

*** Current through the 2015 Regular Session ***

Title 50 Employer And Employee
Chapter 1 Employment Relationship And Practices
Part 7 Tennessee Lawful Employment Act

Tenn. Code Ann. § 50-1-703 (2016)

50-1-703. Duties of employers -- Office of employment verification assistance -- Application -- Complaints for violations -- Commissioner's order on finding of violation -- Penalties.

(a) (1) Employers shall:

(A) For non-employees, request and maintain a copy, pursuant to subdivision (a)(4), of any one (1) of the following documents prior to the non-employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b):

(i) A valid Tennessee driver license or photo identification license issued by the department of safety;

(ii) A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in this state, as determined by the department. The commissioner, in consultation with the department of safety, shall determine which states have issuance requirements that are at least as strict as this state, and shall develop, and periodically update, a publicly accessible list of such states on the department's web site;

(iii) An official birth certificate issued by a United States state, jurisdiction or territory;

(iv) A United States government-issued certified birth certificate;

(v) A valid, unexpired United States passport;

(vi) A United States certificate of birth abroad (DS-1350 or FS-545);

(vii) A report of birth abroad of a citizen of the United States (FS-240);

(viii) A certificate of citizenship (N560 or N561);

(ix) A certificate of naturalization (N550, N570 or N578);

(x) A United States citizen identification card (I-197 or I-179); or

(xi) Valid alien registration documentation or other proof of current immigration registration recognized by the United States department of homeland security that contains the individual's complete legal name and current alien admission number or alien file number (or numbers if the individual has more than one (1) number); and

(B) For employees, either:

(i) Request and maintain a copy, pursuant to subdivision (a)(4), of any one (1) of the documents described in (a)(1)(A)(i)-(xi) prior to the employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b); or

(ii) (a) Enroll in the E-Verify program prior to hiring an employee on or after the applicable phase-in period described in subsection (b);

(b) Verify the work authorization status of the employee hired by using the E-Verify program; and

(c) Maintain a record of any results generated by the E-Verify program for that particular employee in a manner consistent with subdivision (a)(4).

(2) (A) An employer who verifies the work authorization status of an employee pursuant to subdivision (a)(1)(B)(ii) has not violated § 50-1-103(b) with respect to the particular employee if the employer meets the requirements in § 50-1-103(d).

(B) No employer shall prevail in any proceeding where a violation of § 50-1-103 is alleged if the sole evidence presented by the employer is evidence of compliance with subdivisions (a)(1)(A) or (a)(1)(B)(i).

(3) No employer shall be in violation of subdivision (a)(1)(B) if the employer has requested, but has not received, assistance pursuant to subdivision (a)(6).

(4) An employer shall maintain:

(A) A record of results generated by the E-Verify program pursuant to (a)(1)(B)(ii) with respect to an employee for three (3) years after the date of the employee's hire or for one (1) year after the employee's employment is terminated, whichever is later; and

(B) Documentation received pursuant to subdivisions (a)(1)(A) and (a)(1)(B)(i) for three (3) years after the documentation is received by the employer or for one (1) year after the employee or non-employee ceases to provide labor or services for the employer, whichever is later.

(5) Nothing in this section shall be construed to prevent an employer from contracting with or otherwise obtaining the services of an E-Verify employer agent, or similar third party, for the purpose of complying with subdivision (a)(1)(B)(ii).

(6) There is created within the department the office of employment verification assistance. The department is authorized to enter into any memorandum of understanding or other agreement required by the E-Verify program to operate this office, and shall create no more than one (1) full-time administrative position to staff the office. If an employer does not have Internet access, then the office shall, at no charge to the employer, enroll the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program; provided, that the employer signs a prescribed form, under penalty of perjury, attesting to the employer's lack of Internet access and completes any paperwork required by the E-Verify program to permit the office to provide such assistance.

(7) Except as otherwise provided in subsection (c), the department shall conduct an inquiry concerning an employer's compliance with subdivision (a)(1) in conjunction with any pending inquiry, investigation, or inspection of the employer by the department's division of labor standards or workers' compensation division, or any successor divisions thereto. When conducting an inquiry, the commissioner shall provide written notification to the employer of the inquiry and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. If the employer fails to respond with documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subsection (d).

(b) (1) On or after January 1, 2012, subsection (a) shall apply to:

(A) Governmental entities; and

(B) Private employers with employees of five hundred (500) or more.

(2) On or after July 1, 2012, subsection (a) shall apply to private employers with employees of two hundred (200) to four hundred ninety-nine (499).

(3) On or after January 1, 2013, subsection (a) shall apply to private employers with employees of six (6) to one hundred ninety-nine (199).

(c) (1) Any lawful resident of this state or employee of a federal agency may file a complaint alleging a violation of subdivision (a)(1) to the department. The complaint shall, at a minimum, include the name of the individual filing the complaint, and satisfactory evidence of a violation as determined by the commissioner.

(2) On receipt of a complaint, the commissioner shall determine if the complaint contains satisfactory evidence of a violation of subdivision (a)(1); provided, that the commissioner shall inform the individual filing the complaint the basis for such determination. The commissioner shall not investigate complaints that are based solely on race, color or national origin.

(3) If the commissioner determines that the complaint contains satisfactory evidence of a violation of subdivision (a)(1), then the commissioner shall conduct an inquiry. When

conducting an inquiry, the commissioner shall provide written notification to the employer of the alleged violation of subdivision (a)(1) and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. Upon request by the employer, the department shall provide the employer with the name of the individual filing a complaint.

(4) Upon the expiration of the thirty-day period in subdivision (c)(3), the commissioner shall make a determination of whether a violation of subdivision (a)(1) occurred. If the employer fails to provide documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subdivision (d)(1). If documentation is submitted within the thirty-day period, then the commissioner shall determine whether there is clear and convincing evidence of a violation of subdivision (a)(1) based on the documentation submitted, the evidence from the complaint, and other applicable evidence.

(d) (1) If the commissioner determines that an employer has violated subdivision (a)(1) pursuant to subdivision (a)(7) or (c)(4), or determines that an employer has violated § 50-1-704, then the commissioner shall issue an initial order that shall include, at a minimum:

(A) The commissioner's findings and determinations;

(B) The penalties that will apply if a final order is issued;

(C) The process to request a contested case hearing; and

(D) The process by which the commissioner shall waive all penalties for a first violation as provided in subdivision (d)(3).

(2) An employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, an initial order issued by the commissioner pursuant to this section; provided, that the employer sends written notice to the commissioner within thirty (30) days of the date of the initial order. If the employer fails to send such written notice, then the contested case hearing process is waived.

(3) The commissioner shall issue a warning in lieu of all penalties for a first violation of subdivision (a)(1) if:

(A) The employer complies with all remedial action requested by the department to remedy the violation of subdivision (a)(1) within sixty (60) days of the date of the initial order; and

(B) The commissioner determines that the violation of subdivision (a)(1) was not a knowing violation.

(e) If the commissioner does not issue a warning in lieu of penalties pursuant to subdivision (d)(3), then the commissioner shall issue a final order on the date the contested case hearing concludes or is waived and assess penalties in accordance with subsections (f)-(j). The final order shall include, at a minimum, the types of evidence required from the private

employer in order to avoid suspension of the private employer's license under subdivision (f)(3).

(f) (1) If the commissioner issues a final order for a violation of subdivision (a)(1) by a private employer, or a violation of § 50-1-704, then the commissioner shall assess the following civil penalties:

(A) Five hundred dollars (\$500) for a first violation;

(B) One thousand dollars (\$1,000) for a second violation; or

(C) Two thousand five hundred dollars (\$2,500) for a third or subsequent violation.

(2) In addition to the civil penalties provided in subdivision (f)(1), the commissioner shall also assess the following civil penalties:

(A) For a first violation, five hundred dollars (\$500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B);

(B) For a second violation, one thousand dollars (\$1,000) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B); or

(C) For a third or subsequent violation, two thousand five hundred dollars (\$2,500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B).

(3) The private employer shall submit to the commissioner evidence of compliance with subdivision (a)(1) within sixty (60) days of the final order. If the private employer fails to submit such documentation, then the commissioner shall request an order consistent with § 4-5-320, requiring the appropriate local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the private employer's license until the employer remedies the violation; provided, however, if the private employer's license has also been suspended pursuant to § 50-1-103(e)(1)(A) or (B), then the license shall remain suspended until the expiration of the period provided for in § 50-1-103(e)(1)(A) or (B).

(g) A second or subsequent violation of subdivision (a)(1) shall accrue from a separate inquiry conducted under subdivision (a)(7) or (c)(3).

(h) All moneys collected pursuant to this section shall be deposited into the lawful employment enforcement fund created by § 50-1-708.

(i) The penalties described in this section shall not be mutually exclusive, and may be imposed in conjunction with any applicable penalties as provided by law.

(j) If the commissioner issues a final order for a violation of subdivision (a)(1) by a governmental entity, then the commissioner shall post the violation on the department's web site as provided in § 50-1-705.

HISTORY: Acts 2011, ch. 436, § 5; 2013, ch. 147, §§ 1-6.