STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2576 By: Hamilton

AS INTRODUCED

An Act relating to labor; creating Victims Economic Security and Safety Act; stating purpose; defining terms; providing for leave requirements for certain employees; requiring certain notice; providing for confidentiality; providing for group health plan coverage for certain employees; specifying unlawful acts; providing for certain leave; providing certain employment protections; defining terms; requiring Labor Commissioner to perform certain acts; providing for certain findings; providing for Oklahoma Attorney General intervention in certain circumstances; providing for damages; requiring posting of certain information; providing for certain rights of certain employees; providing for severability; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Victims Economic Security and Safety Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 91 of Title 40, unless there is created a duplication in numbering, reads as follows:

The purposes of this act are:

1. To promote the interest of the state in reducing domestic violence, dating violence, sexual assault, and stalking by enabling victims of domestic or sexual violence to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize the physical and emotional injuries from domestic or

sexual violence, and to reduce the devastating economic consequences of domestic or sexual violence to employers and employees;

2. To address the failure of existing laws to protect the employment rights of employees who are victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence, by protecting the civil and economic rights of those employees, and by furthering the equal opportunity of women for economic self-sufficiency and employment free from discrimination;

3. To address the failure of laws to address the employment rights of pregnant women; and

4. To accomplish the purposes described in paragraphs 1 through 3 of this section by entitling employed victims of domestic or sexual violence to take unpaid leave to seek medical help, legal assistance, counseling, safety planning, and other assistance without penalty from their employers.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 92 of Title 40, unless there is created a duplication in numbering, reads as follows:

In this act, except as otherwise expressly provided:

1. "Commerce" includes trade, traffic, commerce, transportation, or communication; and "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes "commerce" and any "industry affecting commerce";

2. "Commissioner" means the Commissioner of Labor;

3. "Course of conduct" means a course of repeatedly maintaining a visual or physical proximity to a person or conveying oral or written threats, including threats conveyed through electronic communications, or threats implied by conduct;

4. "Department" means the Department of Labor;

5. "Domestic or sexual violence" means domestic violence, sexual assault, or stalking;

6. "Domestic violence" includes acts or threats of violence, not including acts of self-defense, as defined by the Protection from Domestic Abuse Act, sexual assault, or death to the person, or the family or household member of the person, if the conduct causes the specific person to have such distress or fear;

7. "Electronic communications" includes communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager;

8. "Employ" means to permit to work;

9. “Employee” means any person employed by an employer and includes a person employed on a full- or part-time basis, or as a participant in a work assignment as a condition of receipt of federal or state income-based public assistance;

10. "Employer" means any of the following:

a. the state or any agency of the state,

b. any unit of local government or school district, or

c. any person that employs at least one hundred employees;

11. "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, maternity leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan". "Employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan;

12. "Family or household member" means a spouse, parent, son, daughter, and persons jointly residing in the same household;

13. "Parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. "Son” or “daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age, or is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability;

14. "Perpetrator" means an individual who commits or is alleged to have committed any act or threat of domestic or sexual violence;

15. "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons;

16. "Public agency" means the government of the state or political subdivision thereof, any agency of the state or of a political subdivision of the state, or any governmental agency;

17. "Public assistance" includes cash, food stamps, medical assistance, housing assistance, and other benefits provided on the basis of income by a public agency or public employer;

18. "Reduced work schedule" means a work schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

19. "Repeatedly" means on two or more occasions;

20. "Sexual assault" means any of the following conduct:

a. rape, or rape by instrumentation, as defined in Sections 1111, 1111.1 and 1114 of Title 21 of the Oklahoma Statutes, or

b. forcible sodomy, as defined in Section 888 of Title 21 of the Oklahoma Statutes;

21. "Stalking" means any conduct pursuant to Section 1173 of Title 21 of the Oklahoma Statutes;

22. "Victim" or "survivor" means an individual who has been subjected to domestic or sexual violence; and

23. "Victim services organization" means a nonprofit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center, an organization carrying out a domestic violence program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 93 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. 1. An employee who is a victim of domestic or sexual violence, has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence, or is a pregnant woman may take unpaid leave from work to address domestic or sexual violence by:

a. seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's family or household member,

b. obtaining services from a victim services organization for the employee or the family or household member of the employee,

c. obtaining psychological or other counseling for the employee or the family or household member of the employee,

d. participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the family or household member of the employee from future domestic or sexual violence or ensure economic security,

e. seeking legal assistance or remedies to ensure the health and safety of the employee or the family or household member of the employee, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence, or

f. in the case of a pregnant woman, seeking medical attention for the pregnancy.

2. Subject to subsection C of this section, an employee shall be entitled to a total of twelve (12) workweeks of leave during any twelve-month period. This act does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993, 29 U.S.C., Section 2601 et seq.

3. Leave described in this section may be taken intermittently or on a reduced work schedule.

B. The employee shall provide the employer with at least forty-eight (48) hours advance notice of the intention of the employee to take the leave, unless providing such notice is not practicable. When an unscheduled absence occurs, the employer may not take any action against the employee if the employee, within a reasonable period after the absence, provides certification under subsection C of this section.

C. 1. The employer may require the employee to provide certification to the employer that:

a. the employee or the family or household member of the employee is a victim of domestic or sexual violence, or

b. the employee is pregnant, and

c. the leave is for one of the purposes enumerated in paragraph 1 of subsection A of this section. The

employee shall provide such certification to the employer within a reasonable period after the employer requests certification.

2. An employee may satisfy the certification requirement of paragraph 1 of this subsection by providing to the employer a sworn statement of the employee, and upon obtaining such documents the employee shall provide:

a. documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the family or household member of the employee has sought assistance in addressing domestic or sexual violence and the effects of the violence,

b. a police or court record,

c. in the case of a pregnant woman, documentation of the pregnancy, or

d. other corroborating evidence.

D. All information provided to the employer pursuant to subsection B or C of this section, including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee has requested or obtained leave pursuant to this section, shall be retained in the strictest confidence by the employer, except to the extent that disclosure is:

1. Requested or consented to in writing by the employee; or

2. Otherwise required by applicable federal or state law.

E. 1. Any employee who takes leave under this section for the intended purpose of the leave shall be entitled, on return from such leave:

a. to be restored by the employer to the position of employment held by the employee when the leave commenced, or

b. to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

2. The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

F. Nothing in this section shall be construed to entitle any restored employee to:

1. The accrual of any seniority or employment benefits during any period of leave; or

2. Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

G. Nothing in this section shall be construed to prohibit an employer from requiring an employee on leave under this section to report periodically to the employer on the status and intention of the employee to return to work.

H. Except as provided in subsection B of this section, during any period that an employee takes leave under this section, the employer shall maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

I. The employer may recover the premium that the employer paid for maintaining coverage for the employee and the family or household member of the employee under such group health plan during any period of leave under this section if:

1. The employee fails to return from leave under this section after the period of leave to which the employee is entitled has expired; and

2. The employee fails to return to work for a reason other than:

a. the continuation, recurrence, or onset of domestic or sexual violence that entitles the employee to leave pursuant to this section, or

b. other circumstances beyond the control of the employee.

J. 1. An employer may require an employee who claims that the employee is unable to return to work because of a reason described in subparagraph a or b of paragraph 2 of subsection I of this section to provide, within a reasonable period after making the claim, certification to the employer that the employee is unable to return to work because of that reason.

2. An employee may satisfy the certification requirement of paragraph 1 of this subsection by providing to the employer:

a. a sworn statement of the employee,

b. documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee has sought assistance in addressing domestic or sexual violence and the effects of that violence,

c. a police or court record, or

d. other corroborating evidence.

K. All information provided to the employer pursuant to subsection C of this section, including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee is not returning to work because of a reason described in subparagraph a or b of paragraph 2 of subsection I of this section shall be retained in the strictest confidence by the employer, except to the extent that disclosure is:

1. Requested or consented to in writing by the employee; or

2. Otherwise required by applicable federal or state law.

L. 1. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this section.

2. It shall be unlawful for any employer to discharge or harass any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment of the individual (including retaliation in any form or manner) because the individual:

a. exercised any right provided under this section, or

b. opposed any practice made unlawful by this section.

3. It shall be unlawful for any public agency to deny, reduce, or terminate the benefits of, otherwise sanction, or harass any individual, or otherwise discriminate against any individual with respect to the amount, terms, or conditions of public assistance of the individual (including retaliation in any form or manner) because the individual:

a. exercised any right provided under this section, or

b. opposed any practice made unlawful by this section.

4. It shall be unlawful for any person to discharge or in any other manner discriminate, as described in paragraph 2 or 3 of this subsection, against any individual because such individual:

a. has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this section,

b. has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this section, or

c. has testified, or is about to testify, in any inquiry or proceeding relating to any right as provided in this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 94 of Title 40, unless there is created a duplication in numbering, reads as follows:

An employee who is entitled to take paid or unpaid leave, including family, medical, sick, annual, personal, maternity, or similar leave, from employment, pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program or plan, may elect to substitute any period of such leave for an equivalent period of leave provided under Section 4 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 95 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer shall not fail to hire, refuse to hire, discharge, or harass any individual, otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, or retaliate against an individual in any form or manner, and a public agency shall not deny, reduce, or terminate the benefits of, otherwise sanction, or harass any individual, otherwise discriminate against any individual with respect to the amount, terms, or conditions of public assistance of the individual, or retaliate against an individual in any form or manner, because:

1. The individual involved:

   a. is or is perceived to be a victim of domestic or sexual violence,

   b. attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the individual or a family or household member of the individual was a victim,

c. requested an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure in response to actual or threatened domestic or sexual violence, regardless of whether the request was granted, or

d. the person is pregnant; or

2. The workplace is disrupted or threatened by the action of a person whom the individual states has committed or threatened to commit domestic or sexual violence against the individual or the individual's family or household member.

B. In this section:

1. "Discriminate", used with respect to the terms, conditions, or privileges of employment or with respect to the terms or conditions of public assistance, includes not making a reasonable accommodation to the known limitations resulting from circumstances relating to being a victim of domestic or sexual violence or a family or household member being a victim of domestic or sexual violence of an otherwise qualified individual:

a. who is:

(1) an applicant or employee of the employer, including a public agency, or

(2) an applicant for or recipient of public assistance from a public agency, and

b. who:

(1) is a victim of domestic or sexual violence, or

(2) has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the individual in subparagraph

a of this paragraph as it relates to the domestic or sexual violence,

unless the employer or public agency can demonstrate that the accommodation would impose an undue hardship on the operation of the employer or public agency;

2. "Qualified individual" means:

a. in the case of an applicant or employee described in division (1) of subparagraph a of paragraph 1 of this subsection, an individual who, but for being a victim of domestic or sexual violence or having a family or household member who is a victim of domestic or sexual violence, can perform the essential functions of the employment position that such individual holds or desires, or

b. in the case of an applicant or recipient described in division (2) of subparagraph a of paragraph 1 of this subsection, an individual who, but for being a victim of domestic or sexual violence or having a family or household member who is a victim of domestic or sexual violence, can satisfy the essential requirements of the program providing the public assistance that the individual receives or desires;

3. "Reasonable accommodation" may include an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, in response to actual or threatened domestic or sexual violence; and

4. "Undue hardship" means an action requiring significant difficulty or expense imposed on the operation of an employer or public agency, when considered in light of the following factors:

a. the nature and cost of the reasonable accommodation needed under this section,

b. the overall financial resources of the facility involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation on the operation of the facility,

c. the overall financial resources of the employer or public agency, the overall size of the business of an employer or public agency with respect to the number of employees of the employer or public agency, and the number, type, and location of the facilities of an employer or public agency, and

d. the type of operation of the employer or public agency, including the composition, structure, and functions of the workforce of the employer or public agency, the geographic separateness of the facility from the employer or public agency, and the administrative or fiscal relationship of the facility to the employer or public agency.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 96 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Labor Commissioner or the authorized representative of the Labor Commissioner shall administer and enforce the provisions of this act.

1. Any employee or a representative of employees who believes their rights under this act have been violated may, within three (3) years after the alleged violation occurs, file a complaint with the Department requesting a review of the alleged violation.

2. A copy of the complaint shall be sent to the person who allegedly committed the violation, who shall be the respondent.

3. Upon receipt of a complaint, the Commissioner shall cause such investigation to be made as the Commissioner deems appropriate.

4. The investigation shall provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged allegation.

5. The parties shall be given written notice of the time and place of the hearing at least seven (7) days before the hearing.

6. Upon receiving the report of the investigation, the Commissioner shall make findings of fact.

7. If the Commissioner finds that a violation did occur, the Commissioner shall issue a decision incorporating the findings and requiring the party committing the violation to take such affirmative action to abate the violation as the Commissioner deems appropriate.

B. Findings and action by the Commissioner may include, but are not limited to:

1. Damages equal to the amount of wages, salary, employment benefits, public assistance, or other compensation denied or lost to such individual by reason of the violation, and the interest on that amount calculated at the prevailing rate;

2. Equitable relief as may be appropriate, including but not limited to hiring, reinstatement, promotion, and reasonable accommodations; and

3. Reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the respondent to a prevailing employee.

C. If the Commissioner finds that there was no violation, the Commissioner shall issue an order denying the complaint.

D. An order issued by the Commissioner under this section shall be final and only subject to judicial review under the Administrative Procedures Act.

E. The Department of Labor shall adopt rules necessary to administer and enforce this act in accordance with the Administrative Procedures Act.

F. The Oklahoma Attorney General may intervene on behalf of the Department of Labor if the Department certifies that the case is of general public importance. Upon such intervention, the court may award such relief as is authorized to be granted to an employee who has filed a complaint or whose representative has filed a complaint under this section.

G. Any employer who has been ordered by the Commissioner of Labor or the court to pay damages under this section and who fails to do so within thirty (30) days after the order is entered is liable to pay a penalty of one percent (1%) per calendar day to the employee for each day of delay in paying the damages to the employee.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 97 of Title 40, unless there is created a duplication in numbering, reads as follows:

Every employer covered by this act shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Commissioner of Labor, summarizing the requirements of this act and information pertaining to the filing of a charge. The Commissioner shall furnish copies of summaries and rules to employers upon request without charge.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 98 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed to supersede any provision of any federal, state, or local law, collective bargaining agreement, or employment benefits program or plan that provides:

1. Greater leave benefits for victims of domestic or sexual violence than the rights established under this act; or

2. Leave benefits for a larger population of victims of domestic or sexual violence as defined in such law, agreement, program, or plan than the victims of domestic or sexual violence covered under this act.

B. The rights established for employees who are victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence under this act shall not be diminished by any federal, state or local law, collective bargaining agreement, or employment benefits program or plan.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 99 of Title 40, unless there is created a duplication in numbering, reads as follows:

If any provision of this act or the application of such provision to any person or circumstance is held to be in violation of the United States Constitution or Oklahoma Constitution, the remainder of the provisions of this act and the application of those provisions to any person or circumstance shall not be affected.

SECTION 11. This act shall become effective November 1, 2006.

50-2-8662 MD 01/13/06