

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 22

By: Coates

4
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; authorizing
19 receipt of certain permit under certain
20 circumstances; prohibiting certain uses of permits;
21 specifying criteria for permits; authorizing adoption
22 of rules; providing for payment of certain costs;
23 providing criteria for immediate family permit;
24 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.

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

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

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

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

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

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

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

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

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

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

23 a. the undocumented individual's spouse, or
24

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 any filing requirements or services that
5 may be required by this act;

6 4. Take action for enforcement as provided by this act; and

7 5. Report annually any statical or financial information
8 generated by the Program to the Governor and the Legislature.

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

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

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

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

20 B. The Governor shall actively participate in the effort to
21 obtain one or more federal waivers, exemptions, or authorizations
22 under this section. The Governor may execute any memorandum of
23 understanding necessary for implementation and any such cooperative
24 agreements between this state and the federal government shall be

1 compatible with the Immigration and Nationality Act, 8 U.S.C.
2 Section 1101 et seq.

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

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

7 2. July 1, 2014.

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

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

17 B. 1. The fund shall consist of:

- 18 a. fees collected under this act,
- 19 b. a fine collected pursuant to Section 14 of this act,
- 20 c. civil penalties imposed under this act,
- 21 d. money appropriated to the restricted account by the
22 Legislature, and
- 23 e. interest earned on the restricted account.

24 2. The restricted account shall earn interest.

1 C. The Legislature may appropriate money from the restricted
2 account for:

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

6 2. The Department to administer the Program;

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

9 4. The Attorney General for costs associated with litigation
10 related to this act.

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

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

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

22 B. 1. If a waiver, exemption, or authorization described in
23 Section 4 of this act does not provide for the issuance of a Social
24 Security number to a guest worker, the Oklahoma Tax Commission

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

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

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

19 SECTION 7. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 366 of Title 40, unless there is
21 created a duplication in numbering, reads as follows:

22 A. 1. An undocumented individual who is eligible to obtain a
23 permit under this act may obtain a permit in accordance with this
24 act.

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

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

7 B. An individual may not use a permit:

8 1. To establish entitlement to a federal, state, or local
9 benefit; or

10 2. To obtain work or provide services in a state other than
11 Oklahoma.

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

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

17 1. a. be eighteen (18) years of age or older, or
18 b. if younger than eighteen (18) years of age, have the
19 permission of a parent or guardian;

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

22 3. Have worked or lived in the United States before May 10,
23 2013;

24 4. Obtain a guest worker permit sponsor;

1 5. Provide relevant contact information and regularly update
2 the relevant contact information in a manner as may be required by
3 rule;

4 6. Provide documentation of a contract for hire under which the
5 undocumented individual begins to provide services within at least
6 thirty (30) days of the day on which the undocumented individual
7 obtains the permit;

8 7. a. agree to a criminal background check described in
9 subsection C of this section, and

10 b. not have been convicted of, pled guilty to, pled no
11 contest to, pled guilty in a similar manner to, or
12 resolved by diversion or its equivalent to a felony;

13 8. Provide evidence satisfactory to the Department of Labor
14 that the person would not be inadmissible for public health grounds
15 under 8 U.S.C. Sec. 1182; and

16 9. Be covered by a basic health insurance plan, and agree to
17 have no medical debt that is past due during the term of the permit.

18 B. The Department may by rule, provide for the documentation
19 required to establish eligibility under subsection A of this
20 section. When making a rule under this section, the Department
21 shall use federal standards as a guideline to avoid unnecessary
22 duplication and additional costs.

23 C. 1. The Department shall require an undocumented individual
24 applying for a guest worker permit, or renewing a guest worker

1 permit, to submit to a criminal background check as a condition of
2 receiving or renewing the guest worker permit.

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

5 a. submit a fingerprint card in a form acceptable to the
6 Department, and

7 b. consent to a fingerprint background check by the
8 Oklahoma State Bureau of Investigation and the Federal
9 Bureau of Investigation.

10 3. For an undocumented individual who submits a fingerprint
11 card and consents to a fingerprint background check under paragraph
12 2 of this subsection, the Department may request:

13 a. criminal background information maintained by the
14 Oklahoma State Bureau of Investigation, and

15 b. complete Federal Bureau of Investigation criminal
16 background checks through the national criminal
17 history system.

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

21 5. The Department shall:

22 a. pay to the Federal Bureau of Investigation the costs
23 incurred by the Federal Bureau of Investigation in
24

1 providing the Department criminal background
2 information under this subsection, and

- 3 b. charge the undocumented individual applying for the
4 permit a fee equal to the aggregate of the costs
5 incurred by the Department pursuant to this section.

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

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

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

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

14 3. Provide relevant contact information and regularly update
15 the relevant contact information in a manner as may be required by
16 rule.

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

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

22 B. The Department shall create a permit that:

23 1. Is of impervious material that is resistant to wear or
24 damage;

1 2. Minimizes the risk that the permit may be forged, falsified,
2 or counterfeited; and

3 3. Ensures that the permit:

4 a. includes a photograph of the individual to whom the
5 permit is issued,

6 b. prominently states the day on which the permit
7 expires, and

8 c. prominently states the type of permit.

9 C. A permit expires two (2) years from the day on which the
10 Department issued the permit unless otherwise revoked or terminated
11 as provided by this act.

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

14 1. An application;

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

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

19 4. An application fee of One Thousand Dollars (\$1,000.00) and a
20 renewal fee of One Thousand Dollars (\$1,000.00) for the guest worker
21 permit; and

22 5. An application fee of Five Hundred Dollars (\$500.00) for
23 each qualifying immediate family member for an immediate family
24 member permit.

1 E. If an undocumented individual submits a complete application
2 and the Department determines that the undocumented individual meets
3 the criteria pursuant to Section 8 of this act, the Department shall
4 issue or renew:

5 1. A guest worker permit if the undocumented individual
6 qualifies; and

7 2. An immediate family permit if the undocumented individual
8 qualifies.

9 F. An undocumented individual may appeal a denial of a permit
10 under this section in accordance with the Administrative Procedures
11 Act.

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

15 A. A permit holder shall continue to meet the eligibility
16 criteria under Section 8 of this act for the type of permit held by
17 the permit holder.

18 B. A permit is automatically revoked if after issuance of the
19 permit:

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

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

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

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

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

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

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

16 a. Title 13, Chapter 47, Private Employer Verification
17 Act, and

18 b. Title 63G, Chapter 11, Identity Documents and
19 Verification.

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

23 5. A. A guest worker permit sponsor shall notify the
24 Department of a termination of employment of a guest worker within

1 three (3) business days of that termination. If there is a
2 termination of employment by the guest worker permit sponsor of a
3 guest worker, the guest worker shall obtain a new guest worker
4 permit within thirty (30) days of that date of notice of termination
5 received by the Department as required by this paragraph and meeting
6 the eligibility criteria of Section 8 of this act.

7 B. An undocumented individual may appeal a determination that a
8 permit is invalid in accordance with the Administrative Procedures
9 Act.

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

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

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

15 3. The determination that a permit is invalid.

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

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

21 B. A person may not:

22 1. Furnish false or forged information or documentation in
23 support of an application;

24 2. Alter the information on a permit;

1 3. Allow an individual to use a permit if the individual is not
2 entitled to use the permit;

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

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

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

9 7. Otherwise violate this act.

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

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

17 For violations pursuant to this act, the Department of Labor
18 may:

19 1. Suspend, limit, or revoke and repossess a permit;

20 2. Impose a civil penalty not to exceed One Thousand Dollars
21 (\$1,000.00) for each violation by an applicant;

22 3. Impose a civil penalty of Five Thousand Dollars (\$5,000.00)
23 for each occurrence for any employer fraudulently utilizing the
24 provisions of this act; or

1 4. Take a combination of actions under this section.

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

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

6 1. Furnishes false or forged information or documentation in
7 support of an application; or

8 2. Alters the information on a permit.

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

12 A. The Department of Labor shall provide the notice described
13 in subsection B of this section, if the Department determines that
14 an undocumented individual who is not lawfully present in the United
15 States:

16 1. Has had the undocumented individual's permit revoked; or

17 2. Has allowed the undocumented individual's permit to expire.

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

20 a. the Attorney General,

21 b. the Department of Public Safety, and

22 c. United States Immigration and Customs Enforcement.

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

24 a. include:

1 (1) the last known address of the undocumented
2 individual, and

3 (2) the basis of the notice described in subsection A
4 of this section, and

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

8 SECTION 17. This act shall become effective November 1, 2013.

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10 54-1-169 MD 12/13/2012 4:07:20 PM