

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1121

By: Maddux

AS INTRODUCED

An Act relating to the Oklahoma Personnel Act; amending 74 O.S. 1991, Section 841.7, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 406, O.S.L. 1997 (74 O.S. Supp. 1998, Section 840-2.5), which relates to disciplinary actions; adding and modifying definitions; modifying disciplinary action procedures; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 841.7, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 406, O.S.L. 1997 (74 O.S. Supp. 1998, Section 840-2.5), is amended to read as follows:

Section 840-2.5 A. ~~For purposes of~~ As used in this section,
"agency":

1. "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand or admonishment in retaliation for engagement in a protected activity;

2. "Agency" means any office, department, commission or institution of the state government;

3. "Official" means an officer or employee of any office, department, commission or institution of the state government;

4. "Probation" means that period of time after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time the performance and conduct of the official is being monitored by the employing agency for further violations of the Oklahoma Personnel Act; and

5. "Protected activity" means:

- a. disclosing public information,
- b. reporting any violation of state or federal law, rule or policy; a gross waste of public funds; or a substantial and specific danger to public health or safety,
- c. reporting such information without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command,
- d. discussing the operations and functions of the agency, either specifically or generally, with the Governor or members of the Legislature, or
- e. filing an appeal with the Oklahoma Merit Protection Commission.

"Protected activity" shall not include the disclosure of information which the employee knows to be false; the knowing and willful disclosure of information with reckless disregard for its truth or falsity; or the knowing disclosure of information confidential pursuant to law.

B. No officer or employee Except as provided in this section, no official of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

- ~~1. Disclosing public information;~~
- ~~2. Reporting any violation of state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;~~
- ~~3. Reporting such information without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command;~~

~~4. Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature or others.~~

~~B. Any person who has authority to take, direct others to take, recommend or approve any personnel action shall not take or fail to take any personnel action with respect to any employee for filing an appeal with the Oklahoma Merit Protection Commission. This section shall not be construed as prohibiting disciplinary action of an employee who discloses information which the employee:~~

~~1. Knows to be false;~~

~~2. Knowingly and willfully discloses with reckless disregard for its truth or falsity; or~~

~~3. Knows to be confidential pursuant to law engaging in a protected activity.~~

C. Each state agency, department, institution, board and commission in all branches of state government, including all institutions in The Oklahoma State System of Higher Education, shall prominently post a copy of this section of law in locations where it can reasonably be expected to come to the attention of all employees.

~~D. As used in this section:~~

~~1. "Disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work; and~~

~~2. "Probation" means that period of time, after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time that officer's or employee's performance and conduct is being monitored by the employing agency for further violations of the Oklahoma Personnel Act.~~

~~E. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission action in the District Court of Oklahoma County against an official within sixty (60) days of the alleged disciplinary action. The Oklahoma Merit Protection Commission shall promulgate rules to establish procedures for the conduct of investigations. If, after investigation, the Executive Director determines a violation of this section may have occurred, the Executive Director shall appoint a hearing examiner to hear the case as provided for in Section 840-6.6 of this title.~~

E. An official shall be found in violation of this section if the employee or former employee establishes by clear and convincing evidence the official knowingly and willfully disciplined the employee for engaging in a protected activity. However, the official shall not be in violation of this section if the official establishes, by a preponderance of the evidence:

1. That the interest of the agency in promoting the efficiency of the public services it performs outweighs the interest of the employee in engaging in the protected activity; or

2. That the official would have taken the disciplinary action regardless of the engagement in the protected activity of the employee.

~~F. If, after the hearing, it is determined adjudged that a violation has occurred, the Commission or hearing examiner District Court shall order corrective action pursuant to Section 841.15 of this title. Such corrective action shall include including, but not be limited to, suspension without pay, demotion, or discharge. In the case of a discharge, the official shall be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years. The District Court, in its discretion, may order the official reinstated to the former position of the official, reimbursed for~~

back pay and accrued benefits, and have the record expunged of the disciplinary action arising from the protected activity. Any employee official found to have violated this section of law, in addition to being suspended or demoted, shall be placed on probation for six (6) months. ~~Such~~ The probation shall commence on the date of the final decision ~~filed by the Commission~~ issued by the District Court. Any employee official who is ~~determined~~ adjudged to have violated the Oklahoma Personnel Act, ~~Section 840-1.1 et seq. of this title,~~ while serving said probation shall forfeit ~~his~~ the position of the official for one (1) year. ~~Any employee, supervisor or appointing authority of any state agency, whether subject to the provisions of the Merit System of Personnel Administration or in unclassified service, who knowingly and willfully violates the provisions of this section shall forfeit his position and be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years, and the Merit Protection Commission shall also refer the matter to the local district attorney for action pursuant to Section 840-6.9 of this title. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act, Sections 308a through 323 of Title 75 of the Oklahoma Statutes.~~

G. An official may request legal representation in an action brought against the official under this section pursuant to Section 20f of this title.

SECTION 2. This act shall become effective July 1, 1999.

SECTION 3. 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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