

State Resources

Department of Labor &
Workforce Development

<https://www.tn.gov/workforce.html>

Reviewing Your

TENNESSEE

Job Offer

Federal Resources

Equal Employment
Opportunity Commission

<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

Tennessee law does not prohibit employers from requiring employees to sign a non-compete agreement upon entering employment or as a condition of continued employment. Non-compete agreements, however, are generally disfavored in Tennessee and cannot constrain ordinary competition. Non-competes are only enforceable if the agreement (1) protects a legitimate business interest, (2) is reasonable in light of the hardship to the employee and the public, and (3) imposes time and territorial limits that are no greater than necessary to protect the employer's legitimate business interests. Courts typically consider three factors when evaluating whether a legitimate business interest exists: whether the employer provided specialized training; whether the employer gave the employee access to trade secrets or other confidential information; and whether the employer's customers tend to associate the employer's business with the employee. Tennessee courts may judicially modify a non-compete agreement if they find the agreement to be unreasonable.

Does your salary match the salary of your co-workers?

Tennessee employers are not required to provide you with the pay scale for the position offered to you, but there is no prohibition on requesting this information. You can also share your compensation with co-workers and ask them, if they are willing, to share this information with you. Under federal law, most employers are prohibited from instituting any policy that restricts employees from or penalize employees for discussing pay. Tennessee law bars discrimination between employees on the basis of sex by paying any employee salary or wage rates less than the rates of an employee of the opposite sex for comparable work.

Assuming your employment is "at will," can you negotiate for contractual protections?

Most employment in the private sector is "at will." This means your employer can terminate your employment or change the terms of your employment with or without cause as long as the reason for that termination/change is not otherwise illegal (i.e., unlawful discrimination). Employees are free to negotiate contractual protections such as a provision requiring a "just cause" provision. To have a "just cause" provision enforceable, however, the employment agreement must be for a term of years (e.g., 3-year contract). Tennessee law does not permit employment agreement agreements with "just cause" provisions that have no end in duration.

Have you properly excluded your individual inventions prior to accepting your job offer?

Your employer may have you sign an agreement clarifying that any logo, invention or other creative work that you develop while working for the employer becomes the employer's property and/or that you are required to assign your rights to such creations to the employer. If so, there is usually a place in the agreement to identify any previous creations and you should identify all prior creations and avoid using them or incorporating them into work you do for the employer. Even without a written provision in a contract, the federal Copyright Act defines a "work for hire" as something prepared by an employee within the scope of his or her employment, and as such is owned by the employer. This federal law does not apply to work created prior to employment, and it does not apply to creations outside the scope of employment. Read the offer carefully to ensure that you are not including pre-employment inventions and that you are not including inventions you create outside the workday or outside the scope of your employment.

Does your job offer require that you sign a forced arbitration agreement?

Mandatory arbitration provisions of employment related claims, including statutory claims for discrimination, are enforceable in Tennessee if the provisions are part of a valid and enforceable agreement. In Tennessee, forced arbitration agreements are allowed and are presumed to be valid, enforceable, and irrevocable. Employers may, but are not required to, give you the option to "opt out" of an arbitration provision. It is usually a good idea to do so, to preserve your rights to a trial, including a jury trial. Read the provision carefully to follow the procedure to "opt out." The new Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022, prohibits employers from forcing employees to agree to arbitration of a claim of sexual harassment or sexual assault. For any claims of sexual assault and/or sexual harassment, which can be construed broadly, you cannot be forced to submit to arbitration, rather you can submit to a court and a jury.

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