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THE STATE SENATE
Thursday, February 18, 2010

Committee Substitute for
Senate Bill No. 1961

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1961 - By: Jolley of the Senate and Sullivan of the House.

[discrimination in employment - disability - genetic information - codification - effective date]

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

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

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

- 1. Civil Rights Act of 1964,~~the~~;
- 2. The federal Age Discrimination in Employment Act of 1967,~~;~~
- and;
- 3. Section 504 of the federal Rehabilitation Act of 1973;
- 4. Title I of the Americans with Disabilities Act;
- 5. The Equal Pay Act of 1963;
- 6. Sections 102 and 103 of the Civil Rights Act of 1991; and
- 7. The Genetic Information Nondiscrimination Act of 2008,

1 ~~to make uniform the law of those states which enact this act,~~
2 and to provide rights and remedies substantially equivalent to those
3 granted under the federal Fair Housing Law.

4 B. This act shall be construed according to the fair import of
5 its terms and shall be liberally construed to further the general
6 purposes stated in this section and the special purposes of the
7 particular provision involved.

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

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

11 1. "Employer" means

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

15 b. a person who ~~as a contractor or subcontractor is~~
16 ~~furnishing the~~ contracts or subcontracts with the
17 state, a governmental entity or a state agency to
18 furnish material or performing perform work for the
19 ~~state or a governmental entity or agency of the state~~
20 ~~and includes, or~~

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

1 The term "employer" does not include ~~an Indian~~ a Native American
2 tribe or a bona fide membership club ~~not organized for profit,~~ other
3 than a labor organization, that is exempt from taxation under Title
4 26, Section 501(c) of the United States Code;

5 2. "Employment agency" means a person regularly undertaking
6 with or without compensation to procure employees for an employer or
7 to procure for employees opportunities to work for an employer and
8 includes an agent of such a person;

9 3. "Labor organization" includes:

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

17 b. a conference, general committee, joint or system
18 board, or joint council so engaged which is
19 subordinate to a national or international labor
20 organization, or

21 c. an agent of a labor organization;

22 4. ~~"Handicapped person"~~ "Disability" means ~~a person who has a~~
23 physical or mental impairment which substantially limits one or more

1 ~~of such person's major life activities, has a record of such an~~
2 ~~impairment or is regarded as having such an impairment; and~~

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

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

7 Section 1302. A. It is a discriminatory practice for an
8 employer:

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

17 2. To limit, segregate, or classify an employee or applicant
18 for employment in a way which would deprive or tend to deprive an
19 individual of employment opportunities or otherwise adversely affect
20 the status of an employee, because of race, color, religion, sex,
21 national origin, age, ~~or handicap unless such action is related to a~~
22 ~~bona fide occupational qualification reasonably necessary to the~~

1 ~~normal operation of the employer's business or enterprise~~ disability
2 or genetic information with respect to the employee.

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

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

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

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

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

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

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

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

19 G. If it is determined in such action that the defendant or
20 defendants in such action have discriminated against the charging
21 party as charged in the petition, the aggrieved party shall be
22 entitled to nominal or actual damages. Actual damages shall
23 include, but not be limited to, reinstatement or hiring, with or

1 without back pay, or any other legal or equitable relief as the
2 court deems appropriate. Interim earnings or amounts earnable with
3 reasonable diligence by the person discriminated against shall
4 operate to reduce the back pay otherwise allowable. If an
5 individual was refused employment or advancement, was suspended
6 and/or was discharged for legitimate reasons other than
7 discrimination as provided by this act, then no order of the court
8 shall require the hiring, reinstatement or promotion of that
9 individual as an employee, nor shall it order payment of any back
10 pay.

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

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-16-10 - DO
18 PASS, As Amended and Coauthored.