

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 575

By: Holt

4
5 AS INTRODUCED

6 An Act relating to labor; prohibiting discharge of
7 certain employee under certain conditions; requiring
8 advance notice of leave; providing exception;
9 requiring certain certification; establishing certain
10 confidentiality; prohibiting discharge for status of
11 victim of certain offenses; providing for reasonable
12 accommodations to employee; stating certain allowable
13 accommodations; limiting accommodations under certain
14 occurrence; requiring good faith actions; providing
15 for employer hardship; authorizing certain
16 certification and recertification for accommodations;
17 making certain information confidential; providing
18 for change in accommodations; prohibiting retaliation
19 for requesting accommodations; providing for
20 violations; making certain willful acts a
21 misdemeanor; allowing filing of complaint with
22 Commissioner of Labor; setting time to file
23 complaint; directing use of certain leave;
24 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; providing for
codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 285 of Title 40, unless there is
created a duplication in numbering, reads as follows:

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

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

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

- 17 a. a police report indicating that the employee was a
18 victim of domestic violence, sexual assault, or
19 stalking,
- 20 b. a court order protecting or separating the employee
21 from the perpetrator of an act of domestic violence,
22 sexual assault, stalking, or other evidence from the
23 court or prosecuting attorney that the employee has
24 appeared in court, or

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

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

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

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

20 2. For purposes of this subsection, reasonable accommodations
21 may include the implementation of safety measures, including a
22 transfer, reassignment, modified schedule, changed work telephone,
23 changed work station, installed lock, assistance in documenting
24 domestic violence, sexual assault or stalking that occurs in the

1 workplace, an implemented safety procedure, or another adjustment to
2 a job structure, workplace facility or work requirement in response
3 to domestic violence, sexual assault or stalking, or referral to a
4 victim assistance organization.

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

8 4. The employer shall engage in a timely, good faith, and
9 interactive process with the employee to determine effective
10 reasonable accommodations.

11 5. In determining whether the accommodation is reasonable, the
12 employer shall consider an exigent circumstance or danger facing the
13 employee.

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

20 7. Upon the request of an employer, an employee requesting a
21 reasonable accommodation pursuant to this subsection shall provide
22 the employer a written statement signed by the employee or an
23 individual acting on the employee's behalf, certifying that the
24 accommodation is for a purpose authorized under this subsection.

1 The employer may also request certification from an employee
2 requesting an accommodation pursuant to this subsection
3 demonstrating the employee's status as a victim of domestic
4 violence, sexual assault or stalking. An employer who requests
5 certification pursuant to this paragraph may request recertification
6 of an employee's status as a victim of domestic violence, sexual
7 assault, or stalking every six (6) months after the date of the
8 previous certification.

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

19 b. (1) if circumstances change and an employee needs a
20 new accommodation, the employee shall request a
21 new accommodation from the employer,
22 (2) upon receiving the request, the employer shall
23 engage in a timely, good faith, and interactive
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1 process with the employee to determine effective
2 reasonable accommodations, and

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

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

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

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

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

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

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

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

22 H. For purposes of this act:

23 1. "Domestic violence" means any of the types of domestic abuse
24 crimes set forth in Title 21 of the Oklahoma Statutes;

1 2. "Sexual assault" means any of the types of sexual assault
2 crimes set forth in Title 21 of the Oklahoma Statutes; and

3 3. "Stalking" means any of the types of stalking or harassment
4 crimes set forth in Title 21 of the Oklahoma Statutes.

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

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

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

16 2. To obtain services from a domestic violence shelter,
17 program, or rape crisis center as a result of domestic violence,
18 sexual assault, or stalking;

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

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

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

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

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

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

23 D. 1. An employee who is discharged, threatened with
24 discharge, demoted, suspended or in any other manner discriminated

1 or retaliated against in the terms and conditions of employment by
2 his or her employer because the employee has exercised his or her
3 rights as set forth in subsection A of this act may file a complaint
4 with the Commissioner of Labor.

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

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

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

20 SECTION 3. This act shall become effective November 1, 2017.

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