

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1038

By: Leftwich

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5
6 AS INTRODUCED

7 An Act relating to labor; creating the Victims
8 Economic Security and Safety Act; stating purposes;
9 providing for applicability to certain employers;
10 providing for leave requirements for certain
11 employees; providing for construction; construing
12 language; requiring certain notice; providing for
13 confidentiality; providing for group health plan
14 coverage for certain employees; specifying unlawful
15 acts; providing for certain leave; providing certain
16 employment protections; defining terms; requiring
17 Labor Commissioner to perform certain acts; providing
18 for certain findings; providing for Oklahoma Attorney
19 General intervention in certain circumstances;
20 providing for damages; requiring posting of certain
21 information; construing act; providing for certain
22 rights of certain employees; providing for
23 codification; and providing an effective date.
24

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 90 of Title 40, unless there is
21 created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Victims
23 Economic Security and Safety Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 91 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 The purposes of the Victims Economic Security and Safety Act
5 are:

6 1. To promote the state's interest in reducing domestic
7 violence, dating violence, sexual assault, and stalking by enabling
8 victims of domestic or sexual violence to maintain the financial
9 independence necessary to leave abusive situations, achieve safety,
10 and minimize the physical and emotional injuries from domestic or
11 sexual violence, and to reduce the devastating economic consequences
12 of domestic or sexual violence to employers and employees;

13 2. To address the failure of existing laws to protect the
14 employment rights of employees who are victims of domestic or sexual
15 violence and employees with a family or household member who is a
16 victim of domestic or sexual violence, by protecting the civil and
17 economic rights of those employees, and by furthering the equal
18 opportunity of women for economic self-sufficiency and employment
19 free from discrimination;

20 3. To address the failure of laws to address the employment
21 rights of pregnant women; and

22 4. To accomplish the purposes described in paragraphs 1 through
23 3 of this section by entitling employed victims of domestic or
24 sexual violence to take unpaid leave to seek medical help, legal

1 assistance, counseling, safety planning, and other assistance
2 without penalty from their employers.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 92 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 The provisions of the Victims Economic Security and Safety Act
7 shall only be applicable to an employer with one hundred or more
8 employees.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 93 of Title 40, unless there is
11 created a duplication in numbering, reads as follows:

12 A. 1. An employee who is a victim of domestic or sexual
13 violence or is a pregnant woman may take unpaid leave from work to
14 address domestic or sexual violence by:

- 15 a. seeking medical attention for, or recovering from,
16 physical or psychological injuries caused by domestic
17 or sexual violence to the employee,
- 18 b. obtaining services from a victim services organization
19 for the employee,
- 20 c. obtaining psychological or other counseling for the
21 employee,
- 22 d. participating in safety planning, temporarily or
23 permanently relocating, or taking other actions to
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1 increase the safety of the employee from future
2 domestic or sexual violence,

3 e. seeking legal assistance or remedies to ensure the
4 health and safety of the employee, including preparing
5 for or participating in any civil or criminal legal
6 proceeding related to or derived from domestic or
7 sexual violence, or

8 f. in the case of a pregnant woman, seeking medical
9 attention for the pregnancy.

10 2. Subject to subsection C of this section, an employee shall
11 be entitled to a total of three (3) workweeks of leave during any
12 twelve-month period. The Victims Economic Security and Safety Act
13 does not create a right for an employee to take unpaid leave that
14 exceeds the unpaid leave time allowed under, or is in addition to,
15 the unpaid leave time permitted by the federal Family and Medical
16 Leave Act of 1993, 29 U.S.C., Section 2601 et seq.

17 3. Leave described in this section may be taken intermittently
18 or on a reduced work schedule.

19 B. The employee shall provide the employer with at least forty-
20 eight (48) hours advance notice of the employee's intention to take
21 the leave, unless providing such notice would endanger the employee.
22 When an unscheduled absence occurs, the employer may not take any
23 action against the employee if the employee, within three (3) days
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1 after the absence, provides certification under subsection C of this
2 section.

3 C. 1. The employer may require the employee to provide
4 certification to the employer that:

- 5 a. the employee is a victim of domestic or sexual
6 violence, or
- 7 b. the employee is pregnant, and
- 8 c. the leave is for one of the purposes enumerated in
9 paragraph 1 of subsection A of this section. The
10 employee shall provide such certification to the
11 employer within ten (10) working days after the
12 employer requests certification in writing.

13 2. An employee may satisfy the certification requirement of
14 paragraph 1 of this subsection by providing to the employer any of
15 the following documents:

- 16 a. documentation from an employee, agent, or volunteer of
17 a victim services organization, an attorney, a member
18 of the clergy, or a medical or other professional from
19 whom the employee has sought assistance in addressing
20 domestic or sexual violence and the effects of the
21 violence,
- 22 b. a police or court record,
- 23 c. a victim's protective order, or

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1 d. in the case of a pregnant woman, documentation of the
2 pregnancy.

3 D. All information provided to the employer pursuant to
4 subsection B or C of this section, including a statement of the
5 employee or any other documentation or record and the fact that the
6 employee has requested or obtained leave pursuant to this section,
7 shall be retained in the strictest confidence by the employer,
8 except to the extent that disclosure is:

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

11 E. 1. Any employee who takes leave under this section for the
12 intended purpose of the leave shall be entitled, on return from such
13 leave:

- 14 a. to be restored by the employer to the position of
15 employment held by the employee when the leave
16 commenced, or
- 17 b. to be restored to an equivalent position with
18 equivalent employment benefits, pay, and other terms
19 and conditions of employment.

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

23 F. Nothing in this section shall be construed to entitle any
24 restored employee to:

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

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

6 G. Nothing in this section shall be construed to prohibit an
7 employer from requiring an employee on leave under this section to
8 report periodically to the employer on the status and intention of
9 the employee to return to work.

10 H. Except as provided in subsection B of this section, during
11 any period that an employee takes leave under this section, the
12 employer shall maintain coverage for the employee and any family or
13 household member under any group health plan for the duration of
14 such leave at the level and under the conditions coverage would have
15 been provided if the employee had continued in employment
16 continuously for the duration of such leave.

17 I. The employer may recover the premium that the employer paid
18 for maintaining coverage for the employee and the employee's family
19 or household members under such group health plan during any period
20 of leave under this section if:

21 1. The continuation, recurrence, or onset of domestic or sexual
22 violence that entitles the employee to leave pursuant to this
23 section; or

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1 2. Other circumstances beyond the control of the employee which
2 would make it impossible for the employee to continue similar work
3 assigned prior to the leave.

4 J. 1. An employer may require an employee who claims that the
5 employee is unable to return to work because of a reason described
6 in subsection I of this section to provide, within a reasonable
7 period after making the claim, certification to the employer that
8 the employee is unable to return to work because of that reason.

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

- 11 a. a sworn statement of the employee,
- 12 b. documentation from an employee, agent, or volunteer of
13 a victim services organization, an attorney, a member
14 of the clergy, or a medical or other professional from
15 whom the employee has sought assistance in addressing
16 domestic or sexual violence and the effects of that
17 violence,
- 18 c. a police or court record, or
- 19 d. other corroborating evidence.

20 K. All information provided to the employer pursuant to
21 subsection J of this section, any other documentation, record, or
22 corroborating evidence, and the fact that the employee is not
23 returning to work because of a reason described in subsection I of
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1 this section shall be retained in the strictest confidence by the
2 employer, except to the extent that disclosure is:

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

5 L. 1. It shall be unlawful for any employer to interfere with,
6 restrain, or deny the exercise of or the attempt to exercise any
7 right provided under this section.

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

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

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

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

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

4 a. has filed any charge, or has instituted or caused to
5 be instituted any proceeding, under or related to this
6 section,

7 b. has given, or is about to give, any information in
8 connection with any inquiry or proceeding relating to
9 any right provided under this section, or

10 c. has testified, or is about to testify, in any inquiry
11 or proceeding relating to any right as provided in
12 this section.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 94 of Title 40, unless there is
15 created a duplication in numbering, reads as follows:

16 An employee who is entitled to take paid or unpaid leave,
17 including family, medical, sick, annual, personal, maternity, or
18 similar leave, from employment, pursuant to federal, state, or local
19 law, a collective bargaining agreement, or an employment benefits
20 program or plan, may elect to substitute any period of such leave
21 for an equivalent period of leave provided under Section 4 of this
22 act.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 95 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An employer shall not fail to hire, refuse to hire,
5 discharge, or harass any individual, otherwise discriminate against
6 any individual with respect to the compensation, terms, conditions,
7 or privileges of employment of the individual, or retaliate against
8 an individual in any form or manner, and a public agency shall not
9 deny, reduce, or terminate the benefits of, otherwise sanction, or
10 harass any individual, otherwise discriminate against any individual
11 with respect to the amount, terms, or conditions of public
12 assistance of the individual, or retaliate against an individual in
13 any form or manner, because:

14 1. The individual involved:

15 a. is or is perceived to be a victim of domestic or
16 sexual violence,

17 b. attended, participated in, prepared for, or requested
18 leave to attend, participate in, or prepare for a
19 criminal or civil court proceeding relating to an
20 incident of domestic or sexual violence of which the
21 individual was a victim,

22 c. requested an adjustment to a job structure, workplace
23 facility, or work requirement, including a transfer,
24 reassignment, or modified schedule, leave, a changed

1 telephone number or seating assignment, installation
2 of a lock, or implementation of a safety procedure in
3 response to actual or threatened domestic or sexual
4 violence, regardless of whether the request was
5 granted, or

6 d. the person is pregnant; or

7 2. The workplace is disrupted or threatened by the action of a
8 person whom the individual states has committed or threatened to
9 commit domestic or sexual violence against the individual.

10 B. In this section:

11 1. "Discriminate", used with respect to the terms, conditions,
12 or privileges of employment or with respect to the terms or
13 conditions of public assistance, includes not making a reasonable
14 accommodation to the known limitations resulting from circumstances
15 relating to being a victim of domestic or sexual violence of an
16 otherwise qualified individual:

17 a. who is:

18 (1) an applicant or employee of the employer,
19 including a public agency, or

20 (2) an applicant for or recipient of public
21 assistance from a public agency, and

22 b. who is:

23 (1) a victim of domestic or sexual violence, or

24 (2) pregnant,

1 unless the employer or public agency can demonstrate that the
2 accommodation would impose an undue hardship on the operation of the
3 employer or public agency;

4 2. "Qualified individual" means:

5 a. in the case of an applicant or employee described in
6 division (1) of subparagraph a of paragraph 1 of this
7 subsection, an individual who, but for being a victim
8 of domestic or sexual violence, can perform the
9 essential functions of the employment position that
10 such individual holds or desires, or

11 b. in the case of an applicant or recipient described in
12 division (2) of subparagraph a of paragraph 1 of this
13 subsection, an individual who, but for being a victim
14 of domestic or sexual violence, can satisfy the
15 essential requirements of the program providing the
16 public assistance that the individual receives or
17 desires;

18 3. "Reasonable accommodation" may include an adjustment to a
19 job structure, workplace facility, or work requirement, including a
20 transfer, reassignment, or modified schedule, leave, a changed
21 telephone number or seating assignment, installation of a lock, or
22 implementation of a safety procedure, in response to actual or
23 threatened domestic or sexual violence; and

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1 4. "Undue hardship" means an action requiring significant
2 difficulty or expense imposed on the operation of an employer or
3 public agency, when considered in light of the following factors:

4 a. the nature and cost of the reasonable accommodation
5 needed under this section,

6 b. the overall financial resources of the facility
7 involved in the provision of the reasonable
8 accommodation, the number of persons employed at such
9 facility, the effect on expenses and resources, or the
10 impact otherwise of such accommodation on the
11 operation of the facility,

12 c. the overall financial resources of the employer or
13 public agency, the overall size of the business of an
14 employer or public agency with respect to the number
15 of employees of the employer or public agency, and the
16 number, type, and location of the facilities of an
17 employer or public agency, and

18 d. the type of operation of the employer or public
19 agency, including the composition, structure, and
20 functions of the workforce of the employer or public
21 agency, the geographic separateness of the facility
22 from the employer or public agency, and the
23 administrative or fiscal relationship of the facility
24 to the employer or public agency.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 96 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 the Victims Economic Security and Safety Act.

7 1. Any employee or a representative of employees who believes
8 their rights under the Victims Economic Security and Safety Act have
9 been violated may, within two (2) years after the alleged violation
10 occurs, file a complaint with the Department of Labor requesting a
11 review of the alleged violation.

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

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

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

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

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

23 7. If the Commissioner finds that a violation did occur, the
24 Commissioner shall issue a decision incorporating the findings and

1 requiring the party committing the violation to take such
2 affirmative action to abate the violation as the Commissioner deems
3 appropriate.

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

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

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

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

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

18 D. The Department of Labor shall adopt rules necessary to
19 administer and enforce the Victims Economic Security and Safety Act.

20 E. The Oklahoma Attorney General may intervene on behalf of the
21 Department of Labor if the Department certifies that the case is of
22 general public importance. Upon such intervention, the court may
23 award such relief as is authorized to be granted to an employee who
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1 has filed a complaint or whose representative has filed a complaint
2 under this section.

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

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 97 of Title 40, unless there is
11 created a duplication in numbering, reads as follows:

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

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 98 of Title 40, unless there is
22 created a duplication in numbering, reads as follows:

23 A. Nothing in the Victims Economic Security and Safety Act
24 shall be construed to supersede any provision of any federal, state,

1 or local law, collective bargaining agreement, or employment
2 benefits program or plan that provides:

3 1. Greater leave benefits for victims of domestic or sexual
4 violence or pregnant women than the rights established under the
5 Victims Economic Security and Safety Act; or

6 2. Leave benefits for a larger population of victims of
7 domestic or sexual violence or pregnant women as defined in such
8 law, agreement, program, or plan than the victims of domestic or
9 sexual violence covered under the Victims Economic Security and
10 Safety Act.

11 B. The rights established for employees who are victims of
12 domestic or sexual violence under the Victims Economic Security and
13 Safety Act shall not be diminished by any federal, state or local
14 law, collective bargaining agreement, or employment benefits program
15 or plan.

16 SECTION 10. This act shall become effective November 1, 2009.

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