; modifying food or drink policies; providing modified seating or allowing the employee to sit more frequently if the job requires standing; providing assistance with manual labor and limits on lifting; authorizing a temporary transfer to a vacant position; providing job restructuring or light duty, if available; acquiring or modifying of equipment, devices, or an employee's work station; modifying work schedules; and allowing flexible schedules for prenatal visits. Employers may not require an employee to take leave if another reasonable accommodation can be provided.

Employers may, if required of other similarly situated employees, request that an employee with a medical need relating to pregnancy, childbirth, or related medical conditions provide medical certification from a health care professional if the employee is requesting a reasonable accommodation related to a temporary transfer to a vacant position, job restructuring, light duty, or an accommodation that requires time away from work.

An employer is not required to do the following unless the employer would do so for another employee or class of employees in need of reasonable accommodations: hire new employees that the employer otherwise would not have hired; discharge an employee, transfer an employee with more seniority, or promote another employee who is not qualified for the new job; create a new position, including light duty, for the employee, unless another equivalent employee would also receive it; compensate an employee for more frequent or longer break periods, unless the employee uses a break period that would otherwise be compensated; or construct a permanent, dedicated space for expressing milk.

An employer must make reasonable accommodations for an employee for medical needs arising from pregnancy, childbirth, or related medical conditions unless the employer can demonstrate that the accommodation would impose an undue burden or hardship on the operation of their business. An employer may not require an employee to take leave under a leave law or policy adopted by the employer if another reasonable accommodation can be made for known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions. An employer may not take adverse actions against an employee for requesting or using reasonable accommodations to known limitations for medical needs arising out of pregnancy, childbirth, or related medical conditions. Tenn. Code Ann. § 50-10-101 *et seq.*

### **Break Time to Express Milk**

An employee must be given reasonable unpaid break time each day to express breast milk for that employee's infant child unless providing the break would unduly disrupt the employer's operations. If possible, the break time must run concurrently with any other break time provided. The employer must make reasonable efforts to provide a private location other than a toilet stall for the employee's use. Tenn. Code Ann. § 50-1-305.

In addition, the federal Fair Labor Standards Act requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth, each time such employee has need to express the milk.

### **Meal Breaks**

Subject to exceptions under the statute, an employer must allow each of its employees one 30-minute rest break or meal period if scheduled to work six or more hours consecutively, except in workplace environments that by their nature of business provide "ample opportunity to take an appropriate meal break." Tenn. Code Ann. § 50-2-103(h). The meal break may not be scheduled during or before the first hour of scheduled work activity.

Employees who are principally employed in food or beverage service, receive tips in the course of their employment, and report those tips to their employer, may waive the 30-minute break if certain conditions are met.

### **Veterans Day Leave**

Employers must provide Veterans Day Leave to employees who are former members of the United States armed forces or who are current or former members of a reserve or Tennessee National Guard unit who were called into active military service, unless doing so will impact public health or safety or cause the employer significant economic or operational disruption. This leave is considered an unpaid holiday, and an employee must give an employer at least one month's written notice of their intent to utilize the leave. Tenn. Code Ann. § 15-1-105.

### **Annual Paid Leave for Public Employees**

Each officer and employee of the state government who works 1,600 hours or more in a fiscal year is entitled to accrue paid leave annually, with pay based on that officer's or employee's accrued annual leave, the time and amount of absence to be approved at the discretion of the head of the department or agency and subject to audit by the commissioner of human resources. An employee shall be granted such leave whether compensated on an hourly, daily, monthly, or piecework basis.

Details regarding accrued annual leave and the rate of accrual can be found in Tenn. Code Ann. § 8-50-801.

### **Sick Leave for Public Employees**

Each officer and employee of the state government who is scheduled to work 1,600 hours or more in a fiscal year is entitled to one day of sick leave for each month of service. An employee shall be granted such leave whether compensated on an hourly, daily, monthly, or piecework basis. Sick leave shall be cumulative for all earned days not used. Saturdays, Sundays, and official holidays within a leave period are not counted as leave unless such days are considered workdays for the particular employee. Part-time employees, employees holding temporary positions for less than six months, seasonal employees, and emergency employees in the preferred service are excluded from this requirement. Sick leave may only be used for illness or disability due to an employee's accident, an employee's exposure to contagious diseases, illness, or death in the employee's immediate family, or an employee's parental leave. See Tenn. Code Ann. § 8-50-802 for additional details regarding sick leave.

## **Volunteer Firefighters**

Employers may not terminate an employee who is a volunteer firefighter solely because the employee is absent or late to work when acting as a volunteer firefighter to respond to an emergency. Employees may leave work to respond to a call, and the employer may not charge against the employee's regular pay any time they are absent from work due to such an emergency. An employee may also take off the next scheduled work period within 12 hours of the emergency if the employee assisted in fighting a fire for more than four hours or worked for more than four hours the previous day or night in an emergency. Employees may use vacation or sick time under these circumstances or take unpaid time off work if vacation or sick time is not available. Employees responding to such an emergency must make a reasonable effort to notify the employer that they may be absent or late.

If an employee is absent to respond to an emergency, the employer has the right to request a written statement from the supervisor or acting supervisor of the volunteer fire department stating that the employee responded to an emergency, including the time and date of the emergency. Tenn. Code Ann. § 50-1-307; Tenn. Code Ann. § 50-1-309.

## **Other Leave**

The State of Tennessee does not require private employers to offer employees paid vacation or sick leave. For details, see Tenn. Code Ann. § 50-2-103(a)(4).

## **Whistleblower Laws**

State employees are encouraged to report violations of state or federal law or regulations, fraud in government programs, misappropriation of government resources, health and safety dangers, mismanagement, and abuses of authority. Whistleblowers are protected from retaliation for reporting violations of state and federal laws and regulations, fraud, misappropriation of resources, health and safety dangers, gross mismanagement, gross waste of government funds, or gross abuse of authority. Employees may not be retaliated against for refusing to carry out orders if the order violates state or federal law, regulations, written policy or procedure, or orders that pose an unreasonable health and safety risk. Tenn. Code Ann. § 8-50-116.

Pursuant to the False Claims Act, employers may not make, adopt, or enforce any rule, regulation, or policy that prevents employees from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under Tenn. Code Ann. § 4-18-104. Likewise, employers may not discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or insistence in an action filed or to be filed under Tenn. Code Ann. § 4-18-104. Tenn. Code Ann. § 4-18-105.

## **Smoking Laws**

Under the "Children's Act for Clean Indoor Air," Tenn. Code Ann. § 39-17-1601, *et seq.*, smoking is prohibited in certain areas frequented by children, including, but not limited to, health care facilities, museums, schools, residential treatment facilities, and zoos. No Smoking signs must be prominently displayed.

Under the Non-Smoker Protection Act, Tenn. Code Ann. § 39-17-1801, *et seq.*, smoking is prohibited in all enclosed public areas not specifically exempted by statute, including, but not limited to, restaurants, banks, laundromats, manufacturing facilities, professional offices, and other workplaces. The Non-Smoker Protection Act has several exemptions, including, but not limited to, age-restricted venues; hotel rooms designated as smoking rooms; and the premises of a manufacturer, importer, or wholesaler of tobacco products. "No Smoking" signs must be prominently displayed.

## Minimum Wage and Overtime

The State of Tennessee has no law regulating minimum wage or overtime – federal laws under the Fair Labor Standards Act apply.

## Timing of Wage Payments

All wages or compensation of employees in private employment must be paid at least once per month. Tenn. Code Ann. § 50-2-103(a)(1). If an employer pays employees once per month, payments must be made no later than the fifth day of the month. If an employer pays employees two or more times per month, payments must be made no later than the fifth and the 20th days of the month. Employers must post and maintain notices in at least two conspicuous places setting forth the wage payment schedule.

After an employee quits or is discharged, the employee must be paid all wages due and owing, including all accrued and unused vacation or other compensatory time if the employer's policies provide for such time. There is no requirement for Tennessee employers to provide paid vacation or other compensatory time. An employer must pay the wages by the later of the next regular payday or 21 days from the date of termination. Tenn. Code Ann. § 50-2-103(a)(4), (g).

In the event an employee passes away without designating a beneficiary with their employer, Tennessee law allows employers to pay the last wages to the surviving spouse or children of a deceased employee, not to exceed \$10,000.00, and other benefits due to the deceased employee without a court order. Tenn. Code Ann. § 30-2-103. If the sum exceeds \$10,000.00, the excess shall be paid to the court representative as ordered by the court. The employer is encouraged to inform the employee of this right at the time of hiring.

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Department of Labor and Workforce Development, and additional information regarding the benefits may be accessed at [www.tn.gov/workforce.html](http://www.tn.gov/workforce.html).

## Workers' Compensation

The Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101, *et seq.*, applies to every employer in Tennessee with five or more employees, or those in the construction and coal mining industries. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. The Act is administered by the Department of Labor and Workforce Development, and additional information regarding the Act may be accessed at [www.tn.gov/workforce/injuries-at-work/injured-workers.html](http://www.tn.gov/workforce/injuries-at-work/injured-workers.html). The most recent version of the Act applies to injuries occurring on or after July 1, 2014. Injuries that occurred prior to July 1, 2014, are governed by the prior version.

Under the Act, a workplace injury must be immediately reported to the employer; failing to report an injury in a timely manner may result in a denial of benefits. Finally, an employer may be held liable to a discharged employee if that employee's claim for benefits under the Act was a "substantial factor" in the employee's termination. See *Clanton v. Cain-Sloan*, 677 S.W.2d 441, 445 (Tenn. 1984); *f.*, 929 S.W.2d 326, 328 (Tenn. 1996).

## Child Labor

The Tennessee Child Labor Act of 1976 is found at Tenn. Code Ann. § 50-5-101, *et seq.* Tennessee has prohibited occupations for minors, Tenn. Code Ann. § 50-5-106, and various rules concerning the time minors may work, based on age and whether school is in session. Tenn. Code Ann. §§ 50-5-103-105. A minor under the age of 14 may not be employed unless there is an applicable statutory exemption.

In employing a minor, employers must "require proof of the age of the minor employee or prospective employee by requiring the minor to provide the employer with a copy of the minor's birth certificate, passport, driver's license, or state-issued identification." Tenn. Code Ann. § 50-5-109. If the above evidence is not available, a parent or guardian shall appear before a judge in the minor's county of residence and make an oath regarding the age of the minor. *Id.*

## Gun Laws

Under Tennessee law, a private business is permitted to prohibit the possession of weapons by employees. A notice to this effect must be posted. Tenn. Code Ann. § 39-17-1315(b)(1). Specific requirements for the notice may be found at Tenn. Code Ann. §39-17-1359. Tennessee law permits an employee to keep a firearm in their personal vehicle at work, as long as it is hidden from view or locked in the trunk, glove box, or secure container. Tenn. Code. Ann. §39-17-1313(a)(2).

Pursuant to Tenn. Code Ann. § 39-17-1309, Tennessee public colleges and universities must allow full-time employees who possess enhanced handgun-carry permits to carry handguns on campus. Any employee who elects to carry a handgun must provide written notification to the law enforcement agency with jurisdiction over the property owned, operated, or controlled by the employing institution. The employee's name and any other information that might identify the employee as a person who has elected to carry a handgun on institutional grounds will be confidential. The law also provides that the employee is not acting within the course and scope of employment by carrying or using the handgun, is not immune from personal liability, is not entitled to workers' compensation for injuries arising from the use or carrying of the handgun, and is not permitted to carry the handgun openly or in a visible manner. In addition, the employee may not carry the handgun in gymnasiums, stadiums, or auditoriums when school-sponsored events are in progress, in disciplinary meetings, in meetings regarding tenure issues, in hospitals or places where mental or medical health services are provided, or in any area where a provision of state or federal law, except the posting provisions of Tenn. Code Ann. § 39-17-1359 prohibits the carrying of a handgun on that property.

## Additional Laws and Regulations

### Termination for Use of Certain Products

An employer shall not terminate an employee solely for participating or engaging in the use of an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law if such employee participates or engages in such use in a manner that complies with all applicable employer policies. Likewise, no employee shall be discharged or terminated solely for participating or engaging in the use of a product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law if the employee participates or engages in the activity during times when the employee is not working. Tenn. Code Ann. § 50-1-304(d).

### Tennessee Human Rights Act (THRA)

The THRA, which may be found at Tenn. Code Ann. § 4-21-101, *et seq.*, mimics Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 in that it prohibits discrimination because of an individual's race, creed, color, religion, sex, age, or national origin. Further, like the Pregnancy Discrimination Act of 1978, the THRA prohibits discrimination based on pregnancy. The THRA applies only to employers with eight or more employees. In May of 2025, the Governor signed into law House Bill 910/Senate Bill 860, which dissolved the Tennessee Human Rights Commission. As of July 1, 2025, the commission's duties transferred to the attorney general's office. H.B. 910, 2025 Reg. Sess. (Tenn. 2025).

### **Tennessee CROWN Act**

The CROWN Act applies to all employers and provides that an employer may not discriminate against an employee for wearing their hair in braids, locs, twists, or in another manner that is part of the cultural identification of the employee's ethnic group or that is a physical characteristic of the employee's ethnic group. The CROWN Act provides for exceptions for public safety employees if it would prevent the employee from performing the essential functions of the employee's job, or for policies that an employer must enact to adhere to common industry safety standards or to comply with applicable laws or regulations. Tenn. Code Ann. § 50-1-313.

### **Tennessee Disability Act (TDA)**

The TDA, which applies to private employers with eight or more employees and may be found at Tenn. Code Ann. § 8-50-103, mirrors the Americans with Disabilities Act of 1990, as amended, in that it prohibits discrimination on account of an individual's physical, mental, or visual disability. The TDA provides that there shall be no discrimination in the hiring, firing, and other terms of employment as a result of the disability "unless such disability to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved." It further prohibits discrimination against a blind person because the person uses a guide dog. However, unlike its federal counterpart, the TDA does not impose a duty on employers to make reasonable accommodations to accommodate a disabled employee. *Bennett v. Nissan North America, Inc.*, 315 S.W.3d 832 (Tenn. App. 2009).

### **Tennessee Public Protection Act (TPPA)**

The TPPA, which may be found at Tenn. Code Ann. § 50-1-304, provides a retaliatory discharge claim for an employee and applies to both public and private employers. The person must prove that they: (1) were an employee; (2) refused to participate in or to remain silent about illegal activities; (3) were terminated by their employer; and (4) had an exclusive causal relationship between the plaintiff's refusal to participate in or remain silent about illegal activities and their termination. *Griggs v. Coca-Cola Employees' Credit Union*, 909 F.Supp. 1059, 1063 (E.D. Tenn. 1995). The term "illegal activities" includes activities that are in violation of criminal or civil codes of Tennessee or the United States, or any regulation intended to protect the public health, safety, or welfare. The term excludes any activities prohibited under Tenn. Code Ann. § 8-50-103 or federal laws prohibiting discrimination in employment.

In 2014, the governor signed legislation that amended the THRA, TPPA, and the TDA. Some of the major changes include:

- Creating a tiered damages cap, based on the number of employees: \$25,000 (for eight – 14 employees), \$50,000 (15 – 100 employees), \$100,000 (101 – 200 employees), \$200,000 (for 201 – 500 employees), and \$300,000 (more than 500 employees). The caps apply to non-pecuniary damages, including future pecuniary loss, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses. The caps do not apply to back pay, interest on back pay, front pay, or equitable relief. Tenn. Code Ann. § 4-21-313;
- Removing individual liability for supervisors and other agents under the THRA for unlawful discriminatory acts of an employer. Tenn. Code Ann. § 4-21-301;
- Eliminating the separate common law cause of action for retaliatory discharge and eliminating the requirement that the employee externally "blow the whistle" by reporting illegal activity to someone outside of the employer;
- Immunizing private employers with fewer than eight employees from liability under the TDA. This means that both the TDA and THRA have the eight-employee threshold, but not the TPPA, which protects employees who have been subject to retaliatory discharge for reporting illegal acts; and
- Providing that an employee may not maintain an action under the THRA, TDA, or the TPPA in state court while maintaining an action under the same "common nucleus of operative facts" in federal court. Tenn. Code Ann. § 4-21-313.

### **Tennessee Equal Pay Act**

The Act, Tenn. Code Ann. § 50-2-201, *et seq.*, mimics the Equal Pay Act of 1963 in that it prohibits discrimination between employees in the same establishment, on the basis of sex, in their compensation for comparable work. It specifies that wage differences based on seniority are permissible. Tenn. Code. Ann. § 50-2-202.

### **Polygraph Testing**

The Tennessee Polygraph Examiners Act is found at Tenn. Code Ann. § 62-27-101, *et seq.* An employer cannot take personnel action against an employee based solely upon the results of a polygraph examination. Tenn. Code Ann. § 62-27-128. A polygraph machine used to test or question individuals must, at a minimum, simultaneously record visually and permanently a person's cardiovascular pattern, respiratory pattern, and skin response pattern. Tenn. Code. Ann. § 62-27-103. In addition, federal law significantly limits the use of polygraph tests by employers.

### **False or Deceptive Hiring**

It is unlawful to induce employment based on false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done; amount and character of the compensation to be paid for such work; sanitary or other conditions of the employment; as to the existence or nonexistence of a strike; or other trouble pending between employer and employees at the time of, or prior to, such engagement. Tenn. Code Ann. § 50-1-102.

### **Reporting Requirements**

Employers are required to provide the Tennessee Department of Human Services with a report that contains the name, address, hire date, and Social Security number of each newly hired employee. In addition, the report must contain the name, address, and identifying number of the employer (assigned under Section 6109 of the Internal Revenue Code). The statute specifically defines the individual terms for business day, commissioner, department, directory of new hires, employee, employer, labor organization, and Title IV-D agency. Tenn. Code Ann. § 36-5-1101, *et seq.*

### **Employee vs. Independent Contractor**

The Tennessee Marketplace Contractors law provides that a "marketplace contractor" of a "marketplace platform" is not an employee of the marketplace platform for all purposes, provided there is a written agreement between the two and certain other conditions are met. The purpose of this statute is to protect certain online digital companies from using workers as independent contractors rather than employees by excluding these workers from the usual rules according to employee status. The terms "marketplace contractor" and "marketplace platform" are specifically defined in the statute. The presumptive effect of this law is to create a more favorable environment for the "gig economy" companies to engage workers without incurring the expense and responsibility of employment. Tenn. Code Ann. § 50-8-101, *et seq.*

### **Plant Closing and Reduction in Operations Act**

This Act, Tennessee's "Mini-WARN" Act, applies to employers with at least 50, but not more than 99, full-time employees. The Act is very similar to the federal WARN Act, but triggers notice requirements if there is a "mass layoff" of 50 or more full-time employees in a three-month period. Tenn. Code Ann. § 50-1-601, *et seq.* Employers must send notices to:

- The official union representing the employees or, if not represented, each affected employee; and
- The Tennessee Commissioner of Labor and Workforce Development.

### **"Ban the Box" Act**

Tenn. Code Ann. § 8-50-112 prohibits a state employer from inquiring about an applicant's criminal history on the initial job application. State employers are still permitted to conduct background checks, but only after the initial screen of applications. Additionally, state employers must provide notice in the job announcement that a criminal background check is required for consideration. Tenn. Code Ann. § 8-50-112.