

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1961

6 By: Jolley

7 COMMITTEE SUBSTITUTE

8 An Act relating to discrimination; amending 25 O.S.
9 2001, Sections 1101, 1301 and 1302, which relate to
10 discrimination in employment; amending purpose;
11 clarifying definition; adding "disability" and
12 "genetic information" discrimination to acts
13 prohibited by employer; creating cause of action;
14 abolishing certain common law; establishing
15 requirements for standing to bring action; providing
16 conditions before bringing action in state courts;
17 providing entitlement to jury trial; limiting certain
18 defense; providing for damages; limiting certain
19 remedies; providing for reasonable attorney fee;
20 limiting certain action; providing for codification;
21 and providing an effective date.

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

23 SECTION 1. AMENDATORY 25 O.S. 2001, Section 1101, is
24 amended to read as follows:

25 Section 1101. A. ~~The general purposes of this~~ This act ~~are to~~
26 ~~provide~~ provides for ~~execution~~ exclusive remedies within the state
27 of the policies embodied in the following federal laws:

28 1. Civil Rights Act of 1964, ~~the~~;

1 2. The ~~federal~~ Age Discrimination in Employment Act of 1967,
2 and;

3 3. Section 504 of the federal Rehabilitation Act of 1973;

4 4. Title I of the Americans with Disabilities Act;

5 5. The Equal Pay Act of 1963;

6 6. Sections 102 and 103 of the Civil Rights Act of 1991; and

7 7. The Genetic Information Nondiscrimination Act of 2008,

8 ~~to make uniform the law of those states which enact this act,~~

9 and to provide rights and remedies substantially equivalent to those
10 granted under the federal Fair Housing Law.

11 B. This act shall be construed according to the fair import of
12 its terms and shall be liberally construed to further the general
13 purposes stated in this section and the special purposes of the
14 particular provision involved.

15 SECTION 2. AMENDATORY 25 O.S. 2001, Section 1301, is
16 amended to read as follows:

17 Section 1301. In Sections 1101 through 1706 of this title:

18 1. "Employer" means

19 a. a person who has fifteen or more employees for each
20 working day in each of twenty (20) or more calendar
21 weeks in the current or preceding calendar year, ~~or~~

22 b. a person who ~~as a contractor or subcontractor is~~
23 ~~furnishing the~~ contracts or subcontracts with the
24 state, a governmental entity or a state agency to

1 furnish material or ~~performing~~ perform work ~~for the~~
2 ~~state or a governmental entity or agency of the state~~
3 ~~and includes, or~~

4 c. an agent of ~~such~~ a person ~~but~~ defined in subparagraphs
5 a or b of this paragraph.

6 The term "employer" does not include an Indian a Native American
7 tribe or a bona fide membership club not organized for profit, other
8 than a labor organization, that is exempt from taxation under Title
9 26, Section 501(c) of the United States Code;

10 2. "Employment agency" means a person regularly undertaking
11 with or without compensation to procure employees for an employer or
12 to procure for employees opportunities to work for an employer and
13 includes an agent of such a person;

14 3. "Labor organization" includes:

15 a. an organization of any kind, an agency or employee
16 representation committee, group, association, or plan
17 in which employees participate and which exists for
18 the purpose, in whole or in part, of dealing with
19 employers concerning grievances, labor disputes,
20 wages, rates of pay, hours, or other terms or
21 conditions of employment,

22 b. a conference, general committee, joint or system
23 board, or joint council so engaged which is
24

1 subordinate to a national or international labor
2 organization, or

3 c. an agent of a labor organization;

4 4. ~~"Handicapped person"~~ "Disability" means ~~a person who has a~~
5 physical or mental impairment which substantially limits one or more
6 ~~of such person's~~ major life activities, ~~has a record of such an~~
7 ~~impairment or is regarded as having such an impairment;~~ and

8 5. "Age discrimination in employment" means discrimination in
9 employment of persons who are at least forty (40) years of age.

10 SECTION 3. AMENDATORY 25 O.S. 2001, Section 1302, is
11 amended to read as follows:

12 Section 1302. A. It is a discriminatory practice for an
13 employer:

14 1. To fail or refuse to hire, to discharge, or otherwise to
15 discriminate against an individual with respect to compensation or
16 the terms, conditions, privileges or responsibilities of employment,
17 because of race, color, religion, sex, national origin, age, ~~or~~
18 ~~handicap unless such action is related to a bona fide occupational~~
19 ~~qualification reasonably necessary to the normal operation of the~~
20 ~~employer's business or enterprise~~ disability or genetic information
21 with respect to the employee; or

22 2. To limit, segregate, or classify an employee or applicant
23 for employment in a way which would deprive or tend to deprive an
24 individual of employment opportunities or otherwise adversely affect

1 the status of an employee, because of race, color, religion, sex,
2 national origin, age, ~~or handicap unless such action is related to a~~
3 ~~bona fide occupational qualification reasonably necessary to the~~
4 ~~normal operation of the employer's business or enterprise~~ disability
5 or genetic information with respect to the employee.

6 B. This section does not apply to the employment of an
7 individual by his parents, spouse, or child or to employment in the
8 domestic service of the employer.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1350 of Title 25, unless there
11 is created a duplication in numbering, reads as follows:

12 A. A cause of action for employment based discrimination is
13 hereby created and any common law remedies are hereby abolished.

14 B. In order to have standing in a court of law to allege
15 discrimination arising from an employment related matter, in a cause
16 of action against an employer for discrimination based on race,
17 color, religion, sex, national origin, age, or genetic information
18 with respect to the employee or retaliation, an aggrieved party
19 must, within three hundred days from the last date of alleged
20 discrimination, file a charge of discrimination in employment with
21 the Equal Employment Opportunity Commission and/or the Oklahoma
22 Human Rights Commission alleging the basis of discrimination
23 believed to have been perpetrated on the aggrieved party. Upon
24 completion of any investigation, the Oklahoma Human Rights

1 Commission shall issue the complaining party a Notice of a Right to
2 Sue.

3 C. Should a charge of discrimination be filed with the Oklahoma
4 Human Rights Commission and not be resolved to the satisfaction of
5 the charging party within one hundred eighty (180) days from the
6 date of filing of such charge, the charging party may request the
7 Commission to issue a Notice of a Right to Sue, which must be first
8 obtained in order to commence a civil action under this section.

9 D. All civil actions brought pursuant to a Notice of a Right to
10 Sue from the Oklahoma Human Rights Commission for redress against
11 any person who is alleged to have discriminated against the charging
12 party and against any person named as respondent in the charge shall
13 be commenced in the district court of this state for the county in
14 which the unlawful employment practice is alleged to have been
15 committed.

16 E. Either party in any such action shall be entitled to a jury
17 trial of any facts in dispute in the action.

18 F. The defending party may allege a bona fide occupational
19 qualification as a defense only as to religion, sex, national origin
20 and age.

21 G. If it is determined in such action that the defendant or
22 defendants in such action have discriminated against the charging
23 party as charged in the petition, the aggrieved party shall be
24 entitled to nominal or actual damages. Actual damages shall

1 include, but not be limited to, reinstatement or hiring, with or
2 without back pay, or any other legal or equitable relief as the
3 court deems appropriate. Interim earnings or amounts earnable with
4 reasonable diligence by the person discriminated against shall
5 operate to reduce the back pay otherwise allowable. If an
6 individual was refused employment or advancement, was suspended
7 and/or was discharged for legitimate reasons other than
8 discrimination as provided by this act, then no order of the court
9 shall require the hiring, reinstatement or promotion of that
10 individual as an employee, nor shall it order payment of any back
11 pay.

12 H. In any action or proceeding under this section the court
13 shall allow a prevailing party a reasonable attorneys fee.

14 I. No action may be filed in district court as herein provided
15 more than ninety (90) days after receiving a Notice of a Right to
16 Sue from the Oklahoma Human Rights Commission.

17 SECTION 5. This act shall become effective November 1, 2010.

18

19 52-2-3680 SJ 2/15/2010 2:52:38 PM

20

21

22

23

24