

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3889

By: Lepak

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6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2021,  
8 Section 2-406, which relates to discharge for  
9 misconduct; creating exemption; and declaring an  
10 emergency.

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

12 SECTION 1. AMENDATORY 40 O.S. 2021, Section 2-406, is  
13 amended to read as follows:

14 Section 2-406. DISCHARGE FOR MISCONDUCT.

15 A. An individual shall be disqualified for benefits if the  
16 individual has been discharged for misconduct connected with the  
17 individual's last work. If discharged for misconduct, the employer  
18 shall have the burden to prove that the employee engaged in  
19 misconduct as defined by this section. Such burden of proof is  
20 satisfied by the employer, or its designated representative,  
21 providing a signed affidavit, or presenting such other evidence  
22 which properly demonstrates the misconduct which resulted in the  
23 discharge. Once this burden is met, the burden then shifts to the  
24 discharged employee to prove that the facts are inaccurate or that

1 the facts as stated do not constitute misconduct as defined by this  
2 section. Disqualification under this section shall continue for the  
3 full period of unemployment next ensuing after the employee has been  
4 discharged for misconduct connected with the employee's work and  
5 until such individual has become reemployed and has earned wages  
6 equal to or in excess of ten (10) times the weekly benefit amount.

7 B. Acts which constitute misconduct under this section shall be  
8 limited to the following:

9 1. Any intentional act or omission by an employee which  
10 constitutes a material or substantial breach of the employee's job  
11 duties or responsibilities or obligations pursuant to the employee's  
12 employment or contract of employment;

13 2. Unapproved or excessive absenteeism or tardiness;

14 3. Indifference to, breach of or neglect of the duties required  
15 which result in a material or substantial breach of the employee's  
16 job duties or responsibilities;

17 4. Acts or omissions that place in jeopardy the health, life,  
18 or property of self or others;

19 5. Dishonesty;

20 6. Wrongdoing;

21 7. Violation of a law; or

22 8. A violation of a policy or rule enacted to ensure orderly  
23 and proper job performance or for the safety of self or others.

1 C. Any employee who declines to receive any drug or vaccine  
2 shall not be deemed to have engaged in misconduct pursuant to  
3 subsection B of this section solely on the basis of such  
4 declination. This subsection shall not apply to an employee who  
5 knew at the time of hiring that receiving a drug or vaccine was a  
6 condition of employment.

7 D. Any misconduct violation as defined in subsection B of this  
8 section shall not require a prior warning from the employer. As  
9 long as the employee knew, or should have reasonably known, that a  
10 rule or policy of the employer was violated, the employee shall not  
11 be eligible for benefits.

12 ~~D.~~ E. Any finding by a state or federal agency of any failure  
13 by the employee to meet the applicable civil, criminal or  
14 professional standards of the employee's profession shall create a  
15 rebuttable presumption of such misconduct, and benefits shall be  
16 denied, unless the employee can show, with clear and convincing  
17 evidence, that such misconduct did not occur, or the Oklahoma  
18 Employment Security Commission determines that such failure did not  
19 constitute misconduct as defined herein.

20 SECTION 2. It being immediately necessary for the preservation  
21 of the public peace, health or safety, an emergency is hereby  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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4 58-2-9056 LRB 01/16/22

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