

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 2130

By: Coates

4  
5  
6 AS INTRODUCED

7 An Act relating to labor; creating the Equal Pay Act  
8 of 2008; providing short title; defining terms;  
9 prohibiting certain discrimination by employers on  
10 the basis of sex; providing exceptions; prohibiting  
11 certain action for compliance; construing act; making  
12 certain actions unlawful; authorizing the  
13 Commissioner of Labor to administer and enforce the  
14 act; authorizing the Commissioner to adopt certain  
15 rules; authorizing the Department of Labor to conduct  
16 certain investigations to enforce the act; providing  
17 for the gathering of certain information; authorizing  
18 certain entry and inspections and questioning of  
19 certain employees; requiring certain employers to  
20 make and keep certain records for certain period of  
21 time and to provide certain reports from the records;  
22 authorizing the Commissioner of Labor to administer  
23 certain oaths, take certain depositions and require  
24 certain subpoenas; providing for issuance of certain  
subpoenas; providing for certain failure of  
compliance; authorizing Commissioner to certify to  
certain acts; making certain acts violations;  
providing for certain employees to recover certain  
amounts; authorizing the Department to bring certain  
legal actions with certain time period; authorizing  
Commissioner to supervise certain payments; providing  
for payment of certain recovered sums; providing  
penalties; providing for certain factors to be  
considered in determining certain penalties;  
providing for recovery of certain penalty; providing  
for payment of certain penalty in certain  
circumstances; providing liability for certain legal  
and equitable relief for certain retaliatory actions  
under certain circumstances; requiring employers to  
post certain notice; requiring Commissioner to  
provide employers copies of certain summaries and

1 rules; requiring the Department to conduct certain  
2 outreach and education efforts targeted toward  
3 certain groups; requiring the Department to conduct  
4 certain studies and provide certain information  
5 biennially to certain groups on certain subjects;  
6 requiring the Department to file certain annual  
7 report; repealing 40 O.S. 2001, Sections 198.1 and  
8 198.2, which relate to payment of discriminatory  
9 wages based on employee's sex, enforcement and  
10 penalties; providing for codification; and providing  
11 an effective date.

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

13 SECTION 1. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 199.11 of Title 40, unless there  
15 is created a duplication in numbering, reads as follows:

16 This act shall be known and may be cited as the "Equal Pay Act  
17 of 2008".

18 SECTION 2. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 199.12 of Title 40, unless there  
20 is created a duplication in numbering, reads as follows:

21 As used in Equal Pay Act of 2008:

22 1. "Commissioner" means the Commissioner of Labor;

23 2. "Department" means the Department of Labor;

24 3. "Employee" means any individual permitted to work by an  
employer; and

4. "Employer" means an individual, partnership, corporation,  
association, business, trust, person or entity for whom four (4) or

1 more employees are gainfully employed in this state and includes the  
2 State of Oklahoma, any state officer, department, or agency, any  
3 unit of local government and any school district.

4 SECTION 3. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 199.13 of Title 40, unless there  
6 is created a duplication in numbering, reads as follows

7 A. No employer may discriminate between employees on the basis  
8 of sex by paying wages to an employee at a rate less than the rate  
9 at which the employer pays wages to another employee of the opposite  
10 sex for the same or substantially similar work on jobs the  
11 performance of which requires equal skill, effort and  
12 responsibility, and which are performed under similar working  
13 conditions, except where the payment is made under:

14 1. A seniority system;

15 2. A merit system;

16 3. A system that measures earnings by quantity or quality of  
17 production; or

18 4. A differential based on any other factor other than:

19 a. sex, or

20 b. a factor that would constitute unlawful discrimination  
21 under the Oklahoma Human Rights Act.

22 B. An employer who is paying wages in violation of this act may  
23 not, to comply with this act, reduce the wages of any other  
24 employee. Nothing in this act may be construed to require an

1 employer to pay, to any employee at a workplace in a particular  
2 county, wages that are equal to the wages paid by that employer at a  
3 workplace in another county to employees in jobs the performance of  
4 which requires equal skill, effort, and responsibility, and which  
5 are performed under similar working conditions.

6 SECTION 4. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 199.14 of Title 40, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. It is unlawful for any employer to:

10 1. Interfere with, restrain, or deny the exercise of or the  
11 attempt to exercise any right provided under this act;

12 2. Discharge or in any other manner discriminate against any  
13 individual for inquiring about, disclosing, comparing or otherwise  
14 discussing the employee's wages or the wages of any other employee,  
15 or aiding or encouraging any person to exercise his or her rights  
16 under this act;

17 3. Discharge or in any other manner discriminate against any  
18 individual because the individual has:

19 a. filed any charge or has instituted or caused to be  
20 instituted any proceeding under or related to this  
21 act,

22 b. given, or is about to give, any information in  
23 connection with any inquiry or proceeding relating to  
24 any right provided under this act, or

1 c. testified, or is about to testify, in any inquiry or  
2 proceeding relating to any right provided under this  
3 act.

4 SECTION 5. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 199.15 of Title 40, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. The Commissioner of Labor, or his or her designee, shall  
8 administer and enforce the provisions of this act. The Commissioner  
9 shall adopt rules necessary to administer and enforce this act.

10 B. The Department of Labor has the power to conduct  
11 investigations in connection with the administration and enforcement  
12 of this act. The authorized officers and employees of the  
13 Department are authorized to investigate and gather data regarding  
14 the wages, hours and other conditions and practices of employment in  
15 any industry subject to this act and may enter and inspect such  
16 places and such records at reasonable times during regular business  
17 hours, question the employees and investigate the facts, conditions,  
18 practices or matters as they may deem necessary or appropriate to  
19 determine whether any person has violated any provision of this act,  
20 or which may aid in the enforcement of this act.

21 SECTION 6. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 199.16 of Title 40, unless there  
23 is created a duplication in numbering, reads as follows:

1 An employer subject to any provision of this act shall make and  
2 preserve records that document the name, address and occupation of  
3 each employee, the wages paid to each employee and any other  
4 information the Commissioner of Labor may promulgate by rule  
5 necessary for enforcement of this act. An employer subject to any  
6 provision of this act shall preserve those records for a period of  
7 not less than three (3) years and shall make reports from the  
8 records as prescribed by rule or order of the Commissioner.

9 SECTION 7. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 199.17 of Title 40, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. The Commissioner of Labor, or his or her authorized  
13 representative, may administer oaths, take or cause to be taken the  
14 depositions of witnesses and require by subpoena the attendance and  
15 testimony of witnesses and the production of all books, records and  
16 other evidence relative to the matter under investigation. A  
17 subpoena issued under this section shall be signed and issued by the  
18 Commissioner or his or her authorized representative.

19 B. In case of failure of any person to comply with any subpoena  
20 lawfully issued under this section, or on the refusal of any witness  
21 to produce evidence or to testify to any matter regarding which he  
22 or she may be lawfully interrogated, it is the duty of any circuit  
23 court, upon application of the Commissioner, or his or her  
24 authorized representative, to compel obedience by proceedings for

1 contempt, as in the case of disobedience of the requirements of a  
2 subpoena issued by such court or a refusal to testify therein. The  
3 Commissioner may certify to official acts.

4 SECTION 8. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 199.18 of Title 40, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. If an employee is paid by his or her employer less than the  
8 wage to which he or she is entitled in violation of Section 3 of  
9 this act, the employee may recover in a civil action the entire  
10 amount of any underpayment together with interest and the costs and  
11 reasonable attorney fees as may be allowed by the court and as  
12 necessary to make the employee whole. At the request of the  
13 employee or on a motion of the Commissioner of Labor, the Department  
14 may make an assignment of the wage claim in trust for the assigning  
15 employee and may bring any legal action necessary to collect the  
16 claim, and the employer shall be required to pay the costs incurred  
17 in collecting the claim. Every such action shall be brought within  
18 three (3) years from the date the employee learned of the  
19 underpayment.

20 B. The Commissioner is authorized to supervise the payment of  
21 the unpaid wages owing to any employee or employees under this act,  
22 may bring any legal action necessary to recover the amount of unpaid  
23 wages and penalties and the employer shall be required to pay the  
24 costs. Any sums recovered by the Commissioner on behalf of an

1 employee under this section shall be paid to the employee or  
2 employees affected.

3 C. Any employer who violates any provision of this act or any  
4 rule promulgated under the act is subject to a civil penalty not to  
5 exceed Two Thousand Five Hundred Dollars (\$2,500.00) for each  
6 violation for each employee affected. In determining the amount of  
7 the penalty, the appropriateness of the penalty to the size of the  
8 business of the employer charged and the gravity of the violation  
9 shall be considered. The penalty may be recovered in a civil action  
10 brought by the Commissioner in any circuit court.

11 SECTION 9. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 199.19 of Title 40, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. Any employer who has been ordered by the Commissioner of  
15 Labor or the court to pay wages due an employee and who fails to do  
16 so within fifteen (15) days after the order is entered is liable to  
17 pay a penalty of one percent (1%) per calendar day to the employee  
18 for each day of delay in paying the wages to the employee, up to an  
19 amount equal to twice the sum of unpaid wages due the employee.

20 B. Any employer, or any agent of an employer, who knowingly  
21 discharges or in any other manner knowingly discriminates against  
22 any employee because that employee has made a complaint to his or  
23 her employer, or to the Commissioner or his or her authorized  
24 representative, that he or she or any employee of the employer has

1 not been paid in accordance with the provisions of this act, or  
2 because that employee has instituted or caused to be instituted any  
3 proceeding under or related to this act or consulted counsel for  
4 such purposes, or because that employee has testified or is about to  
5 testify in an investigation or proceeding under this act, or offers  
6 any evidence of any violation of this act, shall be liable to the  
7 employee for such legal and equitable relief as may be appropriate  
8 to effectuate the purposes of this section, the value of any lost  
9 benefits, back pay and front pay as appropriate so long as the  
10 employee has made reasonable efforts to mitigate his or her damages  
11 and an additional equal amount as liquidated damages.

12 SECTION 10. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 199.20 of Title 40, unless there  
14 is created a duplication in numbering, reads as follows:

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

22 SECTION 11. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 199.21 of Title 40, unless there  
24 is created a duplication in numbering, reads as follows:

1       The Department of Labor shall conduct ongoing outreach and  
2 education efforts concerning this act targeted toward employers,  
3 labor organizations and other appropriate organizations. In  
4 addition, the Department of Labor shall conduct studies and provide  
5 information biennially to employers, labor organizations and the  
6 general public concerning the means available to eliminate pay  
7 disparities between men and women, including:

8           1. Conducting and promoting research to develop the means to  
9 correct the conditions leading to the pay disparities;

10          2. Publishing and otherwise making available to employers,  
11 labor organizations, professional associations, educational  
12 institutions, the Legislature, the media and the general public the  
13 findings resulting from studies and other materials, relating to the  
14 pay disparities;

15          3. Providing information to employers, labor organizations and  
16 other interested persons on the means of eliminating pay  
17 disparities; and

18          4. Developing guidelines to enable employers to evaluate job  
19 categories based on objective criteria such as educational  
20 requirements, skill requirements, independence, working conditions  
21 and responsibility. These guidelines shall be designed to enable  
22 employers to voluntarily compare wages paid for different jobs to  
23 determine if the pay scales involved adequately and fairly reflect  
24 the educational requirements, skill requirements, independence,

1 working conditions and responsibility for each such job with the  
2 goal of eliminating unfair pay disparities between occupations  
3 traditionally dominated by men or women.

4 SECTION 12. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 199.22 of Title 40, unless there  
6 is created a duplication in numbering, reads as follows:

7 The Department of Labor shall file with the Governor and the  
8 Legislature, no later than January 1 of each year, a report of its  
9 activities regarding administration and enforcement of this act for  
10 the preceding fiscal year.

11 SECTION 13. REPEALER 40 O.S. 2001, Sections 198.1 and  
12 198.2, are hereby repealed.

13 SECTION 14. This act shall become effective November 1, 2008.

14  
15 51-2-2331 LKS 1/22/2008 5:39:47 PM

16  
17  
18  
19  
20  
21  
22  
23  
24