

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2189

BY: PAULK

AS INTRODUCED

AN ACT RELATING TO LABOR; AMENDING 40 O.S. 1991, SECTIONS 402, 403, 410, 412, 414 AND 417, WHICH RELATE TO OCCUPATIONAL HEALTH AND SAFETY; MODIFYING DEFINITIONS; MODIFYING CERTAIN EMPLOYER DUTIES; PROVIDING CERTAIN PROHIBITIONS AGAINST RETALIATION; REQUIRING CERTAIN REPORT; REQUIRING CERTAIN SAFETY INSPECTIONS; MODIFYING CERTAIN LANGUAGE; MODIFYING CERTAIN OPERATIONAL PROCEDURES; DELETING AND MODIFYING CERTAIN LANGUAGE; PROVIDING CERTAIN REFERENCES; AMENDING 63 O.S. 1991, SECTION 1-323, WHICH RELATES TO VITAL STATISTICS RECORDS; REQUIRING THE TRANSMISSION OF CERTAIN STATISTICS; PROHIBITING CERTAIN CONDUCT BY AN EMPLOYER; PROVIDING PENALTIES; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 402, is amended to read as follows:

Section 402. As used in the Oklahoma Occupational Health and Safety Standards Act:

1. "Employer" means the state and all its political subdivisions which has in its employ one or more individuals performing services for it in employment; and

2. "Employee" means a person permitted to work by an employer in employment; and

3. "Place of employment" means the plant or premises in or about which an employee is permitted to work; and

4. "Department" means the Department of Labor; and

5. "Commissioner" means the Commissioner of Labor; and

6. "Division" means the Health and Safety Education and Training Division; and

7. "Standard" has the same meaning as, and includes, the words "regulation", "code", and "rule"; and

8. "National consensus standards" means any occupational safety or health standard adopted under a consensus method by a nationally recognized standards-producing organization; and

9. "Employment" includes all services for pay pursuant to a contract of hire ~~except service in agricultural or domestic employment and sand, gravel and quarry operations.~~

SECTION 2. AMENDATORY 40 O.S. 1991, Section 403, is amended to read as follows:

Section 403. (1) ~~Each employer shall establish and maintain conditions of work which are reasonably safe and healthful for employees. Each employer's safety devices and safeguards shall be such as are reasonably necessary to protect the life, health and safety of his employees~~ Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

(2) No person shall discharge, discriminate in any manner or take adverse personnel action against any employee because such employee has filed any complaint, or instituted or caused to be

instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or herself or others of any right affected by this act.

(3) Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injured or killed shall report the accident in writing to the Oklahoma City office of the Oklahoma Department of Labor, in a manner prescribed by the Department. The Commissioner of Labor may require such additional reports as he deems necessary, including the official death certificate from the Oklahoma State Department of Health.

(4) No rule or standard promulgated under this act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 410, is amended to read as follows:

Section 410. A. The Commissioner shall administer and enforce the provisions of the Oklahoma Occupational Health and Safety Standards Act.

1. It is not intended that the Oklahoma Occupational Health and Safety Standards Act be an issue or be involved in any labor dispute, or be used or asserted to advantage in collective bargaining by employer or employee, or by their respective representatives.

2. ~~The Commissioner shall cause to be inspected any plant or facility if he has reason to believe that the plant or facility has not complied with the rules, standards and regulations established by the Commissioner. No plant or facility shall be subject to the provisions of this subsection if it is entitled to credit on its~~

~~workers' compensation insurance rate, or would be entitled to such credit if it secured workers' compensation insurance coverage~~ place of employment to ensure the presence of a functioning safety and health program which meets the requirements of Title 40 of the Oklahoma Statutes and adopted and referenced standards.

B. Subject to the provisions of subsection A of this section, authorized employees of the Department may enter and inspect places of employment, including premises and buildings under construction, demolition or repair, at all reasonable times, in order to investigate such facts, conditions, practices or matters as deemed appropriate, and to determine if any person is violating any provisions of the Oklahoma Occupational Health and Safety Standards Act or any standard promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

C. Upon receipt by the Department of a signed complaint of violation of any of the provisions of the Oklahoma Occupational Health and Safety Standards Act or of any standard promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act, an authorized employee shall investigate the alleged violation and inform the complainant of the result of the investigation.

D. If upon inspection or investigation, or whenever the Commissioner determines ~~that a plant or facility is in a~~ a violation of the Oklahoma Occupational Health and Safety Standards Act or of any standard, rule, or regulation promulgated pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act, ~~or any order of the Commissioner~~ has occurred, the Commissioner shall give written notice to the alleged violator specifying the cause of ~~complaint~~ the determination. Such notice shall require that the ~~matters complained of~~ violations be corrected ~~immediately~~ and specify the terms of such correction or that the alleged violator appear before the Commissioner at a time and place specified in the notice and answer the charges. The notice shall be

delivered to the alleged violator in accordance with the provisions of subsection ~~#~~ G of this section.

~~E. The Commissioner shall give the notice specified by the provisions of subsection D of this section within ten (10) days of an inspection or investigation of the plant or facility if the Commissioner determines that the plant or facility is in violation of the Oklahoma Occupational Health and Safety Standards Act or of the rules and regulations promulgated by the Commissioner pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act.~~

~~F. The Commissioner or his designee shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of subsection ~~#~~ H of this section. 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 alleged violator 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 in Sections 301 through 326 of Title 75 of the Oklahoma Statutes within thirty (30) days after notice has been sent to the parties.~~

~~G. F. Whenever the Commissioner finds that an emergency exists requiring immediate action to protect the public health or welfare pursuant to the provisions of the Oklahoma Occupational Health and~~

Safety Standards Act, the Commissioner may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commissioner shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Commissioner shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the county in which the ~~plant or facility~~ place of employment is located within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. If compliance with said emergency order is not immediately taken, the Commissioner or his duly authorized employee may also request the district attorney of Oklahoma County, or the district attorney in any other district where service can be obtained, to file legal proceedings to enjoin the acts or practices contained in the emergency order to enforce immediate compliance with said order.

~~H.~~ G. Except as otherwise expressly 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 thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Commissioner. 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 as in this section provided shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

~~I.~~ H. The hearings authorized by this section may 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 and records made thereof as provided by the provisions of Sections 301 through 326 of Title 75 of the Oklahoma Statutes.

~~J.~~ I. The employer to whom a health and safety order is directed shall notify the Department of his compliance therewith ~~on~~ ~~a form provided to him~~ in a manner specified by the Department.

~~K.~~ ~~If an employer fails to comply with a health and safety order issued pursuant to this section, the Commissioner may grant an additional time for compliance therewith, modify, alter or dismiss the health and safety order or refer the matter to the Board.~~

SECTION 4. AMENDATORY 40 O.S. 1991, Section 412, is amended to read as follows:

Section 412. A. Any person, ~~firm, or corporation~~ failing to comply with any standard or interfering with, impeding or obstructing in any manner the administration of standards pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor.

B. Any person who violates any of the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

C. The Attorney General, on the request of the Commissioner, shall bring an action against any person violating any of the

provisions of the Oklahoma Occupational Health and Safety Standards Act or violating any order or determination of the Commissioner promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 414, is amended to read as follows:

Section 414. A. The Commissioner shall not assert enforcement jurisdiction pursuant to Section 401 et seq. of this title over any occupational safety or health issue with respect to which a federal standard has been issued pursuant to Section (6) of Public Law 91-596, also known as the Williams-Steiger Occupational Safety and Health Act of 1970.

B. The Commissioner shall provide competent occupational safety and health consultation, education and training for private and public employers in coordination with the State Department of Vocational and Technical Education and other available community resources.

C. Such consultation shall be provided on a priority basis to those private employers which, based on their certification, have occupational injury and illness rates exceeding the national average incidence rate for private employers of similar character.

D. No such consultation shall be provided except upon written request by the private employer.

E. Except when a condition of "imminent danger" exists, no reports, communication, or other information regarding safety and health hazards discovered by the Commissioner, pursuant to the administration of Section 401 et seq. of this title, or his representative in the workplaces of private employers, shall be reported to any enforcement authority whatsoever without the prior approval of the employer.

F. The Commissioner may, in providing services to private employers upon request, refer private employers for participation in

other safety and health consultation, education and training programs including but not limited to the programs authorized by Section 7(C)1 of Public Law 91-596.

G. The Commissioner may, upon request, refer qualifying private employers to programs operated by the U.S. Department of Labor for recognition or for exemption from inspection by the U.S. Department of Labor Occupational Safety and Health Administration.

H. The Commissioner shall certify successful participation in the occupational safety and health consultation, education and training program pursuant to the provisions of Section ~~4~~ 924.2 of ~~this act~~ Title 36 of the Oklahoma Statutes.

I. The Commissioner may promulgate such rules and regulations as may be necessary to implement the provisions of this section.

J. As used in this section:

1. "Private employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a state; and

2. "Imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 417, is amended to read as follows:

Section 417. (1) To assure the availability of accurate, timely statistical data concerning occupational health and safety in Oklahoma, all employers ~~having ten or more employees simultaneously employed~~ shall submit ~~annual~~ reports, on a form and in a manner prescribed by the Commissioner of Labor. Reports ~~shall not call for employees to be identified by name and~~ shall include only those injuries arising from employment within the State of Oklahoma.

(2) The Department may exempt from this requirement those classes of employers for whose operations adequate records of safety

experience are already available or the Department may exempt any employer from this requirement when, in the judgment of the Commissioner, the submission of annual reports by such employer is not necessary to carry out the purposes of this act and would be an undue burden upon such employer because of size, the nature of its operation or other special circumstances.

(3) The Department shall publish each year a detailed summary of the statistical data received from employers. A copy of such summary shall be available on request to each reporting establishment required to file reports of disabling work injuries and shall be made available to anyone having a legitimate interest in the subject matter of the report.

(4) Upon publication of the annual summary, the Commissioner of Labor shall provide to the State Insurance Fund Commissioner, upon request, the reports of each employer subject to the provisions of this section, and any derivation, tables or analysis generated by the Department of Labor in the preparation of such summary.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-323, is amended to read as follows:

Section 1-323. A. To protect the integrity of vital statistics records, to insure their proper use, and to insure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of, or to disclose information contained in, vital statistics records, or to copy or issue a copy of all or part of any such record except to the person himself or in his interest unless ordered to do so by a court of competent jurisdiction; provided, however, that death certificates shall be issued upon request and the payment of applicable fees as provided in Section 1-325 of this Code.

B. The State Commissioner of Health may authorize the disclosure of data contained in vital statistics records for research purposes. Beginning July 1, 1975, and at the end of each

quarter thereafter, the Health Department shall transmit to the Department of Public Safety a list of all registered deaths which have occurred during such period of time. Upon receipt of these names the Department shall use them solely to update their records and cancel the operator's license for those deceased individuals presently holding a valid Oklahoma motor vehicle operator's license.

C. Information in vital statistics records indicating that a birth occurred out of wedlock shall not be disclosed except as provided by regulation or upon order of a court of competent jurisdiction.

D. For the purpose of assisting in the location and recovery of missing children, information pertaining to birth certificates and requests for copies of birth certificates shall be provided to the Oklahoma State Bureau of Investigation pursuant to the provisions of Sections 2 and 3 of this act Section 1-323.1 of this title and Section 150.12A of Title 74 of the Oklahoma Statutes.

E. The Commissioner of Health shall authorize the transmission of death certificates to the Department of Labor for the purpose of the Department of Labor conducting a census of total occupational injuries and illnesses. The Department of Health shall transmit to the Department of Labor statistics of fatal occupational injuries that shall include the following:

1. Name of the deceased;
2. Date of death;
3. Sex;
4. Race;
5. Age;
6. Birth date;
7. Social security number;
8. Whether an autopsy was conducted;
9. Month of the accident; and
10. Whether decedent was of Hispanic origin.

F. The Department of Labor shall be required to protect the integrity of the vital statistics records to the same extent required of the Department of Health pursuant to this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any employer or agent of an employer whether public or private to engage in reckless conduct by allowing or creating a situation of unreasonable risk and probability of death or great bodily harm to an employee, while such employee is engaged at work, and by demonstrating a conscious disregard for the safety of others.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than one (1) year nor more than ten (10) years, and by the imposition of a fine of not more than Twenty Thousand Dollars (\$20,000.00).

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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