

EMPLOYEE RIGHTS

Employment in the private sector is not regulated by Bill of Rights, which authorizes and limits only actions of government. However, private employees have certain rights as set out by federal and state law. There are minimum wage and hour standards, minimum safety and health standards, and laws protecting employee efforts to unionize or otherwise participate in collective bargaining activities. There are laws protecting individuals from being discriminated against based on race, religion, disability, national origin, and gender. Currently there is no protection by the law for discrimination based on sexual orientation.

EMPLOYMENT AT WILL

Employment relationships in Tennessee generally are governed by what is called the "*employment-at-will*" doctrine. This allows employers to terminate employees without giving a reason or notice, unless the reason is discriminatory (i.e., based on race, sex, age, religion, color, disability, or national origin). Courts have begun to define exceptions to the employment-at-will doctrine. "Wrongful discharge" is the claim that the employer violated company rules and regulations or "public policy" by firing someone. Other exceptions specify that employees may not be disciplined or discharged at-will for the following reasons: being called to military service, voting in elections, being called to jury duty, exercising the right of association, wage garnishment, and filing workers' compensation claims.

There are three broad categories of employees who are *not* governed by employment-at-will:

- **Government employees:** federal, state and local government workers are protected by the fifth and fourteenth amendments. These employees have a right to due process, and are protected from arbitrary dismissal. They may also be protected by civil service laws.
- **Union members:** most collective bargaining agreements stipulate that unionized employees can be fired only for just cause, and only after a hearing before a neutral arbitrator.

- **Contract employees:** Some employees, such as executives, academics, performers, athletes, etc. work under individual employment contracts that protect them against unjust dismissal.

Some employers now publish personnel policies or a set of rules and regulations governing on-the-job matters. If your employer has personnel policies and they did not follow those policies, you may have some protection and should contact a private attorney.

GOVERNMENT EMPLOYERS

If your employer is a governmental agency, most likely constitutional guarantees such as due process, equal protection, and the rest of the Bill of Rights apply. If you are in a union, the complaint should be processed through the union first. Complaints about the union can go to the Federal Labor Relations Authority.

If you are a Government employee who is not unionized, you are probably governed by civil service regulations. You should ask for a copy of the personnel policies from the personnel office, which should spell out the grievance and appeal procedures.

WHISTLEBLOWERS

In Tennessee, the Whistle Blower's Law prohibits an employer from retaliating against an employee who advises the employer that the business is in violation of a law and the employee either discloses, threatens to disclose, or testifies about the violation of that law (TCA §50-3-106(7)). An employer also cannot retaliate against an employee who objects to or refuses to participate in an employment act in violation of the law (TCA §50-1-304).

SPECIFIC QUESTIONS:

HAIR AND DRESS

In the public sector, protected by the U.S. constitution, restrictions on hair and mode of dress might infringe on rights of free expression. The state must have a *rational reason* for restrictions on personal appearance based on something like safety, discipline (in uniformed services),



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etc. In the private sector, dress codes can include uniforms, allow only certain types of clothing, restrict hair length or facial hair, or forbid certain types of clothing. Here, you have to dress in the way the employer requires you to dress. However, dress code discrimination (e.g. rules banning ethnic hairstyles, requiring forms of dress that violate religious doctrines, etc.) is prohibited.

SEARCH POLICIES

The Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Tennessee Constitution, which protects citizens against unreasonable searches and seizures, give some protection to employees. In general, a government employer cannot search the person or belongings of an employee without suspicion that the particular employee has done something illegal. Private sector employers have policies allowing for them to search employee property without a warrant (essentially, anything the employee brings onto company property).

With regards to drug testing, if a private sector employer is not covered by workers compensation, there are no laws banning drug tests or regulating how they are used. You can be forced to take a drug test with or without prior warning or risk losing your job. In the public sector, government employees can be required to take drug tests, even if the employer does not suspect individual use, in circumstances where security and safety are involved (police officers, fire fighters, etc.).

Technology and computers have added a new sphere to employee privacy. More and more employees are subjected to surveillance, hidden cameras, and phone taps by their employers. It is also important for employees to know employers can read employee email.

EMPLOYEE TELEPHONE MONITORING

Employers may have a right to monitor business-related calls if done in the normal course of business, for example, to ensure adequate customer contact and service. Eavesdropping on personal calls, however, is prohibited by federal law. To determine if telephone monitoring is impermissible, it is necessary to determine whether the monitoring was announced or covert, whether employees and clients alike received notice, and whether separate phones were provided for personal calls.

POLYGRAPH TESTING

The Employee Polygraph Protection Act (29 U.S.C.A. § 2001 et. seq.) bans all random and most pre-employment testing. An employer can request a polygraph test only if the business has suffered a willful economic loss or injury, the employee to be tested had access to the material, or the employer has executed a written statement including the basis for reasonable suspicion that the individual employee was involved in the incident. In TN, an employer cannot fire, discipline, or refuse to hire an employee solely on the basis of a polygraph test without additional supporting evidence (TCA §62-27-128). An employee being tested has the right to see all questions in writing before the test, be informed of the date, time, and location of the test, be notified that the employee or employer may make a recording of the test, stop the examination at any time, be exempted from the test on the basis of written evidence from a physician acknowledging the presence of a medical/physiological condition that may skew results, and consult with legal counsel before each phase of the test.

RESOURCES – NATIONAL AND STATE

ACLU-TN provides the following list of resources for informational purposes only. ACLU-TN does not endorse any of the organizations listed.

National Organizations

- [Equal Employment Opportunity Commission](#)

National Office:

1801 L Street, N.W.
Washington, DC 20507
(800) 669-4000
(202) 663-4900

Memphis District Office:

1407 Union Avenue
Suite 621
Memphis, TN 38104
Phone: (901) 544-0115
Fax: (901) 554-0111



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Nashville Area Office:

50 Vantage Way
Suite 202
Nashville, TN 37228-9940
Phone: (615) 736-5820
Fax: (615) 736-2107

Investigates complaints of employment discrimination based on race, color, national origin, sex, age, and religious beliefs. Complaints must be made within 180 days of the discriminatory act.

- **Federal Labor Relations Authority (FLRA)**

Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Suite 472
Boston, MA 02222
(617) 565-5100

The FLRA enforces the provisions of the Federal Service Labor-Management Relations Statute, a law which guarantees federal employees the right to form, join or assist labor organizations or to refrain from doing so. The Regional Offices of the Authority investigate alleged unfair labor practices under the Statute that are filed against either federal agencies or labor organizations. Includes federal executive agency employees except employees of the GAO, FBI, CIA, NSC, TVA, FLRA, and the Federal Service Impasses Panel.

- **National Labor Relations Board**

National Office:

1-99 14th St. N.W.
Washington, DC 20570
(866) 667-NLRB

Memphis Area Office:

The Brinkley Plaza Bldg., Suite 350
80 Monroe Avenue
Memphis, TN 38103-2481
Phone: (901) 544-0018
Fax: (901) 544-0008

Nashville Resident Office:

810 Broadway, Suite 302
Nashville, TN 37207-3859
Phone: (615) 736-5921
Fax: (615) 736-7761

Investigates and litigates unfair labor practices under the National Labor Relations Act. These are defined as actions of employers or unions against employees or each other that interfere with, or are motivated by union or other collective bargaining activity of the employees. The NLRB also processes petitions for elections among bargaining units of employees to determine whether they desire representation by a union or to terminate a union's status as their collective bargaining agent.

- **National Whistleblower Center**

PO Box 3768
Washington, DC 20007
Phone: (202) 342-1903
Fax: (202) 342-1904

A non-profit organization that supports precedent-setting litigation on behalf of employee whistleblowers. Provides legal advice and referrals for counsel to whistleblowers nationwide.

- **U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

200 Constitution Avenue, NW
Room C-3310
Washington, DC 20210

Southeast Regional Office

Atlanta Federal Center
61 Forsyth Street, S. W.
Room 7B75
Atlanta, GA 30303
Phone: (404) 893-4545
Fax: (404) 893-4546

Nashville District Office

1321 Murfreesboro Road
Suite 301
Nashville, TN 37217
Phone: (615) 781-5395
Fax: (615) 781-5399



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Memphis Area Office

Federal Office Building

167 North Main Street, Suite 101

Memphis, TN 38103

Phone: (901) 544-3458

Fax: (901) 544-4259

The OFCCP is the single federal civil rights enforcement agency whose mandate is to enforce non-discrimination and affirmative actions programs required of private sector companies that are federal contractors and subcontractors.

- **[U.S. Office of Special Counsel](#)**

1730 M. Street, NW Suite 218

Washington, DC 20036

(202) 254-3670

(800) 872-9855 (TDD)

8:30 am- 5 pm (EST)

Takes and investigates complaints on “prohibited personnel practices” in the Federal Government Agencies. They help federal workers and do not charge a fee.

State Organizations

- **[TN Department of Labor and Workforce Development](#)**

220 French Landing Drive

Nashville, TN 37243

Phone: (615) 741-6642

Offers job-related assistance, education, and training to workers, employers, and the unemployed. Also offers information on wage and hour compliance.

- **[TN Occupational Health and Safety Administration \(TOSHA\)](#)**

220 French Landing Drive

Nashville, TN 37243-1002

Phone: (615) 741-2793, (800) 249-8510

FAX: (615) 741-3325

TOSHA is a division of the TN Department of Labor and Workforce Development that enforces standards of workplace safety and health and offers assistance regarding work-related injuries, illnesses, and deaths.



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