

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1057

BY: ROSS

AS INTRODUCED

AN ACT RELATING TO LABOR; ENACTING THE EMPLOYEE RIGHTS ACT; PROVIDING SHORT TITLE; STATING LEGISLATIVE FINDINGS AND INTENT; DEFINING TERMS; EXEMPTING CERTAIN TERMINATIONS FROM ACT; PREEMPTING CERTAIN STATE COMMON-LAW RIGHTS AND CAUSES OF ACTION; PROVIDING EXCEPTIONS; PROHIBITING CERTAIN TERMINATIONS; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF ACT; PROVIDING FOR CERTAIN RIGHTS AND PROCEDURES RELATED THERETO; AUTHORIZING THE COMMISSIONER OF LABOR TO ISSUE CERTAIN ORDERS; PROHIBITING CERTAIN DAMAGES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5a of Title 40, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 8 of this act shall be known and may be cited as the "Employee Rights Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5b of Title 40, unless there is created a duplication in numbering, reads as follows:

It is a finding of the Oklahoma Legislature that many employees in both the private and public sector have few remedies available to them for wrongful termination of employment. The power to arbitrarily discharge an employee without cause is contrary to the American idea of justice and fair play. The Oklahoma Legislature intends to remedy that injustice by enacting the Employee Rights Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5c of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Employee Rights Act:

1. "Commissioner" means the Commissioner of Labor;
2. "Constructive termination" means a voluntary quitting of employment by an employee due to an act or omission of the employee's employer which an objective, reasonable person would find so intolerable that quitting is the only reasonable response.

"Constructive termination" does not include a quitting due to an employer's refusal to promote the employee or improve the employee's wages, responsibilities, or other terms and conditions of employment;

3. "Department" means the Department of Labor;
4. "Employee" means an individual who works for a person for hire for an average of at least twenty (20) hours a week, including an individual employed in a supervisory, managerial, or confidential position. "Employee" does not include an individual employed as an independent contractor;

5. "Employer" means every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation and every state, county and municipal governmental entity employing ten (10) or more persons for the same private enterprise or governmental entity; and

6. "Termination" means a dismissal of an employee by an employer, or a layoff or suspension of an employee by an employer for more than six (6) months, or a failure to recall or rehire an employee, and includes resignation, retirement, elimination of a position, plant closing, or any cutback in the number of employees. "Termination" includes a constructive termination.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5d of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Employee Rights Act shall not apply to a termination that occurs before September 1, 1991.

B. An individual may contest a termination under the Employee Rights Act on grounds subject to other state or federal law prohibiting discrimination based on any or all of the following criteria:

- a. race,
- b. color,
- c. national origin,
- d. gender,
- e. sexual orientation,
- f. religion,
- g. age,
- h. handicap,
- i. political belief,
- j. marital status,
- k. similar categorical grounds.

C. An individual may contest a termination under the Employee Rights Act on grounds subject to other state or federal law prohibiting retaliation because of the filing of legal charges or claims or because of participation in legal proceedings.

D. Findings of fact and conclusions of law in proceedings pursuant to the Employee Rights Act are admissible in other proceedings and have preclusive effect to the extent allowable.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5e of Title 40, unless there is created a duplication in numbering, reads as follows:

The Employee Rights Act shall preempt all state common-law rights and causes of action, sounding in tort or contract or otherwise, where redress is sought on the basis of acts or facts arising out of the termination of employment of an individual brought by any person, whether the individual whose employment is terminated is an employee pursuant to the provisions of the Employee Rights Act or not, but does not preempt the state common-law contract rights and claims of the following individuals:

1. An individual who is covered pursuant to a collective bargaining agreement between an employer and a labor organization; or

2. An individual who is covered pursuant to an express written contract of employment having a specified duration or dealing specifically with that particular individual's employment rights; or

3. An individual who is a classified employee and covered pursuant to the Oklahoma Merit System of Personnel Administration.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5f of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer may not terminate the employment of an employee:

1. in violation of public policy expressed in any laws conferring rights or imposing duties on persons in this state; or

2. because an employee, in good faith, has reported facts to the appropriate representatives of the employer or to appropriate civil authorities, if the employee believes he is under a legal or ethical duty to report those facts or if a failure to report the

facts could adversely affect the safety or health of the employee, a fellow employee, or the general public.

B. Other than an employee who is covered pursuant to an express written contract of employment having a specified duration, an employer may not terminate the employment of an employee who has been employed for more than one (1) year if:

1. the employer fails to follow its own written policies or procedures, or its own explicit oral assurances that are justifiably relied upon by the employee; or

2. the employer does not have a good faith and reasonable belief that the termination is required by a legitimate business interest; or

3. the employer does not have good cause to terminate the employment of the employee.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5g of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of Labor shall administer and enforce the provisions of the Employee Rights Act.

B. Upon receipt by the Department of a signed complaint of violation of any of the provisions of the Employee Rights Act or of any rule or regulation promulgated pursuant to the Employee Rights Act, an authorized employee of the Department shall investigate the alleged violation and inform the complainant of the result of the investigation.

C. If upon investigation, or at the time the Commissioner determines that an employer is in violation of the Employee Rights Act or of any rule or regulation promulgated pursuant to the provisions of the Employee Rights Act, or any order of the Commissioner, the Commissioner shall give written notice to such employer specifying the cause of complaint. The notice shall require that the matters complained of be corrected immediately or

that the employer appear before the Commissioner at a time and place specified in the notice and answer the charges. The notice shall be delivered to the employer in accordance with the provisions of subsection F of this section.

D. The Commissioner shall give the notice specified by the provisions of subsection C of this section within ten (10) days of the filing of the report on the investigation of the violation if the Commissioner determines that the employer is in violation of the Employee Rights Act or of the rules and regulations promulgated by the Commissioner pursuant to the provisions of the Employee Rights Act.

E. The Commissioner shall afford the employer an opportunity for a fair hearing in accordance with the provisions of this section and the Administrative Procedures Act. On the basis of the evidence produced at the hearing, the Commissioner shall make findings of fact and conclusions of law and enter an order thereon. The Commissioner shall give written notice of such order to the employer and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Commissioner, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Commissioner which shall thereupon enter its order. The Commissioner may enter his order on the basis of such record, or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Commissioner shall become final and binding on all parties unless appealed to the district court as provided for in the Administrative Procedures Act within thirty (30) days after notice has been sent to the parties.

F. Except as otherwise provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Commissioner may be served on any person affected, personally or by

mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known address as shown by the files or records of the Commissioner or by publication if with due diligence service cannot be had personally or by mail. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Commissioner.

Every certificate or affidavit of service made and filed pursuant to this section shall be prima facie evidence of the facts therein stated. A certified copy of such certificate or affidavit shall have like force and effect.

G. The hearings authorized by this section shall be conducted by the Commissioner or the Commissioner may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Commissioner at any time and place. Such hearings shall be conducted in conformity with the Administrative Procedures Act and records shall be made as provided for in the Administrative Procedures Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.5h of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner may issue orders providing for the following remedies:

1. Sustainment of the termination;
2. Reinstatement of the employee;
3. Full or partial back pay for the former employee, with interest, but with a deduction of interim earnings or amounts earnable with reasonable diligence;
4. Additional liquidated damages in an amount not to exceed the amount of back pay awarded, if the Commissioner finds that the

employer's termination of employment was willful and lacking in good faith;

5. If reinstatement is not awarded, a severance payment equal to a continuation of the employee's pretermination pay at the rate paid immediately preceding the termination of employment for a period not to exceed two (2) years beyond the date of the award;

6. Reasonable attorney fees and costs to the prevailing party;

7. Exemplary damages, if the termination of employment was a malicious violation of public policy pursuant to subsection A of Section 6 of this act.

B. There is no right for violations of this act to compensatory damages or exemplary, except as provided for in paragraph 7 of subsection A of this section, or to damages for pain and suffering, emotional distress or defamation.

SECTION 9. This act shall become effective September 1, 1991.

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