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For Department of State Use Only

Sequence Number: 09-37-15
Rule ID(s): 6048-6049
File Date: 9/22/15
Effective Date: 12/21/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
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Zip:	37243-1002
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0800-01-04	OCCUPATIONAL SAFETY AND HEALTH INSPECTIONS, CITATIONS AND PROPOSED PENALTIES
Rule Number	Rule Title
0800-01-04-.18	EMPLOYER AND EMPLOYEE CONTESTS.
Chapter Number	Chapter Title
0800-01-08	DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1972
Rule Number	Rule Title
0800-01-08-.06	FILING OF COMPLAINT ALLEGING DISCRIMINATION.

Chapter 0800-01-01
DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS
UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1972

Amendments

Paragraph (2) of Rule 0800-01-04-.18 EMPLOYER AND EMPLOYEE CONTESTS. is amended by removing the text "T.C.A. §50-3-407" and replacing with "T.C.A §50-3-307(b)" and inserting the parenthetical phrase (as defined for employees in T.C.A §50-3-106) after "terms and conditions" so as amended the paragraph shall read:

- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-307(b), file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions (as defined for employees in T.C.A §50-3-106) of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Paragraph (4)(c) of Rule 0800-01-08-.06 FILING OF COMPLAINT ALLEGING DISCRIMINATION is amended by removing the text ", resorted in good faith to grievance - arbitration proceedings under a collective bargaining agreement or" so as amended the paragraph shall read:

- (c) However, there may be circumstances which would justify tolling the thirty (30) day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; where the employee has within the thirty (30) day period filed a complaint regarding the same general subject with another state or federal agency; or where the discrimination is in the nature of a continuing violation. In the absence of submission of reasonable proof of circumstances justifying the tolling of the thirty (30) day period within ten (10) days of being requested and barring requests for extension of time in which to obtain such proof, the complaint shall be deemed untimely filed and shall not be processed.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 9/3/15 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9/3/15

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: September 3, 2015

Notary Public Signature: Jamie Presson

My commission expires on: March 10, 2019

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Stately III
Herbert H. Stately III
Attorney General and Reporter
9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/22/15

Effective on: 12/21/15

Tre Hargett
Tre Hargett
Secretary of State

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Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0800-01-08-.06 is amended to remove a phrase that is not consistent with state law.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-3-409, makes no allowance for an employee to delay filing an allegation of discrimination due to engagement in arbitration proceedings as part of a collective bargaining agreement. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapter 0800-01-08. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-04

Rule 0800-01-04-.18 Amended

Paragraph (2) of Rule 0800-01-08-.18 EMPLOYER AND EMPLOYEE CONTESTS is amended by removing the text "T.C.A. §50-3-407" and replacing with "T.C.A. §50-3-307(b)" as well as inserting the parenthetical phrase "(as defined for employees in T.C.A. §50-3-106)" after the word "conditions":

Existing Rule:

- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under ~~T.C.A. §50-3-407~~, file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Proposed Amended Rule:

- (2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-307(b), file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions (as defined for employees in T.C.A §50-3-106) of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Authority: T.C.A. §4-3-1411 and §50-3-201.

Chapter 0800-01-08

Rule 0800-01-08-.06 Amended

Paragraph (4)(c) of Rule 0800-01-08-.06 FILING OF COMPLAINT ALLEGING DISCRIMINATION is amended by removing the text ", resorted in good faith to grievance - arbitration proceedings under a collective bargaining agreement or".

Existing Rule:

- (c) However, there may be circumstances which would justify tolling the thirty (30) day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; where the employee has within the thirty (30) day period, ~~resorted in good faith to grievance - arbitration proceedings under a collective bargaining agreement or filed a~~ complaint regarding the same general subject with another state or federal agency; or where the discrimination is in the nature of a continuing violation. In the absence of submission of reasonable proof of circumstances justifying the tolling of the thirty (30) day period within ten (10) days of being requested and barring requests for extension of time in which to obtain such proof, the complaint shall be deemed untimely filed and shall not be processed.

Proposed Amended Rule:

- (c) However, there may be circumstances which would justify tolling the thirty (30) day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; where the employee as within the thirty (30) day period filed a complaint regarding the same general subject with another state or federal agency; or where the discrimination is in the nature of a continuing violation. In the absence of submission of reasonable proof of circumstances justifying the tolling of the thirty (30) day period within ten (10) days of being requested and barring requests for extension of time in which to obtain such proof, the complaint shall be deemed untimely filed and shall not be processed.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.