

PUBLICATION

Effective July 1, 2014: New Tennessee Laws

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New Tennessee laws took effect on July 1, 2014, including changes to the workers' compensation system, caps on damages in suits under the State's statutory employment discrimination laws, and protections for employers hiring or retaining those with criminal records.

Workers' Compensation

In 2013, the 108th General Assembly passed The Reform Act of 2013 (SB1275/HB1159), making sweeping changes to Tennessee's workers' compensation system. Perhaps the most significant change is that workers' compensation claims will move from state chancery and circuit courts to a Workers' Compensation Court contained within the Tennessee Department of Labor and Workforce Development. This change was made because many with first-hand experience with the former system felt that using trial courts to adjudicate workers' compensation claims produced inconsistent results and led to acrimonious and unnecessary litigation. Under the new law, if a claimant or his or her employer is not satisfied with the decision of the Workers' Compensation Court, it may be appealed to an Appeals Board first and then to the Tennessee Supreme Court, if necessary.

Also, in what appears to be a win for employers, the doctrine of liberal construction in favor of an injured worker has been replaced with a mandate to construe the law fairly and impartially in a manner favoring neither the employee nor the employer. Additional changes to the workers' compensation system include:

- All impairment ratings for permanent partial disability (PPD) benefits are now to the body as a whole.
- An injured employee is now eligible for PPD benefits equal to his or her impairment rating if he or she returns to work for any employer.
- Maximum total benefits are extended to 450 weeks.
- An injury must arise "primarily" in the course and scope of employment to be compensable.
- Consideration of pain is now precluded when assigning an impairment rating.
- An ombudsman program was created.

Employment – State Discrimination Claims

Several of Tennessee's state discrimination laws were amended by HB1954/SB2126 (the Bill). The Tennessee Human Rights Act was amended to remove liability for individual supervisors or agents for claims against their employer and added caps on damages for "non-pecuniary damages" such as pain, suffering, embarrassment, humiliation, mental anguish, loss of enjoyment of life, etc. The limit is \$25,000 for an employer who has 8 to 14 employees, \$50,000 for an employer who has 15 to 100 employees, \$100,000 for an employer who has 101 to 200 employees, \$200,000 for an employer who has 201 to 500 employees, and \$300,000 for an employer who has more than 500 employees. The limitations do not apply to back pay, interest on back pay, front pay or any equitable relief.

Additionally, the Bill requires that any claim for retaliation against an employer be brought under the Tennessee Public Protection Act (TPPA), T.C.A. §50-1-304(b), and eliminates the cause of action for

retaliatory discharge as an exception to the employment-at-will rule under common law. The Bill retains the "sole cause" requirement to prove unlawful retaliation under the TPPA. Finally, the Bill provides that an employee may not maintain separate concurrently occurring causes of action in both state and federal court under the Tennessee Human Rights Act, Tennessee Disability Act or Tennessee Public Protection Act, if the actions are based upon the same operative facts. The state court is required to dismiss the action brought under state law where the employee has filed suit based on the same facts in federal court.

Employment – Hiring Employees with a Criminal Record

Hiring or refusing to hire a person with a criminal record is an issue that has vexed Tennessee employers for some time. Bill (SB276/HB1109) allows for those with criminal records to petition a court for a "Certificate of Employability." The Bill protects employers who hire employees with criminal records from claims of negligent hiring or retention as long as the employee has a "Certificate of Employability." This should increase hiring of those with criminal records.

Conclusion

These changes should improve the overall business climate for current and potential Tennessee employers. The changes to the State's workers' compensation system brings Tennessee in line with systems used in most other states, removing some of the unpredictability inherent in the former system. The limits on awards of non-pecuniary damages available under state discrimination statutes will also add predictability to businesses operating in Tennessee. The new protections for employers who hire or retain those with criminal records who have obtained a "Certificate of Employability" should allow more Tennesseans to seek and obtain employment and allow employers to worry less about potential negligent hiring and retention suits.