

HOUSE BILL 417

By Hemmer

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 8 and Title 50, relative
to employment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, Part 1, is amended by
adding the following as a new section:

(a) As used in this section:

(1) "Back-pay" means the difference between an employee's former
wages and new wages, if the employee's new wages are less than the
employee's former wages;

(2) "Commissioner" means the commissioner of labor and workforce
development, or the commissioner's designee;

(3) "Compensation history" means the wage rate paid to a prospective
employee for employment by the prospective employee's current or former
employer;

(4) "Department" means the department of labor and workforce
development;

(5) "Employee" means an individual who performs services for an
employer for valuable consideration;

(6) "Employer" means a person or entity that employs one (1) or more
employees and includes this state and its political subdivisions;

(7) "Political subdivision" means a municipality, public corporation, body politic, authority, district, metropolitan government, county, agency, department, or board of the aforementioned entities, or another form of local government; and

(8) "Wage rate" means:

(A) For an employee paid on an hourly basis, the hourly compensation paid to the employee, plus the value per hour of all other compensation and benefits paid to the employee by the employer; and

(B) For an employee paid on a salary basis, the total of all compensation and benefits paid to the employee by the employer.

(b) It is unlawful for an employer to:

(1) Ask for or require a prospective employee to provide the prospective employee's compensation history;

(2) Consider or rely on a prospective employee's compensation history in determining the compensation for the prospective employee;

(3) Retaliate or discriminate against a prospective employee for failing to disclose the prospective employee's compensation history;

(4) Discharge, or otherwise discriminate or retaliate against, an employee for asserting a right provided by this section;

(5) Discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an employee because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wage rate;

(6) Prohibit, as a condition of employment, an employee from disclosing the employee's wage rate; or

(7) Require an employee to sign a waiver or other document that:

(A) Prohibits the employee from disclosing the employee's compensation history or wage rate; or

(B) Purports to deny the employee the right to disclose the employee's compensation history or wage rate.

(c) An employer does not violate this section if the prospective employee voluntarily and without prompting provides information about the prospective employee's compensation history.

(d)

(1) An employee or individual affected by a violation of this section may bring a civil cause of action within two (2) years after the alleged violation occurs. If the court finds that an employer violated this section, then the court may order the following remedies to the affected employee or individual:

(A) Equitable relief, including reinstatement of employment, promotion, pay increase, or payment of back-pay for a duration not to exceed three (3) years; and

(B) The employee or individual's court costs, including reasonable attorneys' fees.

(2) The court may examine evidence to determine whether the act or omission giving rise to the violation was in good faith and that the employer has reasonable grounds for believing that the employer did not violate this section. In determining whether the employer's violation was made in good faith, the court may consider evidence that within two (2) years prior to the date of the commencement of a civil action brought pursuant to this section, the employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities.

(e) This section does not preclude an employee from asserting another employment claim available under state or federal law.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 1, Part 3, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Department" means the department of labor and workforce development;

(2) "Employee" means an individual who performs services for an employer for valuable consideration;

(3) "Employer" means a person or entity that employs one (1) or more employees and includes this state and its political subdivisions;

(4) "Political subdivision" means a municipality, public corporation, body politic, authority, district, metropolitan government, county, agency, department, or board of the aforementioned entities, or another form of local government; and

(5) "Wage rate":

(A) For an employee paid on an hourly basis, the hourly compensation paid to the employee, plus the value per hour of all other compensation and benefits paid to the employee by the employer; and

(B) For an employee paid on a salary basis, the total of all compensation and benefits paid to the employee by the employer.

(b)

(1) An employer shall provide notice to the employer's employees of employment advancement opportunities and openings, including the potential range of wage rates that the employer reasonably believes that the opening or opportunity will pay and other benefits that will be offered to the hired applicant.

The notice must be provided to all of the employer's employees on the same calendar day and prior to making a promotion decision for the position.

(2) An employer shall post the notice required in subdivision (b)(1) in a conspicuous, easily accessible location for the employer's employees. In addition, the employer shall provide notice electronically, including by email or other posting, if the employer customarily communicates employment information to the employer's employees electronically.

(c) An employee who believes they have been affected by a violation of this section may submit a written complaint to the department, on a form prescribed by the department. The employee shall submit the complaint within one (1) year of the date that the employee learned of the violation. The department shall allow a form submitted pursuant to this section to be submitted electronically.

(d) The department shall investigate a complaint submitted in accordance with subsection (c). If the department finds that an employer has violated this section, then the department may order the employer to pay a fine of no less than five hundred dollars (\$500) and no more than ten thousand dollars (\$10,000) per violation. For purposes of determining the number of violations that have occurred, an employer's failure to:

(1) Post or otherwise provide the notice required under subsection (b) for one (1) promotional opportunity is considered one (1) violation; and

(2) Provide the potential range of wage rates that the employer reasonably believes that the opening or opportunity will pay the hired applicant is considered one (1) violation.

(e) The department shall promulgate rules necessary to effectuate this section.

The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2023, the public welfare requiring it, and applies to prohibited conduct occurring on or after that date.