

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 995

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to immigration; creating the
8 "Oklahoma Guest Worker Permit Program Act"; providing
9 short title; defining terms; providing for
10 administration of certain program; specifying
11 requirements for Department of Labor in administering
12 program; requiring requests for certain waivers,
13 exemptions, or authorizations from federal
14 government; specifying time for implementation;
15 creating certain fund; allowing for deposits and
16 expenditures; authorizing cooperation with other
17 state and federal laws; providing method of tax
18 calculation under certain circumstances; prohibiting
19 permit holder from receiving unemployment
20 compensation; authorizing receipt of certain permit
21 under certain circumstances; prohibiting certain uses
22 of permits; specifying criteria for permits;
23 authorizing adoption of rules; providing for payment
24 of certain costs; providing criteria for immediate
family permit; providing requirements for permit
structure; providing for expiration; specifying
application procedure; providing for appeal;
providing for revocation under certain circumstances;
requiring verification of permit validity for certain
hiring; requiring update of certain information;
providing for termination of permit under certain
circumstances; requiring notice; allowing for appeal;
limiting liability; prohibiting receipt of certain
benefits or services; prohibiting certain conduct;
providing for fines and penalties; providing certain
notice upon findings of undocumented individuals;
providing for codification; providing for
noncodification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law not to be
3 codified in the Oklahoma Statutes reads as follows:

4 This act shall be known and may be cited as the "Oklahoma Guest
5 Worker Permit Program Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 361 of Title 40, unless there is
8 created a duplication in numbering, reads as follows:

9 As used in the Oklahoma Guest Worker Permit Program Act:

10 1. "Basic health insurance plan" means a health plan that is
11 actuarially equivalent to a federally qualified high deductible
12 health plan;

13 2. "Guest worker" means an undocumented individual who holds a
14 guest worker permit;

15 3. "Guest worker permit" means a permit issued in accordance
16 with Section 7 of this act to an undocumented individual who meets
17 the eligibility criteria of Section 8 of this act;

18 4. "Guest worker permit sponsor" means a person or entity that
19 will submit information requested on behalf of a person applying for
20 a guest worker permit and agrees to employ the applicant upon
21 approval for the term of the permit and enroll the guest worker in a
22 basic health insurance plan;

23 5. "Immediate family" means for an undocumented individual:

24 a. the undocumented individual's spouse, or

1 b. a child of the undocumented individual if the child
2 is:

3 (1) under twenty-one (21) years of age, and

4 (2) unmarried;

5 6. "Immediate family permit" means a permit issued in
6 accordance with Section 7 of this act to an undocumented individual
7 who meets the eligibility criteria of Section 9 of this act;

8 7. "Lawfully present in the United States" is as defined in 8
9 C.F.R. Sec. 103.12;

10 8. "Permit" means a permit issued under this act and includes:

11 a. a guest worker permit, and

12 b. an immediate family permit;

13 9. "Permit holder" means an individual who holds a permit;

14 10. "Program" means the Oklahoma Guest Worker Permit Program
15 described in Section 3 of this act;

16 11. "Relevant contact information" means the following for an
17 undocumented individual:

18 a. the undocumented individual's name,

19 b. the undocumented individual's residential address,

20 c. the undocumented individual's residential telephone
21 number,

22 d. the undocumented individual's personal email address,

23 e. the name of the person with whom the undocumented
24 individual has a contract for hire,

- 1 f. the name of the contact person for the person listed
- 2 in subparagraph e of this paragraph,
- 3 g. the address of the person listed in subparagraph e of
- 4 this paragraph,
- 5 h. the telephone number for the person listed in
- 6 subparagraph e of this paragraph,
- 7 i. the names of the undocumented individual's immediate
- 8 family members,
- 9 j. the names of the family members who reside with the
- 10 undocumented individual, and
- 11 k. any other information required by the Department of
- 12 Labor as may be developed by rule;

13 12. "Restricted account" means the Guest Worker Permit
14 Restricted Account created in Section 5 of this act; and

15 13. "Undocumented individual" means an individual who:

- 16 a. lives or works in the state, and
- 17 b. is not lawfully present in the United States.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 362 of Title 40, unless there is
20 created a duplication in numbering, reads as follows:

21 A. The Department of Labor shall administer a program known as
22 the "Oklahoma Guest Worker Permit Program". Under the Program, the
23 Department shall:

- 1 1. Seek one or more waivers, exemptions, or authorizations to
- 2 implement the Program as provided in Section 6 of this act;
- 3 2. Issue a permit as provided in Section 10 of this act;
- 4 3. Establish fees for a filing or service required by this act;
- 5 4. Take action for enforcement as provided by this act; and
- 6 5. Report annually to the Governor and the Legislature.

7 B. The Department shall promulgate and adopt rules to the
8 extent expressly provided for in this act.

9 C. In implementing this act, the Department shall cooperate
10 with other state agencies to minimize any duplication in databases
11 or services required under this act.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 363 of Title 40, unless there is
14 created a duplication in numbering, reads as follows:

15 A. The Department of Labor, in cooperation with the Office of
16 the Governor, shall seek one or more federal waivers, exemptions, or
17 authorizations to implement the Program.

18 B. The Governor shall actively participate in the effort to
19 obtain one or more federal waivers, exemptions, or authorizations
20 under this section. The Governor may execute any memorandum of
21 understanding necessary for implementation and any such cooperative
22 agreements between this state and the federal government shall be
23 compatible with the Immigration and Nationality Act, 8 U.S.C Section
24 1101 et seq.

1 C. The Department shall implement the Program the sooner of:

2 1. One hundred twenty (120) days after the day on which the
3 Governor finds that this state has the one or more federal waivers,
4 exemptions, or authorizations needed to implement the Program; or

5 2. July 1, 2013.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 364 of Title 40, unless there is
8 created a duplication in numbering, reads as follows:

9 A. There is created in the State Treasury a revolving fund for
10 the Department of Labor to be designated as the "Guest Worker Permit
11 Revolving Fund". The fund shall be a continuing fund, not subject
12 to fiscal year limitations. Monies deposited or apportioned to the
13 credit of the fund may be expended for the purposes authorized by
14 law.

15 B. 1. The fund shall consist of:

- 16 a. fees collected under this act,
- 17 b. a fine collected under Section 10 of this act,
- 18 c. civil penalties imposed under this act,
- 19 d. money appropriated to the restricted account by the
20 Legislature, and
- 21 e. interest earned on the restricted account.

22 2. The restricted account shall earn interest.

23 C. The Legislature may appropriate money from the restricted
24 account for:

1 1. The Department of Labor and the Office of the Governor to
2 pay the costs associated with the implementation of Section 3 of
3 this act;

4 2. The Department to administer the Program;

5 3. The Oklahoma Tax Commission for costs associated with
6 implementing Section 6 of this act; and

7 4. The Attorney General for costs associated with litigation
8 related to this act.

9 Expenditures from the fund shall be made upon warrants issued by
10 the State Treasurer against claims submitted to the Director of
11 State Finance.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 365 of Title 40, unless there is
14 created a duplication in numbering, reads as follows:

15 A. To the extent feasible, the Department of Labor shall
16 coordinate the implementation of the Program with other existing
17 state and federal laws that relate to immigration and labor,
18 including laws pertaining to obtaining the privilege to drive and to
19 report citizenship status.

20 B. 1. If a waiver, exemption, or authorization described in
21 Section 4 of this act does not provide for the issuance of a Social
22 Security number to a guest worker, the Oklahoma Tax Commission
23 shall, by rule, provide a means for a person who receives services
24

1 from a guest worker to withhold from compensation paid to the guest
2 worker an amount to be determined by the Tax Commission
3 rule that, as closely as possible, equals the income and employment
4 taxes that would be imposed by state and federal law if the guest
5 worker were an employee with a Social Security number.

6 2. If a waiver, exemption, or authorization described in
7 Section 4 of this act provides for the issuance of a Social Security
8 number to a guest worker, a person who receives services from a
9 guest worker is required to withhold from compensation as provided
10 by law.

11 C. The Department shall facilitate the use in this state of
12 other employer-based work programs that meet the needs of employers
13 of this state by using workers who are not working in Oklahoma and
14 who are not United States citizens. Nothing in this act prevents a
15 person from using an employer-based work program described in this
16 subsection that exists under the auspices of a foreign government in
17 cooperation with the United States government.

18 D. A permit holder is not eligible for unemployment
19 compensation.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 366 of Title 40, unless there is
22 created a duplication in numbering, reads as follows:
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1 A. 1. An undocumented individual who is eligible to obtain a
2 permit under this act may obtain a permit in accordance with this
3 act.

4 2. An undocumented individual shall obtain a guest worker
5 permit before providing services to a person in this state under a
6 contract for hire.

7 3. An undocumented individual who holds an immediate family
8 permit under this act may not provide services in this state under a
9 contract for hire.

10 B. An individual may not use a permit:

11 1. To establish entitlement to a federal, state, or local
12 benefit; or

13 2. To obtain work or provide services in a state other than
14 Oklahoma.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 367 of Title 40, unless there is
17 created a duplication in numbering, reads as follows:

18 A. To be eligible to obtain or maintain a guest worker permit,
19 an undocumented individual shall:

20 1. a. be eighteen (18) years of age or older' or

21 b. if younger than eighteen (18) years of age, have the
22 permission of a parent or guardian;

23 2. Live in this state, but not be lawfully present in the
24 United States;

- 1 3. Have worked or lived in the United States before May 10,
2 2012;
- 3 4. Obtain a guest worker permit sponsor;
- 4 5. Provide relevant contact information and regularly update
5 the relevant contact information in a manner as may be required by
6 rule;
- 7 6. Provide documentation of a contract for hire under which the
8 undocumented individual begins to provide services within at least
9 thirty (30) days of the day on which the undocumented individual
10 obtains the permit;
- 11 7. a. agree to a criminal background check described in
12 subsection C of this section, and
13 b. not have been convicted of, pled guilty to, pled no
14 contest to, pled guilty in a similar manner to, or
15 resolved by diversion or its equivalent to a felony;
- 16 8. Provide evidence satisfactory to the Department of Labor
17 that the person would not be inadmissible for public health grounds
18 under 8 U.S.C. Sec. 1182;
- 19 9. Be covered by a basic health insurance plan, and agree to
20 have no medical debt that is past due during the term of the permit;
21 and
- 22 10. Provide evidence satisfactory to the Department that the
23 undocumented individual will not drive a motor vehicle in the state.
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1 B. The Department may by rule, provide for the documentation
2 required to establish eligibility under subsection A of this
3 section. When making a rule under this section, the Department
4 shall use federal standards as a guideline to avoid unnecessary
5 duplication and additional costs.

6 C. 1. The Department shall require an undocumented individual
7 applying for a guest worker permit, or renewing a guest worker
8 permit, to submit to a criminal background check as a condition of
9 receiving or renewing the guest worker permit.

10 2. An undocumented individual required to submit to a criminal
11 background check pursuant to this section, shall:

12 a. submit a fingerprint card in a form acceptable to the
13 Department, and

14 b. consent to a fingerprint background check by the
15 Oklahoma State Bureau of Investigation and the Federal
16 Bureau of Investigation.

17 3. For an undocumented individual who submits a fingerprint
18 card and consents to a fingerprint background check under paragraph
19 2 of this subsection, the Department may request:

20 a. criminal background information maintained by the
21 Oklahoma State Bureau of Investigation, and

22 b. complete Federal Bureau of Investigation criminal
23 background checks through the national criminal
24 history system.

1 4. Information obtained by the Department from the review of
2 criminal history records received under this subsection shall be
3 used by the Department to determine eligibility to obtain a permit.

4 5. The Department shall:

5 a. pay to the Federal Bureau of Investigation the costs
6 incurred by the Federal Bureau of Investigation in
7 providing the Department criminal background
8 information under this subsection, and

9 b. charge the undocumented individual applying for the
10 permit a fee equal to the aggregate of the costs
11 incurred by the Department pursuant to this section.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 368 of Title 40, unless there is
14 created a duplication in numbering, reads as follows:

15 To be eligible to obtain or maintain an immediate family permit,
16 an undocumented individual shall:

17 1. Live in this state, but not be lawfully present in the
18 United States;

19 2. Be a member of a guest worker's immediate family; and

20 3. Provide relevant contact information and regularly update
21 the relevant contact information in a manner as may be required by
22 rule.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 369 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Department of Labor may not issue a permit under this
5 act until the Program is implemented.

6 B. The Department shall:

7 1. Create a permit that:

8 a. is of impervious material that is resistant to wear or
9 damage,

10 b. minimizes the risk that the permit may be forged,
11 falsified, or counterfeited, and

12 c. ensures that the permit:

13 (1) includes a photograph of the individual to whom
14 the permit is issued,

15 (2) prominently states the day on which the permit
16 expires, and

17 (3) prominently states the type of permit.

18 C. A permit expires two (2) years from the day on which the
19 Department issues the permit unless otherwise revoked or terminated
20 as provided by this act.

21 D. To apply for or renew a permit, an undocumented individual
22 shall submit to the Department, in a form acceptable under this act:

23 1. An application;

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1 2. Documentation meeting the criteria pursuant to Section 7 of
2 this act;

3 3. A signed statement verifying the information in the
4 application and documentation;

5 4. An application fee of Two Thousand Dollars (\$2,000.00) and a
6 renewal fee of Two Thousand Dollars (\$2,000.00) for the guest worker
7 permit; and

8 5. An application fee of Five Hundred Dollars (\$500.00) for
9 each qualifying immediate family member for an immediate family
10 member permit.

11 E. If an undocumented individual submits a complete application
12 and the Department determines that the undocumented individual meets
13 the criteria pursuant to Section 8 of this act, the Department shall
14 issue or renew:

15 1. A guest worker permit if the undocumented individual
16 qualifies; and

17 2. An immediate family permit if the undocumented individual
18 qualifies.

19 F. An undocumented individual may appeal a denial of a permit
20 under this section in accordance with Administrative Procedures Act.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 370 of Title 40, unless there is
23 created a duplication in numbering, reads as follows:

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1 A. A permit holder shall continue to meet the eligibility
2 criteria under Section 8 of this act for the type of permit held by
3 the permit holder.

4 B. A permit is automatically revoked if after issuance of the
5 permit:

6 1. The permit holder to whom it is issued is convicted of,
7 pleads guilty to, or pleads no contest to a felony;

8 2. For a guest worker permit, the permit holder to whom it is
9 issued does not provide services under a contract for hire with the
10 guest worker permit sponsor for more than ninety (90) days; or

11 3. For an immediate family permit, the guest worker permit
12 under which the immediate family member's permit is issued is
13 revoked or expires under this act.

14 SECTION 12. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 371 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 A. 1. A person who hires a guest worker shall verify with the
18 Department of Labor that the guest worker permit is valid in
19 accordance with a procedure established by the Department by rule.

20 2. A guest worker that is hired by an employer other than the
21 guest worker permit sponsor shall update the Department with the
22 name, phone number, and address of the employer.

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1 3. The verification procedure adopted under this subsection
2 shall be substantially similar to the employer requirements to
3 verify federal employment status under:

4 a. Title 13, Chapter 47, Private Employer Verification
5 Act, and

6 b. Title 63G, Chapter 11, Identity Documents and
7 Verification.

8 4. Subject to subsection B of this section, a person shall
9 terminate a guest worker if the guest worker is determined by the
10 department to not hold a valid guest worker permit.

11 5. A. A guest worker permit sponsor shall notify the
12 Department of a termination of employment of a guest worker within
13 three (3) business days of that termination. If there is a
14 termination of employment by the guest worker permit sponsor of a
15 guest worker, the guest worker shall obtain a new guest worker
16 permit within thirty (30) days of that date of notice of termination
17 received by the Department as required by this paragraph and meeting
18 the eligibility criteria of Section 8 of this act.

19 B. An undocumented individual may appeal a determination that a
20 permit is invalid in accordance with the Administrative Procedures
21 Act.

22 C. The state is not liable to any person for:

23 1. The design, implementation, or operation of a verification
24 procedure under this act;

1 2. The collection and disclosure of information as part of a
2 verification procedure under this act; or

3 3. The determination that a permit is invalid.

4 SECTION 13. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 372 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 A. A permit holder may not file for or receive unemployment
8 benefits.

9 B. A permit holder who holds an immediate family permit may not
10 apply for or obtain a contract for hire for services in this state.

11 C. A person may not:

12 1. Furnish false or forged information or documentation in
13 support of an application;

14 2. Alter the information on a permit;

15 3. Allow an individual to use a permit if the individual is not
16 entitled to use the permit;

17 4. Display or represent that a permit is issued to an
18 individual, if the permit is not issued to the individual;

19 5. Display a revoked permit as a valid permit;

20 6. Knowingly or with reckless disregard acquire, use, display,
21 or transfer an item that purports to be a valid permit, but that is
22 not a valid permit; or

23 7. Otherwise violate this act.

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1 D. A person that is a guest worker that has an unapproved
2 absence from work for ten (10) consecutive days shall be in
3 violation of this act and such permit shall be subject to revocation
4 by the Department of Labor.

5 SECTION 14. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 373 of Title 40, unless there is
7 created a duplication in numbering, reads as follows:

8 For violations pursuant to this act, the Department of Labor
9 may:

- 10 1. Suspend, limit, or revoke and repossess a permit;
- 11 2. Impose a civil penalty not to exceed One Thousand Dollars
12 (\$1,000.00) for each violation by an applicant;
- 13 3. Impose a civil penalty of Five Thousand Dollars (\$5,000.00)
14 for each occurrence for any employer fraudulently utilizing the
15 provisions of this act; or
- 16 4. Take a combination of actions under this section.

17 SECTION 15. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 374 of Title 40, unless there is
19 created a duplication in numbering, reads as follows:

20 A person is guilty of a misdemeanor if the person:

- 21 1. Furnishes false or forged information or documentation in
22 support of an application; or
- 23 2. Alters the information on a permit.

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1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 375 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Department of Labor shall provide the notice described
5 in subsection B of this section, if the Department determines that
6 an undocumented individual who is not lawfully present in the United
7 States:

- 8 1. Has had the undocumented individual's permit revoked; or
- 9 2. Has allowed the undocumented individual's permit to expire.

10 B. 1. The Department shall provide the notice required by
11 subsection A of this section to:

- 12 a. the Attorney General,
- 13 b. the Department of Public Safety, and
- 14 c. United States Immigration and Customs Enforcement.

15 2. The notice required by subsection A of this section shall:

16 a. include:

- 17 (1) the last known address of the undocumented
18 individual, and
- 19 (2) the basis of the notice described in subsection A
20 of this section, and

21 b. be sent promptly after the day on which the time to
22 appeal, if any, the action that is the basis for the
23 notification under subsection A of this section ends.

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SECTION 17. This act shall become effective November 1, 2012.

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