

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1051

By: Holt

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6 AS INTRODUCED

7 An Act relating to labor; prohibiting discharge of
8 employee for act of domestic abuse, sexual assault or
9 stalking under certain conditions; requiring advance
10 notice of leave; providing exception; requiring
11 certain certification; establishing certain
12 confidentiality; prohibiting discharge for status of
13 victim of certain offenses; providing for reasonable
14 accommodations to employee; stating certain allowable
15 accommodations; limiting accommodations under certain
16 occurrence; requiring good faith actions; providing
17 for employer hardship; authorizing certain
18 certification and recertification for accommodations;
19 making certain information confidential; providing
20 for change in accommodations; prohibiting retaliation
21 for requesting accommodations; providing for
22 violations; making certain willful acts a
23 misdemeanor; allowing filing of complaint with
24 Commissioner of Labor; setting time to file
complaint; directing use of certain leave;
disallowing modification of leave use under certain
agreements; defining terms; providing additional
conditions for employers with larger numbers of
employees; setting number of employees; stating
prohibitions to discharge; providing for violations;
allowing use of leave under federal Family and
Medical Leave Act of 1993; defining terms; providing
for codification; and providing an effective date.

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23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 285 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An employer shall not discharge or in any manner
5 discriminate or retaliate against an employee who is a victim of
6 domestic violence, sexual assault or stalking for taking time off
7 from work to obtain or attempt to obtain any relief, including, but
8 not limited to, a temporary restraining order, restraining order, or
9 other injunctive relief, to help ensure the health, safety, or
10 welfare of the victim or his or her child.

11 B. 1. As a condition of taking time off for a purpose set
12 forth in subsection A of this section, the employee shall give the
13 employer reasonable advance notice of the employee's intention to
14 take time off, unless the advance notice is not feasible.

15 2. When an unscheduled absence occurs, the employer shall not
16 take any action against the employee if the employee, within a
17 reasonable time after the absence, provides a certification to the
18 employer. Certification shall be sufficient in the form of any of
19 the following:

20 a. a police report indicating that the employee was a
21 victim of domestic violence, sexual assault, or
22 stalking,

23 b. a court order protecting or separating the employee
24 from the perpetrator of an act of domestic violence,

1 sexual assault, or stalking, or other evidence from
2 the court or prosecuting attorney that the employee
3 has appeared in court,

4 c. documentation from a licensed medical professional,
5 domestic violence counselor, a sexual assault
6 counselor, a licensed health care provider, or
7 counselor that the employee was undergoing treatment
8 for physical or mental injuries or abuse resulting in
9 victimization from an act of domestic violence, sexual
10 assault, or stalking.

11 3. To the extent allowed by law and consistent with this act,
12 the employer shall maintain the confidentiality of any employee
13 requesting leave under this act.

14 C. An employer shall not discharge or in any manner
15 discriminate or retaliate against an employee because of the
16 employee's status as a victim of domestic violence, sexual assault,
17 or stalking, if the victim provides notice to the employer of the
18 status or the employer has actual knowledge of the status.

19 D. 1. An employer shall provide reasonable accommodations for
20 a victim of domestic violence, sexual assault, or stalking who
21 requests an accommodation for the safety of the victim while at
22 work.

23 2. For purposes of this subsection, reasonable accommodations
24 may include the implementation of safety measures, including a

1 transfer, reassignment, modified schedule, changed work telephone,
2 changed work station, installed lock, assistance in documenting
3 domestic violence, sexual assault or stalking that occurs in the
4 workplace, an implemented safety procedure, or another adjustment to
5 a job structure, workplace facility or work requirement in response
6 to domestic violence, sexual assault or stalking, or referral to a
7 victim assistance organization.

8 3. An employer is not required to provide a reasonable
9 accommodation to an employee who has not disclosed his or her status
10 as a victim of domestic violence, sexual assault, or stalking.

11 4. The employer shall engage in a timely, good faith, and
12 interactive process with the employee to determine effective
13 reasonable accommodations.

14 5. In determining whether the accommodation is reasonable, the
15 employer shall consider an exigent circumstance or danger facing the
16 employee.

17 6. This subsection does not require the employer to undertake
18 an action that constitutes an undue hardship on the employer's
19 business operations. For the purposes of this subsection, an undue
20 hardship also includes an action that would violate an employer's
21 duty to furnish and maintain a place of employment that is safe and
22 healthful for all employees.

23 7. Upon the request of an employer, an employee requesting a
24 reasonable accommodation pursuant to this subsection shall provide

1 the employer a written statement signed by the employee or an
2 individual acting on the employee's behalf, certifying that the
3 accommodation is for a purpose authorized under this subsection.
4 The employer may also request certification from an employee
5 requesting an accommodation pursuant to this subsection
6 demonstrating the employee's status as a victim of domestic
7 violence, sexual assault or stalking. An employer who requests
8 certification pursuant to this paragraph may request recertification
9 of an employee's status as a victim of domestic violence, sexual
10 assault, or stalking every six (6) months after the date of the
11 previous certification.

12 a. any verbal or written statement, police or court
13 record, or other documentation provided to an employer
14 identifying an employee as a victim of domestic
15 violence, sexual assault, or stalking shall be
16 maintained as confidential by the employer and shall
17 not be disclosed by the employer except as required by
18 federal or state law or as necessary to protect the
19 employee's safety in the workplace. The employee
20 shall be given notice before any authorized
21 disclosure,

22 b. (1) if circumstances change and an employee needs a
23 new accommodation, the employee shall request a
24 new accommodation from the employer,

1 (2) upon receiving the request, the employer shall
2 engage in a timely, good faith, and interactive
3 process with the employee to determine effective
4 reasonable accommodations, and

5 c. if an employee no longer needs an accommodation, the
6 employee shall notify the employer that the
7 accommodation is no longer needed.

8 8. An employer shall not retaliate against a victim of domestic
9 violence, sexual assault, or stalking for requesting a reasonable
10 accommodation, regardless of whether the request was granted.

11 E. 1. An employee who is discharged, threatened with
12 discharge, demoted, suspended or in any other manner discriminated
13 or retaliated against in the terms and conditions of employment by
14 his or her employer because the employee has taken time off for a
15 purpose set forth in this act shall be entitled to reinstatement and
16 reimbursement for lost wages and work benefits caused by the acts of
17 the employer.

18 2. An employee who is discharged, threatened with discharge,
19 demoted, suspended or in any other manner discriminated or
20 retaliated against in the terms and conditions of employment by his
21 or her employer for reasons prohibited by this act, including the
22 employee has requested or received a reasonable accommodation as set
23 forth in this act, shall be entitled to reinstatement and
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1 reimbursement for lost wages and work benefits caused by the acts of
2 the employer, as well as appropriate equitable relief.

3 3. An employer who willfully refuses to rehire, promote, or
4 otherwise restore an employee or former employee who has been
5 determined to be eligible for rehiring or promotion by a grievance
6 procedure or hearing authorized by law is guilty of a misdemeanor.

7 F. 1. An employee who is discharged, threatened with
8 discharge, demoted, suspended or in any other manner discriminated
9 or retaliated against in the terms and conditions of employment by
10 his or her employer because the employee has exercised his or her
11 rights as set forth in this act may file a complaint with the
12 Commissioner of Labor.

13 2. Notwithstanding any time limitation otherwise provided by
14 law, an employee may file a complaint with the Commissioner based
15 upon a violation of this act within one (1) year from the date of
16 occurrence of the violation.

17 G. An employee may use vacation, personal leave or compensatory
18 time off that is otherwise available to the employee under the
19 applicable terms of employment, unless otherwise provided by a
20 collective bargaining agreement, for time taken off for a purpose
21 specified in this act. The entitlement of any employee under this
22 section shall not be diminished by any collective bargaining
23 agreement term or condition.

24 H. For purposes of this act:

1 (1) "Domestic violence" means any of the types of
2 abuse set forth in Title 21 of the Oklahoma
3 Statutes.

4 (2) "Sexual assault" means any of the crimes set
5 forth in Title 21 of the Oklahoma Statutes.

6 (3) "Stalking" means a crime set forth in Title 21 of
7 the Oklahoma Statutes.

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 285.1 of Title 40, unless there
10 is created a duplication in numbering, reads as follows:

11 A. In addition to the requirements and prohibitions imposed on
12 employers pursuant to Section 1 of this act, an employer with
13 twenty-five (25) or more employees shall not discharge or in any
14 manner discriminate or retaliate against an employee who is a victim
15 of domestic violence, sexual assault or stalking for taking time off
16 from work to attend to any of the following:

17 1. To seek medical attention for injuries caused by domestic
18 violence, sexual assault, or stalking;

19 2. To obtain services from a domestic violence shelter,
20 program, or rape crisis center as a result of domestic violence,
21 sexual assault, or stalking;

22 3. To obtain psychological counseling related to an experience
23 of domestic violence, sexual assault or stalking;

1 4. To participate in safety planning and take other actions to
2 increase safety from future domestic violence, sexual assault or
3 stalking, including temporary or permanent relocation.

4 B. 1. As a condition of taking time off for a purpose set
5 forth in subsection A of this section, the employee shall give the
6 employer reasonable advance notice of the employee's intention to
7 take time off, unless the advance notice is not feasible.

8 2. When an unscheduled absence occurs, the employer shall not
9 take any action against the employee if the employee, within a
10 reasonable time after the absence, provides a certification to the
11 employer.

12 3. To the extent allowed by law and consistent with this act,
13 employers shall maintain the confidentiality of any employee
14 requesting leave under subsection A of this section.

15 C. An employee who is discharged, threatened with discharge,
16 demoted, suspended, or in any other manner discriminated or
17 retaliated against in the terms and conditions of employment by his
18 or her employer because the employee has taken time off for a
19 purpose set forth in subsection A of this section, is entitled to
20 reinstatement and reimbursement for lost wages and work benefits
21 caused by the acts of the employer, as well as appropriate equitable
22 relief. An employer who willfully refuses to rehire, promote, or
23 otherwise restore an employee or former employee who has been
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1 determined to be eligible for rehiring or promotion by a grievance
2 procedure or hearing authorized by law is guilty of a misdemeanor.

3 D. 1. An employee who is discharged, threatened with
4 discharge, demoted, suspended or in any other manner discriminated
5 or retaliated against in the terms and conditions of employment by
6 his or her employer because the employee has exercised his or her
7 rights as set forth in subsection A of this act may file a complaint
8 with the Commissioner of Labor.

9 2. Notwithstanding any time limitation otherwise provided by
10 law, an employee may file a complaint with the Commissioner based
11 upon a violation of subsection A of this section within one (1) year
12 from the date of occurrence of the violation.

13 E. An employee may use vacation, personal leave, or
14 compensatory time off that is otherwise available to the employee
15 under the applicable terms of employment, unless otherwise provided
16 by a collective bargaining agreement, for time taken off for a
17 purpose specified in subsection A of this section. The entitlement
18 of any employee under this section shall not be diminished by any
19 collective bargaining agreement term or condition.

20 F. This section does not create a right for an employee to take
21 unpaid leave that exceeds the unpaid leave time allowed under, or is
22 in addition to the unpaid leave time permitted by, the federal
23 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

24 G. For purposes of this section:

1 (1) "Domestic violence" means any of the types of
2 abuse set forth in Title 21 of the Oklahoma
3 Statutes.

4 (2) "Sexual assault" means any of the crimes set
5 forth in Title 21 of the Oklahoma Statutes.

6 (3) "Stalking" means a crime set forth in Title 21 of
7 the Oklahoma Statutes.

8 SECTION 3. This act shall become effective November 1, 2016.

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