Tennessee Lawful Employment Act (TLE Act)

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the Tennessee Code Annotated and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Tennessee Lawful Employment Act (TLE Act)

Reference Number: MTAS-2070

The Tennessee Lawful Employment Act (TLE) (T.C.A. §§ 50-1-701-50-1-715) was signed into law June 7, 2011, and requires all employers in Tennessee to demonstrate that they are hiring and maintaining a legal workforce either by enrolling and verifying the employment eligibility of all newly-hired employees through the federal E-Verify program or request all newly-hired employees to provide identity and employment I-9 authorization documents. Valid documents under the Tennessee Lawful Employment Act per T.C.A. § 50-1-703(a)(1)(A) include:

• A valid Tennessee driver’s license or photo identification;
• A valid driver’s license or photo identification from another state where the license requirements are at least as strict as those in Tennessee;
• A birth certificate issued by a U.S. state, jurisdiction or territory;
• A U.S. government-issued certified birth certificate;
• A valid, unexpired U.S. passport;
• A U.S. certificate of birth abroad (DS-1350 or FS-545);
• A report of birth abroad of a U.S. citizen (FS-240);
• A certificate of citizenship (N560 or N561);
• A certificate of naturalization (N550, N570, or N578);
• A U.S. citizen identification card (I-97 or I-179);
• A valid alien registration document; or
• Other proof of employee’s immigration status and authorization to work in the United States recognized by the Department of Homeland Security.

Additionally, if your city hires non-employees, such as independent contractors, you are required to request and maintain a copy of either a valid Tennessee driver’s license or photo ID license. The employment verification provisions apply to all state and local government agencies no later than January 1, 2012.

Under T.C.A. § 50-1-703(b)(1-3), the employment verification provisions will be phased in as follows:

• All state and local government agencies must be enrolled and participate in E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
• All private employers with 500 or more employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
• All private employers with 200 to 499 employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2012.
• All private employers with six to 199 employees must be register and utilize E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2013.
• All private employers with 50 or more employees must be using E-Verify in addition to complying with the federal I-9 requirements by January 1, 2017.
• All private employers with less than 50 employees can still make a choice about using E-Verify for all newly hired employees or requesting and maintaining documents under the TLEA’s list of authorized identity and employment eligibility documents.

To verify individuals using E-Verify under the TLE Act, employers must:

• Enroll in E-Verify within 30 days of the contract award date, and
Use E-Verify to verify that all new hires and existing employees working directly on federal contracts are authorized to work in the United States.

The TLE Act (T.C.A. § 50-1-103(c)) provides that employers are not required to use E-Verify if the employer requested from the employee, received and documented the "lawful resident verification information" consistent with the employers requirements under the Immigration Reform and Control Act of 1986 (I-9). The Tennessee Lawful Employment Act also provides that if, however, an employer uses E-Verify, it is a defense to a charge of hiring illegal aliens. Obtaining one of the listed documents, on the other hand is not a defense if that is the only evidence the employer has.

For employers without Internet access, the TLE Act allows such employers to enter into a Memorandum of Understanding with the Tennessee Department of Labor and Workforce Development, and permits this agency to enroll the employer in the E-Verify program and conduct employment verification checks of newly hired employees through E-Verify on behalf of the employer. T.C.A. § 50-1-703(a)(5). An employer who has requested this service from the Tennessee Department of Labor and Workforce Development, but has not received assistance will not be in violation of the act (T.C.A. § 50-1-703(a)(2)). Alternatively, the act allows employers to utilize the services of a third party agent to conduct the E-verification process for newly hired employees. T.C.A. § 50-1-703(a)(4).

Under the TLE Act, employers must maintain a record of results generated by E-Verify for three years from the date of hire or one year from the date of termination, whichever is later. Employers who elect to verify the employment eligibility of newly hired employees by requesting an identity and employment authorization document, rather than enroll in E-Verify, must retain this documentation for three years after the documentation is received or for one year after the employee (or non-employee, whichever is the case) stops providing services or labor, whichever is earlier. T.C.A. § 50-1-703(a)(3)(A).

The penalties for violation of the TLE Act are stiff, to say the least. They are outlined below:

- First offense: $500 for the civil penalty, plus $500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(a));
- Second Offense: $1,000 for the civil penalty, plus $1,000 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(b)); and
- Third or Subsequent Offense: $2,500 for the civil penalty, plus $2,500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(c)).

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