



Wimberly Lawson Wright Daves & Jones, PLLC

Attorneys & Counselors at Law

Briefly

November 2014 Volume 14, Issue 11

HR AUDITS AND COMPLIANCE



**Kelly A.
Campbell**



**Jeffrey M.
Crawford**

Thursday, November 6th

**Marriott Downtown Knoxville
Riverview Room**

HR Audits - Are You in Compliance?

11:00 am – 12:00 Noon

**Presented by Kelly A. Campbell
and Jeffrey M. Crawford**

Human Resource audits are important, both to evaluate the effectiveness of a company's Human Resource function, and to ensure compliance with federal, state and local laws. The compliance aspect is especially crucial in today's ever changing regulatory environment, as companies operate within the confines of a heavily-regulated employee environment. Further, those regulatory requirements for companies are in a constant state of change and evolution. The risks of non-compliance are numerous and expensive, and include employee lawsuits (damage awards and attorneys' fees) and regulatory enforcement activities (fines and penalties). Voluntary audits of the Human Resource function can help uncover compliance issues and reduce or prevent liability.

Before conducting a compliance audit, consider the potential results and how they can create or increase potential liability for your company. The audit report will identify the company's Human Resource ("HR") strengths and weaknesses. Are there specific areas of compliance concern? Will the audit disclose areas of non-compliance, and potentially increase possible legal exposure? If so, then it is prudent to conduct your audit in such a manner as to safeguard the audit results from being used against your company in future litigation or government investigations related to regulatory compliance issues.

Once you have completed your HR audit, there are additional steps that should be taken to ensure that the audit process is meaningful. First, the audit report should be assessed, which should result in recommended changes in the HR process to address areas of weakness and non-compliance. Policies may need redrafting. Procedures may need amending. Development of an action plan for improvement in the HR function and regulatory compliance is absolutely necessary.

Second, the audit results should be reviewed with company management. Candid and thorough assessment of the audit report is crucial. All areas of concern should be identified, as well as the risks associated with continuing non-compliance. All necessary changes to your employment policies and procedures should be fully discussed with management to ensure financial support for the necessary remedies of any potentially problematic policies or practices, and to ensure compliance in the future.

Third, revisions in the HR process should be implemented to ensure regulatory compliance. This will require implementation of the changes in policies, practices and procedures needed to address areas of non-compliance. Also, training will be necessary to ensure that all members of management are fully schooled on future implementation of the changes, and on the compliance issues identified which necessitated the changes.

Finally, follow-up evaluation and assessment should be performed on a regular basis to ensure that the compliance issues were adequately remedied. Ongoing assessment is also necessary to ensure that all individuals are adhering to the revised policies and procedures. Re-training may be necessary if non-compliance issues continue.

For more in depth information on HR Audits, Kelly Campbell and Jeff Crawford will participate in presenting a breakout session entitled *HR Audits - Are You In Compliance?* on Thursday, November 6th from 11:00 am to 12:00 noon in the Riverview room at the Marriott Downtown Knoxville.

Our Firm Wimberly Lawson Wright Daves & Jones, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville, Chattanooga and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., Atlanta, Georgia; and Wimberly Lawson Daniels & Fisher, LLC, Greenville, South Carolina.



IMMIGRATION UPDATE: TO E-VERIFY OR NOT TO E-VERIFY

"The bill looks good, smells bad and does very little to help the problem."

So spoke Jim Brown, State Director of the National Federation of Independent Business, in his testimony concerning HB 1378 before the Tennessee House Sub-committee of State and Local Government. The opinions of business and civil rights lobbyists did not prevail. The Tennessee Lawful Employment Act (TLEA) modified the existing state law banning the knowing employment of "illegal aliens" (Tenn. Code Ann. §50-1-103) and created Tenn. Code Ann. §50-1-701 et seq. TLEA ostensibly furthers the federal government's goal of restricting illegal immigration. It imposes new verification requirements on Tennessee employers, mandates inquiries by the Department of Labor and Workforce and Development ("Department") under a broad range of circumstances, and carries with it the risk of significant civil penalties for private employers.

TLEA is enforced in conjunction with the Immigration Reform and Control Act of 1986 ("IRCA"), which made it illegal to knowingly hire unauthorized workers and requires review of employment eligibility through the filing of Form I-9, Employment Verification Eligibility. Under TLEA, employers in Tennessee must also verify a newly hired employee's employment eligibility through one of two means: (1) enrolling in the federal E-Verify program, OR (2) requesting one of the following 11 documents:

- 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 (the Department will make such determinations and post them on its website);
- 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;
- A certificate of citizenship;
- A certificate of naturalization;
- A U.S. citizen identification card;
- A lawful permanent resident card; or
- Other proof of employee's immigration status and authorization to work in the United States.

An employer violates TLEA if it either fails to (1) verify employment eligibility through the E-Verify system, or (2) request and maintain a copy of one of the listed documents. TLEA implementation occurred in three phases from January 1, 2012 to July 1, 2013, depending on the size of the business. Employers must have enrolled and participated in E-Verify or requested and maintained an identity/employment authorization document from newly-hired employees according to the schedule below:

- January 1, 2012: All state and local government entities and all private employers with 500 or more employees
- July 1, 2012: All private employers with 200 to 499 employees
- July 1, 2013: All private employers with 6 to 199 employees

Significantly, TLEA goes beyond the traditional employer-employee relationship: it also requires that Tennessee employers obtain one of the above documents for non-employee independent contractors.

In the end, hassle is unavoidable. Employers will need to choose between the costs of complying with E-Verify or facing the unknown risks of an as-of-yet unregulated law.

For more in depth information on Immigration and E-Verify, Susan Davis will present *Immigration Update: To E-Verify or Not To E-Verify - Choosing Between E-Verify and Alternative Documentation Under the TLEA* on Thursday, November 6th in the Main Ballroom of the Marriott Downtown Knoxville from 4:30 pm to 4:45 pm.



**Susan S.
Davis**

Thursday, November 6th

**Marriott Downtown Knoxville
Main Ballroom**

*Immigration Update: To E-Verify
or Not To E-Verify - Choosing
Between E-Verify and Alternative
Documentation Under the TLEA*

4:30 pm – 4:45 pm

Presented by Susan S. Davis

KNOW YOUR ATTORNEY

PLEASE JOIN US IN WELCOMING ERIC HARRISON BACK TO THE FIRM!



J. ERIC HARRISON is a Member in the Morristown, Tennessee office of Wimberly Lawson Wright Daves & Jones, PLLC, which he re-joined in October 2014. His law practice includes a focus on employers' general liability defense, workers' compensation defense, business contracts and employment law. Eric also practices in the areas of municipal and zoning law, construction law and other general litigation matters. He is a Morristown, Tennessee native who relocated to the area when he opened his own office in 1999. Eric received his Bachelor of Science degree from the University of Tennessee and his law degree from Mercer University, Walter F. George School of Law. He has practiced in all levels of state court in Middle and East Tennessee and has been admitted to practice before the Tennessee Court of Appeals and the Tennessee Supreme Court. Eric has also been admitted to practice in the United States District Court, Eastern District of Tennessee. Eric is a member of the Hamblen County Bar Association.

FMLA STRATEGIES AND PRACTICAL ADVICE



**Jerome D.
Pinn**



**Mary Moffatt
Helms**



**Edward H.
Trent**

Thursday, November 6th

**Marriott Downtown Knoxville
William Blount North**

**FMLA - Strategies and Practical
Advice**

2:45 pm – 3:45 pm

**Presented by Jerome D. Pinn, Mary
Moffatt Helms, and Edward H. Trent**

The Family and Medical Leave Act entitles eligible employees of covered employers to take unpaid, job-protected leave for twelve work weeks in a twelve month period for the following reasons: (1) the birth of a child and/or to care for the newborn child within one year of birth; (2) the placement with the employee of a child for adoption or foster care and/or to care for the newly placed child within one year of placement; (3) to care for the employee's spouse, child, or parent with a serious health condition; (4) a serious health condition that makes the employee unable to perform the essential functions of his/her job; (5) any qualifying exigency arising out of the employee's spouse, son, daughter, or parent who is called to "covered active duty in a military operation;" or (6) 26 weeks of leave during a single twelve month period to care for a covered service member with a serious injury or illness if the eligible employee is a service member's spouse, son, daughter, parent or next of kin ("military caregiver leave").

An "eligible employee" under the FMLA is defined as an employee of a covered employer who:

- (1) has been employed by the employer for at least twelve months; and
- (2) has been employed for at least 1,250 hours of service during the twelve-month period immediately preceding the commencement of the leave; and
- (3) is employed at a worksite where fifty or more employees are employed by the employer within seventy-five miles of that worksite.

While the provisions for FMLA are seemingly straightforward, administration of these provisions can be quite complex. The following are some of the strategies that provide practical advice for handling FMLA issues.

1. Ensure that your FMLA policy and postings are maintained and are up to date.
2. Ensure that you are using current Department of Labor-approved forms, including the initial notice to employees regarding FMLA rights and obligations, as well as other DOL-WH forms.
3. Require certification of serious health conditions when employees request FMLA, and recertification where appropriate, but be aware of the limitations on requesting certifications.
4. Do consider a policy for employees to request extensions of leave after exhaustion of FMLA and accommodations pursuant to the Americans with Disabilities Act.
5. Train supervisors and managers concerning FMLA administration issues and recognizing situations in which FMLA may be implicated.

To learn more strategies for practical advice in handling FMLA issues, Jerome Pinn and Mary Helms and Ed Trent will participate in presenting a breakout session entitled *FMLA - Strategies and Practical Advice* on Thursday, November 6th from 2:45 pm to 3:45 pm in the William Blount North Room at the Marriott Downtown Knoxville.



**Fredrick R.
Baker**



**J. Eric
Harrison**



**Andrew J.
Hebar**



**Michael W.
Jones**

TN WORKERS' COMP REFORM UPDATE

In 2013, the Tennessee General Assembly enacted major workers' compensation changes initiated by Governor Bill Haslam and supported by the Tennessee Chamber of Commerce and Industry. The Act, which is titled the Tennessee Workers' Compensation Reform Act of 2013, was signed with the goal of making Tennessee more employer-friendly and more attractive for new business. In order to achieve these goals, the Act aims to bring about shorter periods to resolve conflicts, quicker return to work for injured workers, more assistance for injured workers, more consistency in results, and fewer obstacles to medical care. The law took effect for injuries occurring on or after July 1, 2014.

With this new law, the General Assembly intends to benefit Tennessee by changing the business landscape, making existing workers' compensation law more employer-friendly. It will require a fair and impartial statutory construction which will no longer lean automatically in the injured worker's favor. Moreover, the administration of workers' compensation claims will be handled by an entirely separate division within the Department of Labor and Workforce Development, calling for the Administrator to cultivate the state's business environment and to create new rules in order to efficiently and justly administer workers' compensation claims. This revamped administrative structure will include the creation of the Court of Workers' Compensation Claims, a medical advisory committee, ombudsman program, as well as adjust the requirements for physician panels. With additional benefit calculation changes, including the new impairment ratings being measured solely on the body as a whole and without reference to pain, the new law promises to significantly alter the way workers' compensation benefits are determined.

For more information on Tennessee Workers' Compensation, Fred Baker will present *TN Workers' Comp Reform Update* on Thursday, November 6th in the Main Ballroom from 10:25 am to 10:45 am. Fred, Eric Harrison, Andrew Hebar and Michael Jones will participate in presenting a breakout session entitled *Practice and Procedure Under Work Comp Reform* on Thursday, November 6th from 11:00 am to 12:00 noon in the Henry Knox Room at the Marriott Downtown Knoxville.

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Get Fast, Expert Guidance Right at your Fingertips
with the All-New

Tennessee Workers' Compensation Handbook, *6th Edition*

The essential desk reference for Tennessee attorneys
and workers' comp claims managers

All-New 6th Edition!

Packed with crucial compliance and practice
guidance to help you manage the sweeping 2014
changes to Tennessee workers' comp laws.
Your new edition will cover:

- **New administrative structure.** How will the changes from a court system to an administrative system alter the way workers' comp claims are decided?
- **New "courts."** How will the Court of Workers' Compensation Claims and Appeals Board operate?
- **Expedited hearings.** When are they available?
- **Settlements.** When and how will settlements be approved?
- **New language.** Terms like BRC and RFA will be replaced with PBD and DCN.
- **Ombudsman program.** The Ombudsman program will provide assistance to parties who are not represented by attorneys.
- **Templates.** With the changes come new forms, now called templates, which will be available for download.

Thursday, November 6th

**Marriott Downtown Knoxville
Main Ballroom**

TN Workers' Comp Reform Update

10:25 am – 10:45 am

Presented by Fredrick R. Baker

Thursday, November 6th

**Marriott Downtown Knoxville
Henry Knox Room**

**Practice and Procedure Under
Work Comp Reform**

11:00 am – 12:00 pm

**Presented by Fredrick R. Baker,
Eric Harrison, Andrew Hebar,
and Michael Jones**