

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1985

By: Erwin

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Personnel Act; amending 74 O.S. 2001, Sections 840-2.5 and 840-6.3, which relate to discipline; adding short title; stating purpose; modifying definition; modifying circumstances under which disciplinary action may be taken; modifying posting requirement; adding definition; deleting requirement that certain matters be forwarded to the local district attorney; deleting obsolete language; specifying that rules promulgated by the Oklahoma Merit Protection Commission concerning discipline contain certain provisions; making exceptions; 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. 2001, Section 840-2.5, is amended to read as follows:

Section 840-2.5 A. This section shall be known and referred to as the "Whistleblower Act". The purpose of the Whistleblower Act is to encourage and protect the reporting of wrongful governmental activities and to deter retaliation against state employees for reporting those activities.

B. For purposes of this section, "agency" means any office, department, commission or institution of the state government, except institutions within The Oklahoma State System of Higher Education and the judicial department of state government. No officer or employee 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 to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;

2. Reporting ~~any~~ a violation of the Oklahoma Constitution, 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~~ other persons in a position to investigate or initiate corrective action; or

4. Taking any of the above actions without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command.

~~B.~~ C. 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 or testifying on behalf of any person 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.

~~C.~~ D. 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 or publish a copy of this section of law in

locations where it can reasonably be expected to come to the attention of all employees.

~~D.~~ E. 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; and

3. "Mismanagement" means fraudulent activity, criminal misuse of funds or abuse or violation of a well-established, articulated, clear and compelling public policy.

~~E.~~ F. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission within sixty (60) days of the alleged ~~disciplinary action violation~~. 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.

~~F.~~ G. If, after the hearing, it is determined that a violation has occurred, the Commission or hearing examiner shall order corrective action pursuant to Section ~~841.15~~ 840-6.6 of this title. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. Any employee 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 probation shall commence on the date of the final decision filed by the Commission. Any employee who is determined 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 person 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~~ the position of the person 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.~~

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-6.3, is amended to read as follows:

Section 840-6.3 A. Each appointing authority shall establish written policies and procedures for progressive discipline of employees according to the rules established by the Oklahoma Merit Protection Commission. ~~Sections 530:10-11-111 and 10-11-113 of the Oklahoma Administrative Code promulgated by the Administrator of the Office of Personnel Management are hereby transferred to the Oklahoma Merit Protection Commission and shall remain in effect until duly amended by the Commission.~~

B. Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Typically, penalties range

from verbal warning to discharge, with intermediate levels of a written warning, suspension or demotion. Absent mitigating circumstances, repetition of an offense is accompanied by a generally automatic progression to the next higher level of discipline.

C. Each supervisor shall be responsible for applying discipline when necessary that is progressive in nature, appropriate for the offense, and equitable. Each supervisor shall consider aggravating or mitigating circumstances when determining the proper disciplinary action. Each supervisor shall use prompt, positive action to avoid more serious disciplinary actions. The Oklahoma Merit Protection Commission shall promulgate rules to establish the requirements and guidelines for discipline.

D. The rules shall prohibit supervisors from considering incidents that occurred longer than two (2) years prior to an offense for purposes of progressive discipline only; except that penalties imposed pursuant to the progressive discipline system authorized by this section shall be limited to offenses of a similar or identical nature to the prior offense. The prohibition shall not apply to the incidents involving the following types of conduct:

1. Criminal activity;
2. Sexual misconduct and/or harassment;
3. Racially discriminatory behavior and/or harassment;
4. Threats of violence against others;
5. Drug and/or alcohol use or abuse;
6. Safety violations; or
7. Other conduct which threatens the safety and/or welfare of other employees in the workplace.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. 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.

48-2-8829

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6/12/15