

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 2866

By: Pae

AS INTRODUCED

An Act relating to labor; creating the Labor Law Amendments Act of 2020; amending 40 O.S. 2011, Sections 197.1, 197.3, 197.4, 197.5, 197.6, 197.7, 197.8, 197.9, 197.10, 197.11, 197.12, 197.13, 197.14 and 197.16, which relate to the Oklahoma Minimum Wage Act; modifying declarations; removing obsolete transfer language; modifying definitions; increasing minimum wage rate; instructing Commissioner of Labor to increase minimum wage rate at economic rate of inflation by certain date; applying coverage of act to certain interns and apprentices; modifying posting of certain notice; requiring Commissioner to update notice annually; requiring Commissioner to make publicly available an electronic reporting system for investigation of complaints; modifying payments of amount due after investigation and findings of Commissioner; modifying limit of court costs and attorney fees; requiring certain information be sent to Oklahoma Tax Commission; providing for audit of certain employers; providing for fine; modifying exceptions; requiring Commissioner to coordinate and create certain entity to investigate complaints; modifying penalties; requiring certain employees be paid at the full minimum wage rate; repealing Section 1, Chapter 40, O.S.L. 2014 (40 O.S. Supp. 2019, Section 160), which relates to local ordinances and regulations establishing mandatory minimum vacation or sick leave days; repealing 40 O.S. 2011, Section 197.17, which relates to credits for uniforms; 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 "Labor Law
5 Amendments Act of 2020".

6 SECTION 2. AMENDATORY 40 O.S. 2011, Section 197.1, is
7 amended to read as follows:

8 Section 197.1 The welfare of the State of Oklahoma demands that
9 the working people of Oklahoma be protected from conditions of labor
10 which have a pernicious effect on their health or morals. The State
11 of Oklahoma, therefore, exercising herein its police and sovereign
12 power, declares that inadequate wages, employment discrimination and
13 insanitary conditions of labor exert such pernicious effect.

14 SECTION 3. AMENDATORY 40 O.S. 2011, Section 197.3, is
15 amended to read as follows:

16 Section 197.3 ~~A. The Wage and Hour Commission is hereby~~
17 ~~terminated and all powers and duties of such Commission are~~
18 ~~transferred to the Commissioner of Labor. All personnel, funds,~~
19 ~~financial obligations and encumbrances, records, equipment,~~
20 ~~furniture, fixtures, files and supplies under the control of the~~
21 ~~Wage and Hour Commission are transferred to the Commissioner of~~
22 ~~Labor as of the effective date of this act.~~

23 ~~B.~~ The Commissioner of Labor shall establish, pursuant to ~~this~~
24 ~~act~~ the Oklahoma Minimum Wage Act, such standards of wages and

1 conditions of labor for employees within the State of Oklahoma as
2 shall be reasonable and not detrimental to health and morals.

3 SECTION 4. AMENDATORY 40 O.S. 2011, Section 197.4, is
4 amended to read as follows:

5 Section 197.4 As used in ~~this act~~ the Oklahoma Minimum Wage
6 Act:

7 ~~(a)~~ 1. "Commissioner" means the Commissioner of Labor;

8 ~~(b)~~ 2. "Wage" means compensation due to an employee by reason
9 of his or her employment, payable in legal tender of the United
10 States or checks on banks convertible into cash on demand at full
11 face value, subject to such deductions, charges or allowances as may
12 be permitted by law;

13 ~~(c)~~ 3. "Employ" includes to suffer or to permit to work;

14 ~~(d)~~ 4. "Employer" means any individual, partnership,
15 association, corporation, business trust, or any person or group of
16 persons, ~~hiring~~ employing more than ~~ten full-time~~ five employees ~~or~~
17 ~~equivalent~~ at any one location or place of business; provided,
18 however, if an employer has less than ~~ten full-time~~ five employees
19 ~~or equivalent~~ at any one location or place of business but does a
20 gross business of more than One Hundred Thousand Dollars
21 (\$100,000.00) annually, said employer shall not be exempt under the
22 provisions of this act.

23 This act shall not apply to employers subject to the Fair Labor
24 Standards Act of 1938, as amended, ~~and who are paying the minimum~~

1 ~~wage under the provisions of said act, nor to employers whose~~
2 ~~employees are exempt under paragraph (c) of this section. when~~
3 ~~federal law supersedes; and~~

4 ~~(e)~~ 5. "Employee" includes any individual employed by an
5 employer but shall not include:

6 ~~(1) An individual employed on a farm, in the employ of any~~
7 ~~person, in connection with the cultivation of the soil, or in~~
8 ~~connection with raising or harvesting any agricultural commodity,~~
9 ~~including raising, shearing, feeding, caring for, training, and~~
10 ~~management of livestock, bees, poultry, and furbearing animals and~~
11 ~~wildlife, or in the employ of the owner or tenant or other operator~~
12 ~~of a farm in connection with the operation, management,~~
13 ~~conservation, improvement or maintenance of such farm and its tools~~
14 ~~and equipment;~~

15 ~~(2) Any individual employed in domestic service in or about a~~
16 ~~private home;~~

17 ~~(3) Any~~

18 a. any individual employed by the United States
19 government, or

20 ~~(4) Any~~

21 b. any individual working as a volunteer in a charitable,
22 religious or other nonprofit organization;

23 ~~(5) Any newspaper vendor or carrier;~~

1 ~~(6) Any employee of any carrier subject to regulation by Part I~~
2 ~~of the Interstate Commerce Act;~~

3 ~~(7) Any employee of any employer who is subject to the~~
4 ~~provisions of any Federal Fair Labor Standards Act or to any Federal~~
5 ~~Wage and Hour Law now in effect or enacted hereafter; and who is~~
6 ~~paying the minimum wage under the provisions of this act;~~

7 ~~(8) Any employee employed in a bona fide executive,~~
8 ~~administrative or professional capacity, or in the capacity of~~
9 ~~outside salesman;~~

10 ~~(9) Any person employed as part-time employee not on permanent~~
11 ~~status. A part-time employee is defined as an employee who is~~
12 ~~employed less than twenty-five (25) hours a week;~~

13 ~~(10) Any person who is less than eighteen (18) years of age and~~
14 ~~is not a high school graduate or a graduate of a vocational training~~
15 ~~program, and any person who is less than twenty-two (22) years of~~
16 ~~age and who is a student regularly enrolled in a high school,~~
17 ~~college, university or vocational training program;~~

18 ~~(11) Any individual employed in a feedstore operated primarily~~
19 ~~for the benefit and use of farmers and ranchers; or~~

20 ~~(12) Any individual working as a reserve force deputy sheriff.~~

21 SECTION 5. AMENDATORY 40 O.S. 2011, Section 197.5, is
22 amended to read as follows:

23 Section 197.5 Every employer shall pay to each of his or her
24 employees who have reached eighteen (18) years of age wages at a

1 rate of not less than ~~Two Dollars (\$2.00)~~ Eight Dollars and sixty-
2 five cents (\$8.65) per hour. The Commissioner of Labor is
3 instructed to increase this rate at the economic rate of inflation,
4 as determined by the State Treasurer, on January 1 of any year
5 beginning on January 1, 2022. Any economic deflation is considered
6 a rate of zero (0) inflation for the purposes of this section.
7 Regardless of other provisions of the Oklahoma Minimum Wage Act,
8 every employee of the State of Oklahoma or any lessee or
9 concessionaire thereof is hereby specifically covered by the
10 Oklahoma Minimum Wage Act. Any intern or apprentice over eighteen
11 (18) years of age who is expected to work equal to or greater than
12 ten (10) hours per week in the State of Oklahoma, and emancipated
13 minors working in the capacity as an intern or apprentice in the
14 State of Oklahoma, are specifically covered by the Oklahoma Minimum
15 Wage Act.

16 SECTION 6. AMENDATORY 40 O.S. 2011, Section 197.6, is
17 amended to read as follows:

18 Section 197.6 On and after ~~August 1, 1965~~ November 1, 2020,
19 every employer, subject to ~~this act~~ the Oklahoma Minimum Wage Act,
20 shall post a notice or notices, updated annually, of the pertinent
21 provisions of this act in such form as may be prescribed and
22 furnished by the Commissioner of Labor. The notice shall be not
23 less than eight and one-half (8 1/2) inches by eleven (11) inches in
24 size and shall be conspicuously displayed in such a manner so as to

1 be accessible to all employees in each establishment under the
2 control of the employer. The Commissioner, or his or her duly
3 authorized representative, may, for the purpose of determining
4 whether such notice has been properly posted, enter, during business
5 hours, upon the premises of any employer subject to this act. The
6 Commissioner shall update notices by January 1 of each year with any
7 updates to relevant state and federal labor laws. Notices shall be
8 county-specific and are to include any relevant city and county
9 labor ordinances. Notices shall also include, if available,
10 electronic mailing addresses, phone numbers and Internet websites in
11 which employees may report alleged violations of federal, state and
12 municipal labor laws. Employers shall post, by February 15 of each
13 year, the most updated county-specific notice that corresponds with
14 the county in which a particular place of business is located.

15 SECTION 7. AMENDATORY 40 O.S. 2011, Section 197.7, is
16 amended to read as follows:

17 Section 197.7 Upon verified complaint by an employee or former
18 employee that an employer has violated the provisions of Section
19 197.5 of this title by failure to pay the minimum wage thereby
20 established, the Commissioner of Labor, or his or her authorized
21 representative, is hereby empowered to make such investigation as
22 deemed necessary to ascertain the facts concerning such charge. The
23 Commissioner shall have the power to administer oaths and
24 affirmations, require sworn statements, certify to official acts,

1 and issue subpoenas to compel the attendance of witnesses and the
2 production of books, papers, correspondence memoranda, and other
3 records deemed necessary as evidence in connection with the
4 investigation of any alleged violation of Section 197.5 of this
5 title. All information obtained by the Commissioner, or his or her
6 duly authorized representatives, shall be confidential and, except
7 for the finding of the need for additional wages, as provided by
8 Section 197.8 of this title, and information which is necessarily
9 disclosed in court proceedings provided by Section 197.9 or 197.10
10 of this title, such information shall not be disclosed to any
11 person. The Commissioner shall make publicly available an
12 electronic reporting system, on a Department-of-Labor-managed
13 Internet website, to allow for simplified reporting and evidence
14 collection of any alleged violation of this act.

15 SECTION 8. AMENDATORY 40 O.S. 2011, Section 197.8, is
16 amended to read as follows:

17 Section 197.8 The Commissioner of Labor, after investigation,
18 shall promptly make his finding in writing as to whether or not
19 additional wages are due the employee. If the Commissioner finds
20 that additional wages are due, ~~ten percent (10%)~~ one hundred percent
21 (100%) of such amount due shall be added as penalty for such wage
22 deficiency. The Commissioner shall mail said findings to the
23 employer and to the employee by certified mail. Payment by the
24 employer and acceptance by the employee of the amount so determined

1 by the Commissioner shall absolve the employer of any further
2 liability to the employee with respect to wages claimed by the
3 employee for the period he or she was employed by the employer.

4 SECTION 9. AMENDATORY 40 O.S. 2011, Section 197.9, is
5 amended to read as follows:

6 Section 197.9 Any employer who is found by a court of competent
7 jurisdiction to have paid an employee wages less than those to which
8 such employee is entitled, under or by virtue of ~~this act~~ the
9 Oklahoma Minimum Wage Act, shall be liable to such employee for
10 double the full amount of such wages, less any amount actually paid
11 to such employee by the employer, and for court costs, and such
12 reasonable attorney fees as may be allowed by the court, which in no
13 case shall be less than ~~One Hundred Dollars (\$100.00)~~ Five Thousand
14 Dollars (\$5,000.00). Any agreement between such employee and the
15 employer to work for less than such wage rate shall be no defense to
16 such action.

17 SECTION 10. AMENDATORY 40 O.S. 2011, Section 197.10, is
18 amended to read as follows:

19 Section 197.10 At the request of any employee who has been
20 found by the Commissioner of Labor to have been paid wages less than
21 those to which such employee is entitled, under or by virtue of this
22 act, the Commissioner shall take an assignment of such wage claim in
23 trust for the assigning employee and shall bring legal action
24 necessary to collect such claim; and if the Commissioner prevails in

1 such action the employer shall be liable to pay the Department of
2 Labor double the full amount of such wages, and the court costs.
3 The Commissioner shall not be required to pay a filing fee in
4 connection with any such action. The Commissioner in such an action
5 shall be represented by the Attorney General. The Commissioner
6 shall forward information of employers found to be in violation of
7 this act to the Executive Director of the Oklahoma Tax Commission,
8 or designated agent thereof. Forwarded information shall include
9 the following:

- 10 1. The company name;
- 11 2. Federal employee identification number of the company;
- 12 3. List of company officers; and
- 13 4. Any other information deemed pertinent by the Commissioner
14 or the Executive Director of the Oklahoma Tax Commission, or
15 designated agent thereof.

16 The Executive Director of the Oklahoma Tax Commission, or his or
17 her designated agent, shall audit at least the three (3) most recent
18 years of tax filings by the employer found to have paid wages to
19 employees less than those to which an employee is entitled. If any
20 tax due is discovered by the Oklahoma Tax Commission, then the
21 employer in question shall pay a fine equal to twenty-five percent
22 (25%) of the tax due plus all costs associated with conducting any
23 related audit to the Oklahoma Tax Commission. This fine is in
24

1 addition to any other fines, penalties or interest levied by the
2 Oklahoma Tax Commission.

3 SECTION 11. AMENDATORY 40 O.S. 2011, Section 197.11, is
4 amended to read as follows:

5 Section 197.11 The Commissioner of Labor, to the extent
6 necessary in order to prevent curtailment of opportunities for
7 employment, shall by regulations provide for:

8 ~~(a) the employment of learners, of apprentices, and of~~
9 ~~messengers employed primarily in delivering letters and messages,~~
10 ~~under special certificates issued pursuant to regulations of the~~
11 ~~Commissioner, at such wages lower than the minimum wage applicable~~
12 ~~and subject to such limitations as to time, number, proportion, and~~
13 ~~length of service as the Commissioner shall prescribe; and~~

14 ~~(b) the 1. The~~ employment of individuals whose earning
15 capacity is impaired by age or physical or mental deficiency or
16 injury, under special certificates issued by the Commissioner, ~~at~~
17 ~~such wages lower than the minimum wage and for such period as shall~~
18 ~~be fixed in such certificates; and~~

19 ~~(c) any 2. Any~~ individual employed by any state, county, city,
20 town, municipal corporation or quasi-municipal corporation,
21 political subdivision, or any instrumentality thereof; and

22 ~~(d) students 3. Students~~ and regular attendants at any
23 institution of higher learning, either public or private.
24

1 SECTION 12. AMENDATORY 40 O.S. 2011, Section 197.12, is
2 amended to read as follows:

3 Section 197.12 The Commissioner of Labor is hereby authorized
4 and empowered to adopt such rules, regulations and standards as he
5 or she deems necessary and appropriate to carry out the provisions
6 of ~~this act~~ the Oklahoma Minimum Wage Act; provided, that the
7 adoption of all such rules, regulations and standards and all
8 administrative proceedings of the Commissioner shall be governed by
9 applicable provisions of Sections ~~301-325~~ 301 through 325,
10 inclusive, of Title 75 of the Oklahoma Statutes. The Commissioner
11 shall coordinate with the federal Equal Employment Opportunity
12 Commission on the creation of an entity within the Department of
13 Labor to investigate complaints sent to the Equal Employment
14 Opportunity Commission.

15 SECTION 13. AMENDATORY 40 O.S. 2011, Section 197.13, is
16 amended to read as follows:

17 Section 197.13 Any employer, or the officer or agent of any
18 corporation, who pays or agrees to pay to any employee less than the
19 rate of compensation required by Sections 197.2 and 197.5 of this
20 title, upon conviction, shall be guilty of a misdemeanor and shall
21 be punished, on the first offense, by a fine of not less than Five
22 Thousand Dollars (\$5,000.00) and not more than ~~Five Hundred Dollars~~
23 ~~(\$500.00)~~ Ten Thousand Dollars (\$10,000.00), or by imprisonment in
24 the county jail for not more than six (6) months, or by both such

1 fine and imprisonment. Upon a second or subsequent offense, the
2 entity shall be guilty of a misdemeanor and shall be punished by a
3 fine of not less than Ten Thousand Dollars (\$10,000.00) and not more
4 than Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the
5 county jail for not more than one (1) year, or by both such fine and
6 imprisonment.

7 SECTION 14. AMENDATORY 40 O.S. 2011, Section 197.14, is
8 amended to read as follows:

9 Section 197.14 Any employer, or officer or agent of any
10 corporation, failing to post the notice required by Section ~~6~~ 197.6
11 of this ~~act~~ title shall be punished by a fine ~~of~~ not to exceed
12 ~~Twenty-five Dollars (\$25.00)~~ Five Hundred Dollars (\$500.00), and
13 each week ~~he~~ the employer fails to post such notice shall constitute
14 a separate offense.

15 SECTION 15. AMENDATORY 40 O.S. 2011, Section 197.16, is
16 amended to read as follows:

17 Section 197.16 To compute the minimum wage of any employee
18 coming within the purview of this act, credit toward the minimum
19 required wage must be given for any commissions, tips or gratuities,
20 ~~meals or lodging~~ received by the employee up to but not exceeding
21 fifty percent (50%) of said wage. Employees receiving commissions,
22 tips or gratuities shall be paid at the full minimum wage rate as
23 specified by this act. It shall be unlawful for any employer to
24 confiscate any amount of commissions, tips or gratuities given to an

1 employee, for an employee is fully entitled to any amount of
2 commissions, tips or gratuities earned. Employers shall establish a
3 method by which employees declare their daily amount of commissions,
4 tips or gratuities earned, and then the employer shall file a
5 quarterly report with the Oklahoma Tax Commission, using a form
6 created by the Oklahoma Tax Commission for this purpose, to declare
7 the amount of taxable commissions, tips and gratuities earned by
8 each employee. Employers with employees who do not receive tips or
9 gratuities are exempt from this provision. The Oklahoma Tax
10 Commission shall collect tax from taxable commissions, tips and
11 gratuities.

12 SECTION 16. REPEALER Section 1, Chapter 40, O.S.L. 2014
13 (40 O.S. Supp. 2019, Section 160), is hereby repealed.

14 SECTION 17. REPEALER 40 O.S. 2011, Section 197.17, is
15 hereby repealed.

16 SECTION 18. This act shall become effective November 1, 2020.

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18 57-2-9072 LRB 10/31/19
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