THE STATE SENATE
Wednesday, February 23, 2005

Senate Bill No. 727

SENATE BILL NO. 727 - By: BASS of the Senate and WORTHEN of the House.

An Act relating to labor; amending 40 O.S. 2001, Section 165.7, which relates to administrative proceedings; providing for administrative wage claim hearings; stating purpose; authorizing The Department of Labor to participate in certain hearings; providing for order of proceedings at certain hearings; providing for certain motions and grounds for such motions; providing for certain waiver of appearance; providing that such waiver does not preclude certain involvement in certain litigation or proceedings; providing for certain burden of proof; providing for certain evidence and witnesses; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, 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 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, the order of determination shall become final.

D. A hearing 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. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.

E. In addition to the other provisions of this section, the following shall apply to a wage claim hearing:

1. The Commissioner, or the designee of the Commissioner sitting as an Administrative Law Judge, shall conduct administrative wage claim hearings which shall be informal, with the purpose of dispensing speedy justice between the parties to ensure a full and complete hearing on the merits;

2. The Department of Labor is entitled to participate in all administrative wage claim hearings;

3. The counsel of the Department of Labor, in defense of an issued order of determination, shall proceed first at the administrative wage claim hearing; thereafter, the wage claimant may present additional evidence at the administrative wage claim hearing;

4. At the conclusion of the presentation of evidence at the administrative wage claim hearing by the counsel of the Department of Labor and the wage claimant, the Commissioner, or the designee of the Commissioner sitting as an Administrative Law Judge, may entertain a motion for judgment or dismissal, which is the equitable

equivalent of a demurrer to the evidence, on the grounds that the counsel of the Department of Labor or the wage claimant, or both, have failed to meet the primary burden of proof in the wage claim hearing, which shall be substantial, competent evidence which is more than a scintilla but less than a preponderance of the evidence;

5. The right of the Department of Labor to appear and defend the earlier issued order of determination is absolute; however, the counsel of the Department of Labor may waive appearance at the hearing solely at the discretion of the counsel of the Department of Labor. An election by the Department of Labor to waive appearance at the hearing does not preclude the involvement of the Department of Labor in future litigation or any proceedings provided for in Section 317 et seq. of Title 75 of the Oklahoma Statutes;

6. The employer shall have the burden of proof of substantial, competent evidence which is more than a scintilla but less than a preponderance for all affirmative defenses to the wage claim;

7. The wage claimant and the employer shall have the right to offer evidence on their behalf, and the Commissioner, or the designee of the Commissioner sitting as an Administrative Law Judge, may call and question such witnesses and order the production of and admit into evidence such documents as deemed appropriate in the discretion of the Commissioner, or the designee of the Commissioner sitting as an Administrative Law Judge.

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

~~F.~~ G. 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.~~ H. 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, her or their own name to enforce the provisions of such sections.

SECTION 2. This act shall become effective November 1, 2005.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-14-05 - DO PASS, As Coauthored.