

## **Employment Discrimination**

In Tennessee the relationship between an employer and an employee without a written contract is described as an at-will relationship. That means that an employee may be discharged for good cause, bad cause, or no cause at all, provided it is not for an unlawful reason, as discussed below. Either the employer or the employee may terminate the relationship at will. Generally speaking, absent discrimination or wrongful discharge an employee has no legal recourse if terminated by his or her employer. However, over the years, the courts in Tennessee have made exceptions to the employment-at-will doctrine in certain areas.

Tennessee courts have recognized the cause of action to prevent an employer from utilizing retaliatory discharge as a device to defeat the rights of employees under the Workers' Compensation Law. If an employee is discharged for pursuing or claiming entitlement to workers' compensation benefits, the employee has a cause of action for damages. To establish a cause of action for retaliation for asserting a workers' compensation claim an employee must show:

- (1) that he/she was an employee of his/her employer at the time of injury;
- (2) the employee made claim against his or her employer for workers' compensation benefits;
- (3) the employer terminated the employee's employment; and
- (4) the claim for workers' compensation benefits was a substantial factor in the employer's motivation to terminate the employee. The employee must prove all the elements of his/her cause of action, including a causal relationship between the claim for workers' compensation benefits and termination of employment. Proof of discharge without evidence of a causal relationship between the claim for benefits and discharge is not enough to prevail.

Tennessee also has a Human Rights Act which prohibits discrimination in employment, public accommodations, and housing. The Act prohibits discrimination on the basis of race, creed, color, religion, sex, age or national origin in connection with employment, public accommodations, and because of race, color, creed, religion, sex or national origin in connection with housing. If an employee is discharged in violation of the Tennessee Human Rights Act he or she may be awarded damages including reinstatement with back pay, compensatory damages, front pay, and attorney's fees. There are also several federal laws which prohibit discrimination and retaliation that may apply to employers.

There are other employment statutes such as the Tennessee Occupational Safety and Health Act which contains provisions prohibiting an employer from firing an employee for availing

himself/herself of the protective features of the statute including filing a charge or a complaint.

In 1990 the Tennessee legislature passed the Public Protection Act which, among other things, helps insulate smokers from discharge for smoking. The Act provides that employees shall not be discharged or terminated solely for participating or engaging in the use of an agricultural product so long as the employee participates or engages in such use in a manner which complies with all applicable policies regarding such use during the time at which such employee is working. An employer is free under the Act to restrict the use of tobacco to certain areas of the workplace or to totally ban the use of tobacco at work. The employer may not terminate an employee solely for using agricultural products during times when an employee is not working.

If an employer and employee have entered into a contract governing the terms of the employment relationship the contract may provide for an employment relationship other than employment-at-will. Some contracts between employers and employees provide that an employee will only be discharged "for cause." Cause may include any violation of work rules, dishonesty, refusal to perform the job, or a host of other factors.

The general employment-at-will rule in Tennessee is also altered for employers and employees who work in a unionized facility. Most collective bargaining agreements between employers and their unions provide that discharge can only occur for "just cause." Most contracts will also provide for a grievance and arbitration procedure an employee can use to seek assistance from the union if he or she believes he/she has been discharged unfairly. If the employee pursues an action through the grievance and arbitration procedure, it usually will be held by a neutral arbitrator ultimately.

Another possible exception to the employment-at-will doctrine may be legally inferred from language within an employee handbook. The general rule is that only when a personnel manual or handbook makes certain "guarantees" to employees will the manual be deemed part of the total employment contract. However, if the manual or handbook contains specific language to disclaim guarantees, the manual will not be deemed a part of the employment contract. Although employee handbooks can afford employees certain guarantees, if specifically spelled out, employers may utilize language disclaimers or changing guarantees in the handbook.

Tennessee recognizes a public policy exception to the employment-at-will rule when an employee is discharged for his/her refusal to violate the law at the employer's request, for his/her refusal to remain silent about a violation of the law, or for whistle-blowing.

Employees may contact the Tennessee Human Rights Commission and/or the Equal Employment Opportunity Commission if they believe the employer has violated their rights. But keep in mind that these agencies do not enforce all employment laws—only certain ones. Also, you typically

must file a formal complaint with the THRC within 180 days or the EEOC within 300 days of when the employer acted illegally against you.

# **Your Health Care Rights During And After Employment**

Numerous federal and state laws extend specific health care rights to you and your dependents under your employer's group health plan both during and after your employment. These laws include the Employee Income Retirement Security Act ([ERISA](#)), the Family and Medical Leave Act ([FMLA](#)), the Consolidated Omnibus Budget Reconciliation Act ([COBRA](#)), the Americans with Disabilities Act ([ADA](#)), the Older Workers Benefit Protection Act ([OWBPA](#)), civil rights laws, and state insurance laws.

**Health Care Rights During Employment** - Under ERISA, if an employer has a health plan, the employer must provide plan participants with copies of the latest summary plan description and summary annual report. The summary plan description describes the benefit provisions of your employer's health plan, such as eligibility requirements, basic medical benefits, out-of-pocket maximums, co-payments, deductibles and plan limitations. Other documents, such as the plan itself or any collective bargaining agreement, contract or trust agreement governing the plan, must be made available upon your request. (A reasonable fee may be charged for copying). Actions for enforcement of benefits may be filed by plan participants and beneficiaries against the plan itself. For example, an employee who believes he was improperly denied a medical benefit may file suit against the plan in federal court. However, the employee should first exhaust the intra-company appeals process provided by the plan. Your employer must provide you with a written response, including the specific reasons for the denial and the specific plan sections upon which the denial is based.

## **FAMILY AND MEDICAL LEAVE ACT**

The Family and Medical Leave Act of 1993 (FMLA) was enacted to give you up to 12 weeks per year of unpaid leave from work for any of the following reasons:

- (1) The birth of a child,
- (2) The placement of a child with you for the purpose of adoption or foster care,
- (3) To care for your spouse, son, daughter, or parent when such persons have a serious health condition, and
- (4) For certain servicemember-related activities

Normally, to qualify under the FMLA, you must have been employed at least 12 months by the employer from whom you request leave, and you must have worked at least 1,250 hours for that employer in the preceding 12-month period.

Not all employers are mandated to comply with the FMLA: Generally it must employ at least 50 employees each work day for 20 or more workweeks in the current or preceding calendar year.

## **What If I Am Injured At Work?**

Work-related injuries are covered in Tennessee under the "Workers' Compensation Law." Information regarding Workers' Compensation in Tennessee is available at the [Tennessee Department of Labor](http://www.tn.gov/workforce)'s website at <http://www.tn.gov/workforce>.

With the exception of a limited number of exempt employers, every employer using the services of five or more persons must provide workers' compensation to its employees. Most injuries arising out of the employment and suffered during the course of employment are covered unless they result from the following: (1) willful misconduct, (2) intentional self-inflicted injury, (3) intoxication or illegal drugs, and (4) willful failure or refusal to use safety devices or perform a duty required by law.

If you are injured, you are required to provide written notice of the injury to your employer within 30 days of injury. Failure to give the notice required by statute may result in loss of the right to benefits.

Upon receiving notice of injury, the employer is required to file a report with the State of Tennessee, Department of Labor, and, if compensable, further to provide you with benefits either through the employer's workers' compensation insurance carrier or directly from the employer, if the employer is self-insured. The Workers' Compensation Law provides benefits for work-related injury or death. The principal types of benefits which apply in ordinary cases include a portion of lost wages, medical treatment, and, if applicable, temporary total disability payments and permanent disability payments.

The employer must give an employee a choice of three physicians, not practicing together, from which the employee can choose his or her treating physician. Failure of the employee to accept medical treatment from authorized physicians may result in the employee bearing the cost of the medical treatment, and failure to comply with employer's reasonable request for examination or required medical services may result in suspension of benefits.

## Unemployment Compensation

Your employer carries insurance to help you when you become unemployed through no fault of your own. In Tennessee, employers pay the full cost of unemployment insurance for their employees so that nothing is deducted from an employee's pay to cover the cost of this insurance. The State of Tennessee does not contribute money to pay the cost of unemployment insurance for employees in this state. The State only administers the program. Tennessee's unemployment insurance program is governed by the Tennessee Employment Security Law and regulations, and is administered through the Tennessee Department of Labor & Workforce Development .

An employer must pay unemployment insurance premiums, and consequently is subject to the Unemployment Law, if it paid \$1,500 or more for service in employment wages in any calendar quarter either in the current or preceding year or if it employed at least one individual in Tennessee for some portion of a day in each of 20 different calendar weeks in either the current or preceding calendar year. The 20 different calendar weeks do not have to be consecutive.

Generally, you are considered unemployed for the purposes of unemployment compensation in any week during which you performed no services and received no wages and in certain instances during weeks of less than full time work.

The Tennessee Department of Labor has an [online FAQ page](http://www.tn.gov/workforce) at <http://www.tn.gov/workforce> for claimants for unemployment compensation.

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