

SHORT TITLE: Labor; allowing actions against certain employers; regulating safety plans; addressing certain amusement ride matters; expanding employee assistance options; and providing for family leave. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1297

By: Long

AS INTRODUCED

An Act relating to labor; amending Section 10, Chapter 391, O.S.L. 1997, 40 O.S. 1991, Sections 165.7, as amended by Section 3, Chapter 263, O.S.L. 1993, 165.9, Section 12, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as amended by Section 12, Chapter 391, O.S.L. 1997, 461, and 467, Section 11, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1997, Sections 89, 165.7, 425, and 561), which relate to enforcement of provisions on protection of child labor, employment of women, wage claims, recovery of wages, damages, hazardous industries list, definitions pertaining to amusement rides, liability insurance, and employee drug and alcohol assistance; increasing administrative fine; requiring certain hearings; allowing certain actions by designee of Commissioner of Labor; authorizing Commissioner of Labor to require certain workplace safety plans; authorizing Commissioner of Labor to order cessation of operations under certain circumstances; modifying definition; increasing required liability insurance coverage; prohibiting certain discharge or adverse employment action and making exceptions; requiring certain optional assistance programs; requiring certain employers grant family leave to certain employees under certain circumstances; requiring

certain payment for family leave taken under certain circumstances; defining terms; requiring continuation of certain benefits; authorizing employer to require certain employee contributions; requiring certain notice to employer; deleting superfluous language; eliminating gender distinctions; repealing 40 O.S. 1991, Section 35, which relates to payment of fees and fines to State Treasury; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 10, Chapter 391, O.S.L. 1997 (40 O.S. Supp. 1997, Section 89), is amended to read as follows:

Section 89. A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title shall be liable for an administrative fine, to be assessed by the Commissioner of Labor or the Commissioner's designee, of not more than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) for each offense. The maximum administrative fine shall not exceed ~~One Thousand Dollars (\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving

Fund, created pursuant to Section 141.19 of ~~Title 40 of the Oklahoma Statutes~~ this title.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title. The warning shall cite the violation committed by the person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with

the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 165.7, as amended by Section 3, Chapter 263, O.S.L. 1993 (40 O.S. Supp. 1997, Section 165.7), is amended to read as follows:

Section 165.7 A. The Commissioner of Labor shall enforce and administer the provisions of this act and in any case where a civil action may be brought for the collection of a wage claim, the Commissioner of Labor may provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted according to the Administrative Procedures Act.

B. In any case when the Commissioner has received a wage complaint, the Commissioner may seek collection of such claim through administrative proceedings in a manner provided in this section. The Commissioner may join in a single administrative proceeding any number of wage claims against the same employer. The Commissioner shall serve upon the employer an order of determination directing the employer to pay to the Commissioner the amount of the wage claim and any penalty amounts. Service shall be made by regular mail to the employer's last-known address. The order of determination shall include:

1. A reference to the particular sections of the statutes or rules involved;

2. A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

3. A statement that the employer within twenty (20) days after receipt of the order of determination must pay in full the wage claim and any penalties assessed ~~on appeal to district court~~; and

4. A statement that unless a written request for ~~reconsideration~~ an administrative hearing is received by the Commissioner ~~or the order is appealed to district court~~ within the time specified, the order of determination shall become final.

C. Upon failure of the employer to pay the amount specified in the order of determination or to request ~~reconsideration or appeal to district court~~ an administrative hearing, the order of determination shall become final.

D. ~~A hearing~~ Hearings conducted pursuant to this section shall be held in accordance with the applicable provisions of the Administrative Procedures Act by the Commissioner or the Commissioner's designee. The Commissioner shall adopt rules for such ~~hearing~~ hearings. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.

E. Final administrative orders issued in a wage claim proceeding are subject to appeal pursuant to the Administrative Procedures Act.

F. When an order under this section ~~becomes final by operation of law or an appeal, and the amount due~~ is not paid within twenty (20) days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the county clerk's lien record. The order may be collected as any other money judgment.

G. The remedies provided by Sections 165.1 through 165.11 of this title shall be additional to and not in substitution for and in no manner impair other remedies. Additionally, one or more individuals who are aggrieved by violation of any provision of Sections 165.1 through 165.11 of this title shall be entitled to bring an action ~~in his or their own name~~ to enforce the provisions of such sections.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 165.9, is amended to read as follows:

Section 165.9 A. ~~Action~~ An action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated ~~for such wages~~. Any employee, or ~~his~~ employee's representative, shall have the power to settle and adjust ~~his~~ a claim for the employee's unpaid wages.

B. The court, or the Commissioner of Labor or the Commissioner's designee, in any action brought under this section may, in addition to any judgment awarded to the plaintiff or plaintiffs, defendant or defendants, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees.

SECTION 4. AMENDATORY Section 12, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as amended by Section 12, Chapter 391, O.S.L. 1997 (40 O.S. Supp. 1997, Section 425), is amended to read as follows:

Section 425. A. The Commissioner of Labor shall for each calendar year approve a list of the most hazardous industries in the state by Standard Industrial Classification Code based on the most current data available from the Federal Occupational Health and Safety Administration. In computing level of hazard the Commissioner of Labor shall include the following factors:

1. Total injuries;
2. Fatalities;
3. Number of fatal incidents;
4. High experience modifiers; and

5. Other factors as determined by the Commissioner to indicate a high hazard industry.

B. The Commissioner of Labor shall approve the annual list within forty-five (45) days after receipt of national and state incident rate of nonfatal occupational injuries by industry data from the United States Department of Labor, Bureau of Labor Statistics. The list shall be transmitted to the Insurance Commissioner for distribution to insurance companies providing workers' compensation insurance or an equivalent product in this state and to the State Insurance Fund.

C. The Commissioner of Labor shall by rule establish criteria for determining what constitutes an adequate workplace safety plan and shall have the authority to require workplace safety plans, review them, reject those that do not meet the established criteria, require by a date certain the preparation of plans that do meet the criteria, and order cessation of operations for lack of workplace safety plans that meet the criteria.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 461, is amended to read as follows:

Section 1. As used in ~~Sections 1 through 10 of this act~~ Section 461 et seq. of this title:

1. "Amusement ride" means a ~~mechanical~~ contrivance or device which carries ~~or,~~ conveys, or propels passengers along, around, or over a fixed or restricted route ~~or,~~ course, or trajectory for the purpose of giving its passengers amusement. Amusement ride does not include the operation of articles of husbandry incidental to any agricultural operation or the operation of amusement devices of a permanent nature which are subject to building regulations issued by cities or counties and existing applicable safety orders;

2. "Operator" or "owner" means a person who owns or controls or has the duty to control the operation of an amusement ride and

includes the state and every state agency, and each county, city and all private or public corporations and political subdivisions;

3. "Certificate of inspection" means a certificate issued by the Commissioner of Labor which indicates that an inspection of the ride has been performed pursuant to rules ~~and regulations~~ adopted by the Department of Labor; and

4. "Permanent amusement park ride" means an amusement ride which is stationary or cannot be easily moved and which is located on the same premises on which it is operated for no less than ninety (90) days.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 467, is amended to read as follows:

Section 467. No person shall operate an amusement ride ~~unless at the time there exists~~ without having in force a policy of insurance in an amount of not less than ~~Three Hundred Thousand Dollars (\$300,000.00)~~ One Million Dollars (\$1,000,000.00) insuring the owner or operator against liability for injury suffered by bystanders or persons riding the amusement ride.

SECTION 7. AMENDATORY Section 11, Chapter 355, O.S.L. 1993 (40 O.S. Supp. 1997, Section 561), is amended to read as follows:

Section 561. A. Drug or alcohol testing governed by the Standards for Workplace Drug and Alcohol Testing Act shall not be requested or required of an employee by an employer unless the employer provides an employee assistance program. For the purposes of this section, "employee assistance program" means an in-house or contracted program which at a minimum provides drug and alcohol dependency evaluation and referral services for substance abuse counseling, treatment or rehabilitation.

B. No employer shall discharge or take other adverse employment action against any employee unless the employee has tested positive for drugs under the Standards for Workplace Drug and Alcohol Testing

Act at least two times within the preceding year or, in the case of post-rehabilitation testing, within the preceding two (2) years; and further provided, that this requirement shall not apply to post-accident testing where it is determined that the employee was under the influence of drugs or alcohol at the time of the work-related injury or damage to the employer's property.

C. Any employee assistance program under the Standards for Workplace Drug and Alcohol Testing Act which offers or requires participation in a twelve-step or religiously-based treatment program shall offer at least one alternative treatment program that is not twelve-step or religiously based.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 165.3b of Title 40, unless there is created a duplication in numbering, reads as follows:

An employer who, in any consecutive twelve-month period, is found liable for five or more claims for the non-payment of wages due under Section 165.1 et seq. of Title 40 of the Oklahoma Statutes may, in addition to any other penalty prescribed by law, be assessed a civil fine by the Commissioner of Labor or the Commissioner's designee of not less than the sum of the unpaid wages nor more than Ten Thousand Dollars (\$10,000.00) to be deposited to the Department of Labor Revolving Fund created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section:

1. "Emergency" means circumstances where the seven day notice required under subsection D of this section could have a significant adverse impact on a family member;

2. "Employee" means a person who has been continuously employed by the same employer for a period of one (1) year for an average of at least thirty (30) hours per week;

3. "Employer" means every individual, partnership, firm, association, corporation, limited liability company, or the receiver, trustee, or successor of such that employs fifteen or more individuals for an average of at least thirty (30) hours per week each;

4. "Family leave" means an employee's leave of absence from employment to attend to the needs of a family member for any of the following purposes:

- a. medical emergency,
- b. illness,
- c. routine medical or dental appointment, or
- d. for a family member less than eighteen (18) years of age, pre-school or school activities or parent-teacher conferences; and

5. "Family member" means an employee's child, stepchild, foster child, or ward who lives with the employee, or the employee's spouse or parent, or the parent of the employee's spouse.

B. Each employee shall, upon request, be allowed up to twenty-four (24) hours of family leave per year in increments of not less than two (2) hours each. At the discretion of the employee, family leave taken shall be paid leave deducted from any vacation, sick, or other paid leave which the employee has accrued.

C. The employer shall continue employment benefits for the duration of the leave at the level and under the conditions that coverage would be provided if the employee were on duty during the employee's regular duty hours for the duration of the leave. The employer may require that the employee contribute to the cost of the benefits during the hours family leave is taken at the existing rate of employee contribution.

D. An employee shall make a reasonable attempt to schedule appointments for which leave may be taken under this section outside of regular work hours. In order to take leave under this section, an employee shall provide the employer with the earliest possible notice, but in no case later than seven (7) days before leave is to be taken except in the case of an emergency.

SECTION 10. REPEALER 40 O.S. 1991, Section 35, is hereby repealed.

SECTION 11. Sections 4, 5, 6, and 7 of this act shall become effective November 1, 1998.

SECTION 12. 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.

46-2-2179

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