

CS for EHB 1985

1 THE STATE SENATE
2 Monday, April 8, 2002

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1985

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1985 - By: ERWIN,
7 TIBBS, BALKMAN, CARGILL and GRAVES of the House and HERBERT of the
8 Senate.

9 [Oklahoma Personnel Act - amending 74 O.S., Sections 840-
10 2.5 and 840-6.3 - discipline - district attorney - Oklahoma
11 Merit Protection Commission - effective date -
12 emergency]

13 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-2.5, is
14 amended to read as follows:

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

20 B. For purposes of this section, "agency" means any office,
21 department, commission or institution of the state government. No
22 officer or employee of any state agency shall prohibit or take
23 disciplinary action against employees of such agency, whether
24 subject to the provisions of the Merit System or in unclassified
25 service, for:

1 1. Disclosing public information to correct what the employee
2 reasonably believes evidences a violation of the Oklahoma
3 Constitution or law or a rule promulgated pursuant to law. No
4 conviction of any person shall be required to afford protection for
5 any employee under this act;

6 2. Reporting ~~any~~ a violation of the Oklahoma Constitution,
7 state or federal law, rule or policy; mismanagement; a gross waste
8 of public funds; an abuse of authority; or a substantial and
9 specific danger to public health or safety;

10 3. ~~Reporting such information without giving prior notice to~~
11 ~~the employee's supervisor or anyone else in the employee's chain of~~
12 ~~command;~~

13 4. Discussing the operations and functions of the agency,
14 either specifically or generally, with the Governor, members of the
15 Legislature or ~~others~~ other persons in a position to investigate or
16 initiate corrective action; or

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

20 ~~B.~~ C. Any person who has authority to take, direct others to
21 take, recommend or approve any personnel action shall not take or
22 fail to take any personnel action with respect to any employee for
23 filing an appeal or testifying on behalf of any person filing an

1 appeal with the Oklahoma Merit Protection Commission. This section
2 shall not be construed as prohibiting disciplinary action of an
3 employee who discloses information which the employee:

- 4 1. Knows to be false;
- 5 2. Knowingly and willfully discloses with reckless disregard
6 for its truth or falsity; or
- 7 3. Knows to be confidential pursuant to law.

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

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

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

20 2. "Probation" means that period of time, after an officer or
21 employee is found to have violated the provisions of this section
22 and corrective action is ordered, during which time that officer's
23 or employee's performance and conduct is being monitored by the

1 employing agency for further violations of the Oklahoma Personnel
2 Act; and

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

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

15 ~~F.~~ G. If, after the hearing, it is determined that a violation
16 has occurred, the Commission or hearing examiner shall order
17 corrective action pursuant to Section ~~841.15~~ 840-6.6 of this title.
18 Such corrective action shall include, but not be limited to,
19 suspension without pay, demotion or discharge. Any employee found
20 to have violated this section of law, in addition to being suspended
21 or demoted, shall be placed on probation for six (6) months. Such
22 probation shall commence on the date of the final decision filed by
23 the Commission. Any employee who is determined to have violated the

1 Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, while
2 serving said probation shall forfeit ~~his~~ the position of the person
3 for one (1) year. Any employee, supervisor or appointing authority
4 of any state agency, whether subject to the provisions of the Merit
5 System of Personnel Administration or in unclassified service, who
6 knowingly and willfully violates the provisions of this section
7 shall forfeit ~~his~~ the position of the person and be ineligible for
8 appointment to or employment in a position in state service for a
9 period of at least one (1) year and no more than five (5) years, ~~and~~
10 ~~the Merit Protection Commission shall also refer the matter to the~~
11 ~~local district attorney for action pursuant to Section 840-6.9 of~~
12 ~~this title.~~ The decision of the Commission in such cases may be
13 appealed by any party pursuant to Article II of the Administrative
14 Procedures Act, ~~Sections 308a through 323 of Title 75 of the~~
15 ~~Oklahoma Statutes.~~

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

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

1 ~~Oklahoma Merit Protection Commission and shall remain in effect~~
2 ~~until duly amended by the Commission.~~

3 B. Progressive discipline is a system designed to ensure not
4 only the consistency, impartiality and predictability of discipline,
5 but also the flexibility to vary penalties if justified by
6 aggravating or mitigating conditions. Typically, penalties range
7 from verbal warning to discharge, with intermediate levels of a
8 written warning, suspension or demotion. Absent mitigating
9 circumstances, repetition of an offense is accompanied by a
10 generally automatic progression to the next higher level of
11 discipline.

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

20 D. The rules shall prohibit supervisors from considering
21 incidents that occurred longer than five (5) years prior to an
22 offense for purposes of progressive discipline only; except that
23 penalties imposed pursuant to the progressive discipline system

1 authorized by this section shall be limited to offenses of a similar
2 or identical nature to the prior offense. The prohibition shall not
3 apply to the incidents involving the following types of conduct:

- 4 1. Criminal activity;
- 5 2. Sexual misconduct and/or harassment;
- 6 3. Racially discriminatory behavior and/or harassment;
- 7 4. Threats of violence against others; or
- 8 5. Drug and/or alcohol use or abuse that affects employee
9 performance.

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

11 SECTION 4. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14

1 be in full force from and after its passage and approval.

2 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT OPERATIONS & AGENCY
3 OVERSIGHT, dated 4-1-02 - DO PASS, As Amended.