

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2027

By: Shelton

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5  
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2001,  
8 Sections 197.2 and 197.4, which relate to the  
9 Oklahoma Minimum Wage Act; modifying minimum wage for  
10 certain occupations under specific circumstances;  
11 requiring Commissioner of Labor to promulgate rules;  
12 defining terms; providing an effective date; and  
13 declaring an emergency.

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

15 SECTION 1. AMENDATORY 40 O.S. 2001, Section 197.2, is  
16 amended to read as follows:

17 Section 197.2 A. It shall be unlawful to employ workers in any  
18 industry or occupation within the State of Oklahoma under conditions  
19 of labor detrimental to their health or morals and it shall be  
20 unlawful to employ workers in any industry within the State of  
21 Oklahoma at wages which are not adequate for their maintenance.

22 ~~Except as otherwise provided in the Oklahoma Minimum Wage Act, no~~  
23 ~~employer within the State of Oklahoma shall pay any employee a wage~~  
24 ~~of less than the current federal minimum wage for all hours worked.~~

1 B. Every wage paid or agreed to be paid by any employer to any  
2 employee, except as otherwise provided, shall not be less than a  
3 living wage. Any employer paying, offering to pay, or agreeing to  
4 pay any employee a wage lower or less in value than a living wage is  
5 guilty of violating this section.

6 C. Except as otherwise provided in this section, the minimum  
7 wage for wages earned after August 31, 2007, shall be Six Dollars  
8 and fifty cents (\$6.50) per hour. For wages paid pursuant to this  
9 subsection, if an employer furnishes an employee with meals or  
10 lodging in accordance with rules promulgated by the Commissioner of  
11 Labor, the employer may deduct the following amounts from the wages  
12 of the employee:

13 1. For lodging furnished after August 31, 2007, Fifty-two  
14 Dollars (\$52.00) per week or Seven Dollars and forty cents (\$7.40)  
15 per day; and

16 2. For meals furnished after August 31, 2007, Seventy-eight  
17 Dollars (\$78.00) per week or Three Dollars and seventy cents (\$3.70)  
18 per meal.

19 D. Except as otherwise provided in this section, the minimum  
20 wage for a minor employee for wages earned after August 31, 2007,  
21 shall be Six Dollars and twenty-five cents (\$6.25) per hour, and the  
22 minimum wage for an opportunity employee for wages earned after  
23 August 31, 2007, shall be Six Dollars and twenty cents (\$6.20) per  
24 hour. If an employer furnishes a minor employee or an opportunity

1 employee with meals or lodging in accordance with rules promulgated  
2 by the Commissioner, the employer may deduct the following amounts  
3 from the wages of the employee:

4 1. For lodging furnished after August 31, 2007, Forty-two  
5 Dollars and twenty cents (\$42.20) per week or Six Dollars and  
6 seventy-five cents (\$6.75) per day; and

7 2. For meals furnished after August 31, 2007, Seventy Dollars  
8 and eighty cents (\$70.80) per week or Three Dollars and thirty-five  
9 cents (\$3.35) per meal.

10 E. If an employer of a tipped employee establishes by the  
11 employer's payroll records that, when adding the tips received by  
12 the tipped employee in a week to the wages paid to the tipped  
13 employee in that week, the tipped employee receives not less than  
14 the applicable minimum wage specified in this section, the minimum  
15 wage for the tipped employee shall be as follows:

16 1. For wages earned by a tipped employee who is not an  
17 opportunity employee, Two Dollars and thirty-three cents (\$2.33) per  
18 hour; and

19 2. For wages earned by a tipped employee who is an opportunity  
20 employee, Two Dollars and thirteen cents (\$2.13) per hour.

21 If an employer furnishes a tipped employee with meals or lodging  
22 in accordance with rules promulgated by the Commissioner, the  
23 employer may deduct the applicable amounts specified subsections C  
24 and D of this section from the wages of the tipped employee.

1 F. The minimum wage for an agricultural employee shall be Five  
2 Dollars and fifteen cents (\$5.15) per hour for wages earned by an  
3 adult agricultural employee, and Four Dollars and twenty-five cents  
4 (\$4.25) per hour for wages earned by a minor agricultural employee.  
5 If an employer furnishes an agricultural employee with meals or  
6 lodging in accordance with rules promulgated by the Commissioner,  
7 the employer may deduct the following amounts from the wages of the  
8 employee:

9 1. For lodging furnished to an adult agricultural employee,  
10 Forty-one Dollars and twenty cents (\$41.20) per week or Five Dollars  
11 and ninety cents (\$5.90) per day, or for lodging furnished to a  
12 minor agricultural employee, Thirty-four Dollars (\$34.00) per week  
13 or Four Dollars and eighty-five cents (\$4.85) per day; and

14 2. For meals furnished to an adult agricultural employee,  
15 Sixty-one Dollars and eighty cents (\$61.80) per week or Two Dollars  
16 and ninety-five cents (\$2.95) per meal, or for meals furnished to a  
17 minor agricultural employee, Fifty-one Dollars (\$51.00) per week or  
18 Two Dollars and forty cents (\$2.40) per meal.

19 G. For an adult camp counselor the minimum wage for wages  
20 earned after August 31, 2007, but before August 31, 2008, shall be  
21 Two Hundred Seventy Dollars (\$270.00) per week if meals and lodging  
22 are not furnished, Two Hundred Seventeen Dollars (\$217.00) per week  
23 if only meals are furnished, and One Hundred Seventy-one Dollars  
24 (\$171.00) per week if both meals and lodging are furnished. For

1 wages earned by an adult camp counselor on or after August 31, 2008,  
2 the minimum wage shall be Three Hundred Fifteen Dollars (\$315.00)  
3 per week if meals and lodging are not furnished, Two Hundred Forty  
4 Dollars (\$240.00) per week if only meals are furnished, and One  
5 Hundred Eighty-nine Dollars (\$189.00) per week if both meals and  
6 lodging are furnished. For minor counselors the minimum wage for  
7 wages earned after August 31, 2007, but before August 31, 2008,  
8 shall be Two Hundred Twenty-five Dollars (\$225.00) per week if meals  
9 and lodging are not furnished, One Hundred Seventy-one Dollars  
10 (\$171.00) per week if only meals are furnished, and One Hundred  
11 Thirty-five Dollars (\$135.00) per week if both meals and lodging are  
12 furnished. For wages earned by a minor counselor on or after August  
13 31, 2008, the minimum wage shall be Two Hundred Seventy-five Dollars  
14 (\$275.00) per week if meals and lodging are not furnished, Two  
15 Hundred Nine Dollars (\$209.00) per week if only meals are furnished,  
16 and One Hundred Sixty-five Dollars (\$165.00) per week if both meals  
17 and lodging are furnished.

18 H. The minimum wage for a golf caddie is as follows:

19 1. For eighteen holes, Ten Dollars and fifty cents (\$10.50);

20 and

21 2. For nine holes, Five Dollars and ninety cents (\$5.90).

22 I. The Commissioner shall promulgate rules providing the

23 minimum wage for all of the following:

24

1        1. An employee or worker with a disability covered under a  
2 license;

3        2. A student learner; or

4        3. A student employed by an independent college or university  
5 for less than twenty (20) hours per week.

6        J. The Commissioner shall promulgate rules exempting from the  
7 minimum wage requirements under this section all of the following:

8        1. A person engaged in casual employment in and around an  
9 employer's home on an irregular or intermittent basis for not more  
10 than fifteen (15) hours per week;

11        2. A person who resides with and who provides companionship and  
12 care, not including practical or professional nursing, and not more  
13 than fifteen (15) hours per week of general household work for an  
14 employer who, due to advanced age or physical or mental disability,  
15 cannot care for his or her own needs; or

16        3. An elementary or secondary school student performing student  
17 work-like activities in the student's school.

18        K. The Commissioner may promulgate rules to increase a minimum  
19 wage or an allowance for meals and lodging provided under this  
20 section.

21        L. Beginning in 2008, the minimum wage requirements in this  
22 section shall be adjusted annually based on the rate of inflation  
23 according to the consumer price index as reported annually by the  
24 federal Bureau of Labor Statistics. Such adjustments shall become

1 effective on March 1 of each year. Beginning February 15, 2008, and  
2 each February 15 thereafter, the Commissioner shall make available  
3 on the Department of Labor web site the new required minimum wages  
4 for each category listed in this section after application of the  
5 cost-of-living adjustment required by this subsection.

6 M. The Commissioner shall promulgate rules to implement the  
7 provisions of this section.

8 SECTION 2. AMENDATORY 40 O.S. 2001, Section 197.4, is  
9 amended to read as follows:

10 Section 197.4 As used in this act:

11 ~~(a) "Commissioner"~~ 1. "Agriculture" means the Commissioner of  
12 Labor farming and all its branches including, but not limited to,  
13 the cultivation and tillage of the soil; dairying; the production,  
14 cultivation, growing and harvesting of any agricultural commodities;  
15 the raising of livestock, fish and other marine life, bees, fur-  
16 bearing animals or poultry; and any practices performed by a farmer  
17 or on a farm as an incident to or in conjunction with farming  
18 operations, including preparation for market, delivery to storage or  
19 to market or to carriers for transportation to market;

20 ~~(b) "Wage" means compensation due to an employee by reason of~~  
21 ~~his employment, payable in legal tender of the United States or~~  
22 ~~checks on banks convertible into cash on demand at full face value,~~  
23 ~~subject to such deductions, charges or allowances as may be~~

24

1 ~~permitted by law~~ 2. "Agricultural employee" means an employee who  
2 is employed in agriculture;

3 ~~(c) "Employ" includes to suffer or to permit to work~~ 3. "Camp  
4 counselor" means a counselor at a seasonal, recreational, or  
5 educational camp, including a day camp, who is an adult;

6 ~~(d) "Employer"~~ 4. "Commissioner" means any individual,  
7 partnership, association, corporation, business trust, or any person  
8 or group of persons, hiring more than ten full time employees or  
9 equivalent at any one location or place of business; provided,  
10 however, if an employer has less than ten full time employees or  
11 equivalent at any one location or place of business but does a gross  
12 business of more than One Hundred Thousand Dollars (\$100,000.00)  
13 annually, said employer shall not be exempt under the provisions of  
14 this act.

15 ~~This act shall not apply to employers subject to the Fair Labor~~  
16 ~~Standards Act of 1938, as amended, and who are paying the minimum~~  
17 ~~wage under the provisions of said act, nor to employers whose~~  
18 ~~employees are exempt under paragraph (c) of this section. the~~  
19 Commissioner of Labor;

20 ~~(e)~~ 5. "Employee" ~~includes any~~ means an individual employed by  
21 an employer but, except that the term "employee" shall not include:

22 ~~(1) An~~

23 a. any individual employed ~~on a farm, in the employ of~~  
24 any person, in connection with the cultivation of the

1 ~~soil, or in connection with raising or harvesting any~~  
2 ~~agricultural commodity, including raising, shearing,~~  
3 ~~feeding, caring for, training, and management of~~  
4 ~~livestock, bees, poultry, and furbearing animals and~~  
5 ~~wildlife, or in the employ of the owner or tenant or~~  
6 ~~other operator of a farm in connection with the~~  
7 ~~operation, management, conservation, improvement or~~  
8 ~~maintenance of such farm and its tools and equipment;~~

9 ~~(2) Any in a bona fide executive, administrative, or~~  
10 ~~professional capacity,~~

11 ~~b. any individual employed in domestic service in or~~  
12 ~~about a private home;~~

13 ~~(3) Any engaged in the activities of an educational,~~  
14 ~~charitable, religious, or nonprofit organization where~~  
15 ~~the employer-employee relationship does not, in fact,~~  
16 ~~exist or where the services rendered to the~~  
17 ~~organization are on a voluntary basis,~~

18 ~~c. any individual employed by the United States~~  
19 ~~government;~~

20 ~~(4) Any standing in loco parentis to foster children in~~  
21 ~~their care,~~

22 ~~d. any individual working as a volunteer in a charitable,~~  
23 ~~religious or other nonprofit organization;~~

24 ~~(5) Any newspaper vendor or carrier;~~

1 ~~(6) Any employee of any carrier subject to regulation by~~  
2 ~~Part I of the Interstate Commerce Act;~~

3 ~~(7) Any employee of any employer who is subject to the~~  
4 ~~provisions of any Federal Fair Labor Standards Act or~~  
5 ~~to any Federal Wage and Hour Law now in effect or~~  
6 ~~enacted hereafter; and who is paying the minimum wage~~  
7 ~~under the provisions of this act;~~

8 ~~(8) Any employee who receives a minimum wage pursuant to~~  
9 ~~the Fair Labor Standards Act of 1938, as amended,~~  
10 ~~including individuals employed by an employer covered~~  
11 ~~by 29 U.S.C. 203, or other applicable federal law,~~

12 ~~e. any individual employed for less than four (4) months~~  
13 ~~in any year in a resident or day camp for children or~~  
14 ~~youth, or any individual employed by an educational~~  
15 ~~conference center operated by an educational,~~  
16 ~~charitable or not-for-profit organization,~~

17 ~~f. any individual engaged in the activities of an~~  
18 ~~educational organization where employment by the~~  
19 ~~organization is in lieu of the requirement that the~~  
20 ~~individual pay the cost of tuition, housing or other~~  
21 ~~educational fees of the organization or where earnings~~  
22 ~~of the individual employed by the organization are~~  
23 ~~credited toward the payment of the cost of tuition,~~  
24 ~~housing or other educational fees of the organization,~~

1 g. any individual employed on or about a private  
2 residence on an occasional basis for six (6) hours or  
3 less on each occasion,

4 h. any handicapped person employed in a bona fide  
5 executive, administrative or professional capacity, or  
6 in the capacity of outside salesman,

7 ~~(9) Any sheltered workshop, certified by the State~~  
8 Department of Education,

9 i. any person employed as part-time employee not on  
10 permanent status. A part-time employee is defined as  
11 an employee who is employed less than twenty-five (25)  
12 hours a week,

13 ~~(10) Any person who is less than eighteen (18) years of age~~  
14 ~~and is not a high school graduate or a graduate of a~~  
15 ~~vocational training program, and any person who is~~  
16 ~~less than twenty-two (22) years of age and who is a~~  
17 ~~student regularly enrolled in a high school, college,~~  
18 ~~university or vocational training program,~~

19 ~~(11) Any on a casual basis in domestic service employment~~  
20 to provide baby-sitting services, any person employed  
21 in the domestic service of any family or person at  
22 their home, and any employee employed for not more  
23 than fifteen (15) hours per week in domestic service  
24 employment to provide companionship services for

1 individuals who because of age or infirmity are unable  
2 to care for themselves,

3 j. any individual employed on a casual or intermittent  
4 basis as a golf caddy, newsboy, or in a similar  
5 occupation,

6 k. any individual employed in a feedstore operated  
7 primarily for the benefit and use of farmers and  
8 ranchers; or

9 ~~(12)~~ Any whose earnings are derived in whole or in part  
10 from sales commissions and whose hours and places of  
11 employment are not substantially controlled by the  
12 employer,

13 l. any individual working as a reserve force deputy  
14 sheriff subject to the minimum wage provisions of  
15 applicable federal law or any individual who is  
16 employed in any government position defined in 29  
17 U.S.C. 203(2)(c)(i) and (ii),

18 m. any individual employed by a retail or service  
19 business whose annual gross volume sales made or  
20 business done is less than Five Hundred Thousand  
21 Dollars (\$500,000.00),

22 n. any individual, who is incarcerated in any  
23 correctional facility operated by the State Department  
24 of Corrections or jail operated by a municipality or

1           county, including offenders who provide labor or  
2           services on the grounds of such correctional facility,  
3           or  
4           o. any individual described by the provisions of 29  
5           U.S.C. 213(a)(8);

6           (6) "Employer" means any individual, partnership, association,  
7           corporation, business, business trust, or any person or group of  
8           persons acting directly or indirectly in the interest of an employer  
9           in relation to an employee;

10           (7) "Learner and apprentice" means any individual who has not  
11           completed the required training for a particular job. In no event  
12           shall the individual be deemed a learner or apprentice in the  
13           occupation after three (3) months of training except where the  
14           director finds, after investigation, that for the particular  
15           occupation a minimum of proficiency cannot be acquired in three (3)  
16           months. In no case shall a person be declared to be a learner or  
17           apprentice after six (6) months of training for a particular  
18           employer or job. Employees of an amusement or recreation business  
19           that meets the criteria set out in 29 U.S.C. 213(a)(3) may be deemed  
20           a learner or apprentice for ninety (90) working days. No individual  
21           shall be deemed a learner or apprentice solely for the purpose of  
22           evading the provisions of the Oklahoma Minimum Wage Act;

23           (8) "Living wage" means compensation for labor paid, whether by  
24           time, piecework, or otherwise, sufficient to enable the employee

1 receiving it to maintain a standard of living under conditions  
2 consistent with the welfare of the employee;

3 (9) "Minor counselor" means a counselor at a seasonal,  
4 recreational, or educational camp, including a day camp, who is a  
5 minor;

6 (10) "Minor employee" means a minor who is paid at the  
7 applicable minimum wage rate for minors;

8 (11) "Occupation" means any occupation, service, trade,  
9 business, industry, or branch or group of industries or employment  
10 or class of employment in which individuals are gainfully employed;

11 (12) "Opportunity employee" means a person under twenty (20)  
12 years of age who is in the first ninety (90) days of employment with  
13 the employer;

14 (13) "Tipped employee" means an employee who in the course of  
15 employment customarily and regularly receives money or other  
16 gratuities from persons other than the employee's employer; and

17 (14) "Wage" means compensation due to an employee by reason of  
18 employment, payable in legal tender of the United States or checks  
19 on banks convertible into cash on demand at full face value.

20 SECTION 3. This act shall become effective July 1, 2007.

21 SECTION 4. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby  
23  
24

1 declared to exist, by reason whereof this resolution shall take  
2 effect and be in full force from and after its passage and approval.

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