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## **Tennessee General Assembly Changes Standard for Summary Judgment**

As the most recent legislative session drew to a close, the Tennessee General Assembly passed legislation that overhauls Tennessee's standard for summary judgment. Two new laws significantly change Tennessee civil procedure and offer potential benefits to defendants in lawsuits, particularly employers. The bills now head to Governor Bill Haslam's desk, where, pending his approval, they will take effect on July 1, 2011.

### *Background to the New Legislation*

The story behind these changes begins in October 2008, when the Tennessee Supreme Court handed down *Hannan v. Alltel Publishing Company*, 270 S.W.3d 1 (Tenn. 2008). *Hannan* dealt with Tennessee's standard for summary judgment.

A summary judgment is a procedural mechanism by which a court can decide a lawsuit based on legal issues alone without the need for a case to go to trial. Defendants in particular benefit from the ability to obtain a summary judgment, because they can dispose of some or all issues in a lawsuit without having to risk going before a jury and without having to absorb the costs and inconvenience of trial preparation. Summary judgments are available, however, only when the important facts are not in dispute.

In *Hannan*, the Tennessee Supreme Court held that a defendant can obtain summary judgment either by negating an essential element of the plaintiff's claim or by showing that the plaintiff cannot prove his or her claim at trial. Unlike in federal courts, however, *Hannan* held that a defendant cannot merely point out that the plaintiff has failed to come up with the evidence needed to prove his or her claim. This requirement, which reflected Tennessee's greater deference to the jury, made it more difficult in Tennessee state courts for defendants to obtain summary judgment.

After *Hannan* was handed down, Tennessee courts continued to grant summary judgments from time to time. But many judges and trial attorneys concluded—as did Justice Koch in his dissenting opinion in *Hannan*—that *Hannan* had placed such a heavier burden on parties seeking a summary judgment that summary judgment was, in effect, relegated to the spectator seats and no longer a viable alternative to trial.

Moreover, the Tennessee Supreme Court, having driven a wider wedge between Tennessee and federal summary-judgment procedure, thereafter struggled to reconcile *Hannan* with well-settled procedures for litigating federal employment statutes. Whereas Tennessee courts had previously followed federal summary-judgment procedures in such cases, to maintain consistency post-*Hannan* the Tennessee Supreme Court found itself compelled to begin jettisoning these longstanding federal standards.

*General Change to Summary-Judgment Procedure:  
Senate Bill No. 1114 / House Bill No. 158*

With the passage of Senate Bill No. 1114 / House Bill No. 158, which will be codified at T.C.A. § 20-16-101, the Tennessee General Assembly has not only stopped this advance of *Hannan's* standard, but it has mandated that, beginning July 1, 2011, Tennessee courts must apply essentially the same summary-judgment procedure in Tennessee state courts as is applied in federal courts. In fact, the express purpose of the new law is to make Tennessee summary-judgment procedure more viable by conforming it with the federal standard.

Here is the crucial language in the new law: "[T]he moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it... [d]emonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." This language corresponds precisely with the federal standard, which was first stated in Justice Brennan's dissent in *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). The law clarifies that Tennessee summary-judgment procedure remains otherwise unchanged.

By passing this legislation, the Tennessee General Assembly has not only brought summary judgment back onto the playing field, but has also given it a starting role. That is to say, defendants in Tennessee state courts now have a more effective means than perhaps ever before of obtaining a judicial decision without having to go to trial. And plaintiffs, to be able to force cases to go to trial in Tennessee state courts, will now be under greater pressure to obtain through discovery evidence that substantiates their claims. This new law thus has a sweeping effect on Tennessee summary-judgment procedure in general.

#### *Summary Judgment in Employment Lawsuits: Senate Bill 940*

When it comes specifically to *Hannan's* effect on cases involving federal employment laws, the Tennessee General Assembly has passed a companion act specifically targeting summary judgment in these kinds of cases. This act, set forth in Senate Bill 940 and to be codified at T.C.A. § 4-21-311, unwinds the effect of *Hannan* on summary-judgment procedure in cases involving certain federal employment statutes. This act provides that, in cases involving employment discrimination and retaliation, the federal burden-shifting standard that was rejected by the Tennessee Supreme Court in cases after *Hannan*, is reinstated in Tennessee. This act takes effect immediately upon being signed by Governor Haslam.

Passage of this act is good news for Tennessee employers, for it makes it possible for employers to avoid having to go to trial when the plaintiff cannot meet its burden of proof at the summary-judgment level.

If you have any questions regarding these legislative changes, please feel free to contact the authors of this alert, [Bob Parsley](#) or [Junaid Odubeko](#) from [Miller & Martin PLLC's Litigation Department](#).

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