

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

April 3, 2008

Opinion No. 08-81

Constitutionality of Tenn. Code Ann. § 50-2-103

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**QUESTION**

Does Tenn. Code Ann. § 50-2-103 violate the equal protection clauses of the United States and Tennessee Constitutions?

**OPINION**

No.

**ANALYSIS**

Tenn. Code Ann. § 50-2-103 provides as follows:

**50-2-103. Private employment; manner of payment; rest or meal periods; violations**

(a) All wages or compensation of employees in private employments shall be due and payable as follows:

(1) All such wages or compensation earned and unpaid prior to the first day of any month shall be due and payable not later than the twentieth day of the month following the one in which such wages were earned;

(2) All wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than the fifth day of the succeeding month; and

(3) For the purposes of this subsection (a), the final wages of an employee who quits or is discharged shall include any vacation pay or other compensatory time that is owed to the employee by virtue of company policy or labor agreement. This subdivision (a)(3) does not mandate employers to provide vacations, either paid or unpaid, nor does it require that employers establish written vacation pay policies.

(b) "Private employment," as used in subsection (a), means and includes all

employments in concerns where five (5) or more employees are employed, except those under the direct management, supervision and control of the United States, of the state of Tennessee, any county, incorporated city or town, or other municipal corporation or political subdivision of the state, or any office or department of the state or general government.

(c) Nothing contained in this section shall be construed as prohibiting the payment of wages at more frequent periods than semimonthly.

(d) Every employer shall establish and maintain regular pay days as provided in this section, and shall post and maintain notices, printed or written in plain type or script, in at least two (2) conspicuous places where such notices can be seen by the employees as they go to and from work, setting forth the regular pay day as prescribed in subsection (a).

(e) The payment of wages or compensation of employees in the employments defined in this section shall be made in lawful money of the United States or by a good and valid negotiable check or draft, payable, on presentation thereof, at some bank or other established place of business, without discount, exchange or cost of collection, in lawful money of the United States, and not otherwise.

(f) In case an employee in any such employment shall be absent from the usual place of employment at the time such payment shall be due and payable, such employee shall be paid the wages or compensation within a reasonable time after making a demand therefor.

(g) Any employee who leaves or is discharged from employment shall be paid in full all wages or salary earned by such employee no later than the next regular pay day following the date of dismissal or voluntary leaving, or twenty-one (21) days following the date of discharge or voluntary leaving, whichever occurs last. No employer shall, by any means, secure an exemption from this subsection (g).

(h) Each employee must have a thirty (30) minute unpaid rest break or meal period if scheduled to work six (6) hours consecutively, except in workplace environments that by their nature of business provide for ample opportunity to rest or take an appropriate break. Such break shall not be scheduled during or before the first hour of scheduled work activity.

(i) A violation of this section is a Class B misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Further, every employer, partnership or corporation willfully violating any provision contained in subsections (a)-(h) is subject to a civil penalty of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) at the discretion of the commissioner, or the commissioner's designated representative. Each and

every infraction constitutes a separate and distinct offense. If the commissioner, or the commissioner's designated representative, determines that the violation was unintentional, there shall be a warning, in lieu of a penalty, on the first offense. On second or subsequent violations, the civil penalty is applicable and may be assessed at the discretion of the commissioner, or the commissioner's designated representative. It shall be at the sole discretion of the commissioner to elect to proceed either civilly or criminally upon any violation of this part; however, the employer shall not be charged both civilly and criminally for the same violation.

(j) The department of labor and workforce development shall enforce the provisions of this section. Each employer, during normal business hours, shall make available to inspectors of the department specific wage and payroll records of its employees maintained on the premises that are pertinent to a written complaint. Records that are maintained off the premises or inaccessible shall be made available to the inspectors on a timely basis as agreed upon by the inspector and the employer.

You have asked whether this statute, which is applicable only to employees of private employers, and which therefore draws a distinction between employees of private employers and federal, state, county and/or municipal employees, violates the equal protection clause of either the United States or Tennessee Constitutions. There appears to be no equal protection violation.

Both the United States and Tennessee Constitutions guarantee citizens the equal protection of the laws. *Brown v. Campbell County Bd. of Educ.*, 915 S.W.2d 407, 412 (Tenn. 1995); *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994). The equal protection provisions of the Tennessee Constitution provide the same protection as the equal protection clause of the United States Constitution; therefore, the rational basis review is the same. *State v. Price*, 124 S.W.3d 135, 137-38 (Tenn.Crim.App. 2003) *p.t.a. denied* (2003). A legislative body may make distinctions and treat various groups differently so long as the classification is not arbitrary. *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). A classification having some reasonable basis does not offend equal protection merely because the classification is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98, 105 (Tenn.Ct.App. 1995), *as modified on rehearing, p.t.a. denied* (Tenn. 1996). In such an instance, there is a presumption of validity.

“Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.” *Baxstrom v. Herold*, 383 U.S. 107, 113 (1966). In the absence of a suspect classification or an intrusion upon a fundamental constitutional right, review is limited to whether the classification is rationally related to a legitimate governmental interest. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994); *State v. Ray*, 880 S.W.2d 700, 706 (Tenn. Crim. App. 1993). A right is fundamental only when it is protected, either implicitly or explicitly, by a constitutional provision. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994).

Tenn. Code Ann. § 50-2-103 does not affect employees on the basis of any suspect

classification such as race, gender, or religion. Nor does the statute infringe upon any fundamental constitutional right. There is no constitutional right to be paid in a certain way or according to any particular administrative procedure. Nor is there a fundamental right on the part of private employees to have their wages and benefits governed by the exact same laws as those governing governmental employees' wages and benefits. The State therefore need only demonstrate a rational basis for the classification employed in Tenn. Code Ann. § 50-2-103, distinguishing private from public employees.

The rational basis standard is highly deferential to the State. In *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313-314, 113 S. Ct. 2096, 2101, 124 L.Ed.2d 211 (1993), the United States Supreme Court stated:

Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [citations omitted] Where there are 'plausible reasons' for Congress' action, 'our inquiry is at an end. [citation omitted] This standard of review is a paradigm of judicial restraint.' [citations omitted].

While the precise legislative intent in distinguishing public from private employees is not apparent from the plain language of Tenn. Code Ann. § 50-2-103, there are a number of possible reasonable bases for the distinction. For example, the statute, which has been amended and modified a number of times since the original 1917 legislation,<sup>1</sup> was likely intended to correct irregularities or abuses reported at the hands of private employers, rather than public employers. In addition, there are numerous separate and distinct laws and regulations governing the administration of wages and benefits for governmental employees. Due to the different laws and regulations applicable to public and private employees the General Assembly might well have chosen to enact separate laws for the payment and administration of wages and benefits to the two groups as well.

In any event, the burden is not on the State to show a rational basis, but rather lies with the challenger to prove that there is no rational basis. See *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 367, 121 S. Ct. 955, 964, 148 L.Ed.2d 866 (2001). Insofar as there are a number of "reasonably conceivable state of facts that could provide a rational basis for the classification," *F.C.C. v. Beach Communications, Inc., Id.*, we conclude that Tenn. Code Ann. § 50-2-103 does not infringe upon the equal protection provisions of the United States or Tennessee Constitutions.

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<sup>1</sup>See 1917 Pub. Acts, c. 32, §§ 1 to 6.

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