

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1866

By: Shannon

4
5
6 AS INTRODUCED

7 An Act relating to labor; defining terms; providing
8 for leave requirements for certain employees;
9 requiring certain notice; providing for
10 confidentiality; providing for group health plan
11 coverage for certain employees; providing for
12 recovery of premiums under certain circumstances;
13 specifying unlawful acts; providing for certain
14 leave; requiring Labor Commissioner to perform
15 certain acts; providing for certain findings;
16 providing for Oklahoma Attorney General intervention
17 in certain circumstances; providing for damages;
18 providing for severability; providing for
19 codification; and providing an effective date.

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1 2. "Employer" means any of the following:

- 2 a. the state or any agency of the state,
- 3 b. any unit of local government or school district, or
- 4 c. any person that employs at least one hundred
- 5 employees;

6 3. "Employment benefits" means all benefits provided or made
7 available to employees by an employer, including group life
8 insurance, health insurance, disability insurance, sick leave,
9 annual leave, maternity leave, educational benefits, and pensions,
10 regardless of whether such benefits are provided by a practice or
11 written policy of an employer or through an "employee benefit plan".

12 "Employee benefit plan" or "plan" means an employee welfare benefit
13 plan or an employee pension benefit plan or a plan which is both an
14 employee welfare benefit plan and an employee pension benefit plan;

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

18 5. "Public agency" means the government of the state or
19 political subdivision thereof, any agency of the state or of a
20 political subdivision of the state, or any governmental agency;

21 6. "Reduced work schedule" means a work schedule that reduces
22 the usual number of hours per workweek, or hours per workday, of an
23 employee; and

1 7. "Victim of a crime" means an individual who has been
2 subjected to criminally injurious conduct that results in bodily
3 injury or economic injury.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 202 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 A. An employee who is a victim of a crime may take unpaid leave
8 from work to seek legal assistance, including preparing for or
9 participating in any civil or criminal legal proceeding related to
10 or derived from the crime.

11 B. An employee shall be entitled to a total of twelve (12)
12 workweeks of leave during any twelve-month period. This act shall
13 not be construed to create a right for an employee to take unpaid
14 leave that exceeds the unpaid leave time allowed under, or is in
15 addition to the unpaid leave time permitted by, the Federal Family
16 and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq. Leave
17 described in this section may be taken intermittently or on a
18 reduced work schedule.

19 C. The employee shall provide the employer with at least forty-
20 eight (48) hours advance notice of the intention of the employee to
21 take the leave, unless providing such notice is not practicable.
22 When an unscheduled absence occurs, the employer may not take any
23 action against the employee if the employee, within a reasonable
24

1 period after the absence, provides certification under subsection D
2 of this section.

3 D. The employer may require the employee to provide
4 certification to the employer that the employee is the victim of a
5 crime and that leave is necessary for the purpose provided for in
6 subsection A of this section. The employee shall provide such
7 certification to the employer within a reasonable period after the
8 employer requests certification.

9 E. An employee may satisfy the certification requirement of
10 subsection D of this section by providing to the employer a sworn
11 statement of the employee, and upon obtaining such documents the
12 employee shall provide:

- 13 1. Documentation from an attorney;
- 14 2. A police or court record; or
- 15 3. Other corroborating evidence.

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

- 22 1. Requested or consented to in writing by the employee; or
- 23 2. Otherwise required by applicable federal or state law.

24

1 G. 1. Any employee who takes leave under this section as a
2 victim of a crime shall be entitled, on return from such leave:

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

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

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

12 H. Nothing in this section shall be construed to entitle any
13 restored employee to:

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

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

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

23 J. Except as provided in subsection C of this section, during
24 any period that an employee takes leave under this section, the

1 employer shall maintain coverage for the employee and any family or
2 household member under any group health plan for the duration of
3 such leave at the level and under the conditions coverage would have
4 been provided if the employee had continued in employment
5 continuously for the duration of such leave.

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

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

13 2. The employee fails to return to work for a reason other than
14 circumstances beyond the control of the employee.

15 L. 1. An employer may require an employee who claims that the
16 employee is unable to return to work to provide, within a reasonable
17 period after making the claim, certification to the employer that
18 the employee is unable to return to work.

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

- 21 a. a sworn statement of the employee,
- 22 b. documentation from an attorney,
- 23 c. a police or court record, or
- 24 d. other corroborating evidence.

1 M. All information provided to the employer pursuant to
2 subsection E of this section, including a statement of the employee
3 or any other documentation, record, or corroborating evidence, and
4 the fact that the employee is not returning to work based on a claim
5 made by the employee shall be retained in the strictest confidence
6 by the employer, except to the extent that disclosure is:

- 7 1. Requested or consented to in writing by the employee; or
- 8 2. Otherwise required by applicable federal or state law.

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

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

- 17 a. exercised any right provided under this section, or
- 18 b. opposed any practice made unlawful by this section.

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

- 1 a. exercised any right provided under this section, or
- 2 b. opposed any practice made unlawful by this section.

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

- 6 a. has filed any charge, or has instituted or caused to
7 be instituted any proceeding, under or related to this
8 section,
- 9 b. has given, or is about to give, any information in
10 connection with any inquiry or proceeding relating to
11 any right provided under this section, or
- 12 c. has testified, or is about to testify, in any inquiry
13 or proceeding relating to any right as provided in
14 this section.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 203 of Title 40, unless there is
17 created a duplication in numbering, reads as follows:

18 An employee who is entitled to take paid or unpaid leave,
19 including family, medical, sick, annual, personal, maternity, or
20 similar leave, from employment, pursuant to federal, state, or local
21 law, a collective bargaining agreement, or an employment benefits
22 program or plan, may elect to substitute any period of such leave
23 for an equivalent period of leave provided under Section 2 of this
24 act.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 204 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

22 7. If the Commissioner finds that a violation did occur, the
23 Commissioner shall issue a decision incorporating the findings and
24 requiring the party committing the violation to take such

1 affirmative action to abate the violation as the Commissioner deems
2 appropriate.

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

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

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

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

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

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

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

23 F. The Oklahoma Attorney General may intervene on behalf of the
24 Department of Labor if the Department certifies that the case is of

1 general public importance. Upon such intervention, the court may
2 award such relief as is authorized to be granted to an employee who
3 has filed a complaint or whose representative has filed a complaint
4 under this section.

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

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 205 of Title 40, unless there is
13 created a duplication in numbering, reads as follows:

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

19 SECTION 6. This act shall become effective November 1, 2007.

20
21 51-1-6344 GRS 01/16/07
22
23
24