

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 SENATE BILL NO. 1522

By: Johnson (Rob) of the Senate

4 and

5 Schwartz of the House

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7
8 An Act relating to termination of injured employee;
9 amending 85 O.S. 2011, Section 341, which relates to
10 discharge or termination of group insurance;
11 modifying prohibited actions by employer; specifying
12 burden of proof in certain actions; authorizing
13 termination of certain employers after specified time
14 period; limiting certain damage awards; authorizing
15 award of certain costs and fees; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 85 O.S. 2011, Section 341, is
19 amended to read as follows:

20 Section 341. A. No employer may ~~discharge or, except for~~
21 ~~nonpayment of premium,~~ terminate any group health insurance of any
22 ~~employee because the employee has in good faith:~~

23 1. ~~Filed a claim;~~

24 2. ~~Retained a lawyer for representation regarding a claim;~~

3. ~~Instituted or caused to be instituted any proceeding under~~
~~the provisions of this act;~~

1 ~~4. Testified or is about to testify in any proceeding under the~~
2 ~~provisions of this act; or~~

3 ~~5. Elected to participate or not to participate in a certified~~
4 ~~workplace medical plan as provided in this act~~ an employee solely
5 because the employee has instituted or maintained in good faith any
6 action against the employer to recover workers' compensation
7 benefits. In order for an employer to be liable under this section,
8 the employee shall prove by a preponderance of the evidence that the
9 sole reason for the termination of employment was because the
10 employee instituted or maintained a good faith action to recover
11 workers' compensation benefits.

12 B. No employer may discharge any employee during a period of
13 temporary total disability solely on the basis of absence from work.
14 However, no employer is required to retain an employee if the
15 employee is not able to return to work within one (1) year from the
16 date of the injury, regardless of whether the employee is
17 temporarily disabled. After one (1) year from the date of the
18 injury, an employer is permitted to end the employment relationship
19 without liability under this section.

20 ~~C. After an employee's period of temporary total disability has~~
21 ~~ended, no~~ An employer shall not be required to rehire or retain any
22 employee who is determined by the employer's physician to be
23 physically unable to perform the assigned job duties and
24 responsibilities at the time the injury occurred. The failure of an

1 employer to rehire or retain any such employee or the decision of an
2 employer to terminate an employee shall not be deemed a violation of
3 this section.

4 ~~D. No employer may discharge an employee for the purpose of~~
5 ~~avoiding payment of temporary total disability benefits to the~~
6 ~~injured employee.~~

7 ~~E. An employer which violates any provision of this section~~
8 ~~shall be liable in a district court action solely for reasonable~~
9 ~~damages, actual and punitive if applicable, suffered by an employee~~
10 ~~as a result of the violation. An employee discharged in violation~~
11 ~~of the Workers' Compensation Code shall be entitled to be reinstated~~
12 ~~to his or her former position. Exemplary or punitive damage awards~~
13 ~~made pursuant to this section shall not exceed One Hundred Thousand~~
14 ~~Dollars (\$100,000.00). The employee shall have the burden of proof~~
15 ~~by a preponderance of the evidence the amount of wages lost by the~~
16 ~~employee. The amount of lost wages shall not exceed one (1) year of~~
17 ~~wages based upon the amount of wages the employee was being paid at~~
18 ~~the time of the injury and shall be offset by any collateral source~~
19 ~~of income, including, but not limited to, unemployment compensation,~~
20 ~~payments from workers' compensation, payments from any insurance~~
21 ~~including disability insurance or payments from the federal or state~~
22 ~~government of any nature while the worker is unemployed. The~~
23 ~~employee shall not be entitled to recover punitive, compensatory or~~
24 ~~emotional damages and is required to act in good faith to take all~~

1 measures to mitigate any lost wages. The prevailing party in any
2 action under this section shall be entitled to an award of
3 reasonable costs and attorney fees.

4 SECTION 2. This act shall become effective November 1, 2012.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO
6 PASS, As Coauthored.

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