

1 STATE OF OKLAHOMA

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

3 SENATE BILL 728

By: Leftwich

4
5
6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.
8 2001, Section 840-2.21, as last amended by Section 8,
9 Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2008, Section
10 840-2.21), which relates to leave without pay;
authorizing certain leave without pay for certain
victims; defining terms; providing an effective date;
and declaring an emergency.

11
12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-2.21, as
15 last amended by Section 8, Chapter 312, O.S.L. 2004 (74 O.S. Supp.
16 2008, Section 840-2.21), is amended to read as follows:

17 Section 840-2.21 A. If a state employee, whether in the
18 classified or unclassified service, is absent because of an illness
19 or injury arising out of and sustained in the course of his or her
20 employment with the state, and for which workers' compensation
21 benefits have been filed, the employing agency shall place the
22 employee on leave without pay if the employee so requests; provided,
23 leave without pay pursuant to this section shall not for any purpose
24 be considered a break in service.

1 B. An employee who sustains an illness or injury arising out of
2 and sustained in the course of employment with the State of Oklahoma
3 shall not be required to use either accumulated sick or annual leave
4 during such period prior to being placed on leave without pay
5 pursuant to this section.

6 C. An employee placed on leave without pay pursuant to the
7 provisions of this section shall continue receiving basic plan
8 insurance coverage as defined in Section 1363 of this title and
9 dependent insurance benefit allowance pursuant to paragraph 2 of
10 subsection C of Section 1370 of this title paid by the agency during
11 the leave without pay.

12 D. An employee on leave without pay pursuant to the provisions
13 of this section shall have the right to be returned to his or her
14 original position in accordance with rules promulgated by the Office
15 of Personnel Management. If it is found necessary for the good of
16 the state to fill the position during the period the employee is on
17 leave without pay the employee filling the position shall vacate the
18 position upon the return of the employee on leave without pay,
19 subject to layoff, transfer or demotion rights earned under the
20 Oklahoma Personnel Act and rules of the Office of Personnel
21 Management. The right to return to the original position shall
22 expire one (1) year from the date of the start of leave without pay.
23 Notwithstanding the provisions of Section 1 et seq. of Title 85 of
24 the Oklahoma Statutes, the employee may be separated in accordance

1 with the Oklahoma Personnel Act and Merit Rules if the employee has
2 not returned to the original position of the employee or some other
3 position within the agency within one (1) year from the date of the
4 start of leave without pay.

5 E. An employee on leave without pay pursuant to the provisions
6 of this section shall provide a medical statement as to his or her
7 ability to perform the duties of the position to the appointing
8 authority at least every three (3) months.

9 F. If the employee becomes medically able with reasonable
10 accommodation to perform the duties of his or her original position,
11 the employee shall be returned to such position. If the employee is
12 unable to perform the duties of the original position with
13 reasonable accommodation, but is medically able with reasonable
14 accommodation to perform the duties of any other position within the
15 agency for which the employee is qualified, and appointment to such
16 other position does not constitute a promotion, the employee shall
17 have first preference for any such position which becomes vacant
18 within the agency, notwithstanding any other preference provisions
19 of the Oklahoma Personnel Act or of other laws of the State of
20 Oklahoma. An employee accepting another position pursuant to this
21 subsection shall not forfeit his or her right to be returned to the
22 original position within twelve (12) months after the start of leave
23 without pay pursuant to the provisions of subsection D of this
24 section.

1 G. An ill or injured employee shall be eligible to participate
2 in the Disability Insurance Program established pursuant to the
3 provisions of Section 1331 et seq. of this title in accordance with
4 rules promulgated by the State and Education Employees Group
5 Insurance Board.

6 H. Any state employee may take unpaid leave for up to thirty
7 (30) days per calendar year if the employee or the employee's family
8 or a household member is a victim of domestic abuse, sexual assault
9 or stalking. The leave may be taken if the purpose of the leave is
10 to seek medical attention, obtain victim services, obtain
11 counseling, temporarily or permanently relocate or take legal
12 action.

13 I. As used in this subsection:

14 1. "Domestic or sexual violence" means domestic violence,
15 domestic abuse, sexual assault, or stalking;

16 2. "Domestic violence" or "domestic abuse" means acts or
17 threats of violence, not including acts of self defense, as defined
18 in Section 60.1 of Title 22 of the Oklahoma Statutes, sexual
19 assault, or death to the person, or the person's family or household
20 member, if the conduct causes the specific person to have such
21 distress or fear;

22 3. "Family or household member" means a spouse, parent, son,
23 daughter, and persons jointly resident in the same household;

24

1 4. "Sexual assault" means any conduct as defined in Section
2 142.20 of Title 21 of the Oklahoma Statutes;

3 5. "Stalking" means any conduct as defined in Section 60.1 of
4 Title 22 of the Oklahoma Statutes; and

5 6. "Victim" means an individual who has been subjected to
6 domestic or sexual violence.

7 J. All benefits, rights, and obligations contained in this
8 section shall continue during the time the employee remains on leave
9 without pay status, for a continuous period not to exceed twelve
10 (12) months. However, if a workers' compensation claim based on
11 such illness or injury is denied during the twelve-month period, all
12 benefits, rights and obligations conferred upon an employee pursuant
13 to this section shall cease and be discontinued immediately.

14 ~~F.~~ K. A classified employee who is separated pursuant to
15 subsection D of this section shall be eligible for reinstatement to
16 employment with any state agency for twelve (12) months after the
17 date of separation whether in the classified or unclassified service
18 in accordance with rules adopted by the Administrator of the Office
19 of Personnel Management provided the employee is qualified for the
20 position to which reinstated. An unclassified employee who is
21 separated pursuant to subsection D of this section shall be eligible
22 for reinstatement to unclassified employment with any state agency
23 for twelve (12) months after the date of separation in accordance
24 with rules promulgated by the Administrator of the Office of

1 Personnel Management provided the employee is qualified for the
2 position to which reinstated. Nothing in this subsection shall be
3 construed to compel or require any agency of the state to reinstate
4 a former employee who is separated pursuant to subsection D of this
5 section. Further, nothing in this subsection shall be construed as
6 limiting or reducing a former employee's eligibility for
7 reinstatement pursuant to other general reinstatement or
8 reemployment provisions in rules promulgated by the Administrator.

9 SECTION 2. This act shall become effective July 1, 2009.

10 SECTION 3. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

14

15 52-1-433 ARE 3/6/2009 6:22:20 AM

16

17

18

19

20

21

22

23

24