



## Tennessee Supreme Court Throws Out Applicant's Workers' Compensation Retaliation Claim Against Prospective Employer

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**Executive Summary:** On August 21, 2015, the Tennessee Supreme Court held that a job applicant does *not* have a cause of action under the Tennessee Workers' Compensation Act (TWCA) against a prospective employer for failure to hire based on the applicant's workers' compensation claim against a previous employer. *Yardley v. Hospital Housekeeping Systems, LLC*.

In this case, Yardley had been employed as a housekeeping aide by a hospital. The hospital contracted out the housekeeping services to the company in question. The company declined to hire Yardley because she was receiving workers' compensation benefits as an employee of the hospital. Yardley then sued the company alleging violations of the Tennessee Disability Act (TDA) and the TWCA. The district court dismissed Yardley's TDA claim finding she failed to sufficiently allege that she was not hired "because of" a perceived disability. The district court then certified the question of whether Yardley had a cause of action under the TWCA to the Tennessee Supreme Court, as that issue had never been decided under state law.

The Tennessee Supreme Court held that Yardley did not have a cause of action. Its reasoning was simple. In Tennessee, there is no statutory or common law cause of action for retaliatory failure to hire. While an employer's decision to fire an employee for filing a workers' compensation claim is unlawful under the TWCA, the TWCA applies *only* to employers and employees. Potential employers have no obligations to job applicants under the TWCA. Accordingly, Yardley failed to state a claim for a violation of the TWCA.

**Employers' Bottom Line:** In a decidedly pro-employer decision, the Tennessee Supreme Court has reaffirmed an employer's freedom to choose its employees without interference from the courts. However, the court's decision was limited to the narrow question of whether a job applicant is protected under the TWCA; it does not address broader implications that failure to hire an applicant with a known workers' compensation claim may have under the Americans with Disabilities Act (ADA) and/or the TDA. While the district court dismissed Yardley's TDA claim because she had not sufficiently alleged the causation element, she did not make a claim under the ADA, which has a broader definition of disability and a lower causation threshold than the TDA. Accordingly, Tennessee employers are cautioned to consider whether a job applicant may be deemed disabled under either the TDA or ADA prior to making any adverse hiring decisions.

If you have any questions regarding this case or other labor or employment related issues, please contact the authors of this Alert, [Louis Britt](mailto:lbritt@fordharrison.com), [lbritt@fordharrison.com](mailto:lbritt@fordharrison.com), a partner in our Memphis office, or [Katie Parham](mailto:kparham@fordharrison.com), [kparham@fordharrison.com](mailto:kparham@fordharrison.com), an associate in our Memphis office. You may also contact the FordHarrison attorney



with whom you usually work.