

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2867

By: Pae

4
5
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2011,
8 Sections 198.1, 198.2 and 199, which relate to
9 discrimination; modifying payment of discriminatory
10 wages; making certain acts unlawful; providing
11 certain exemptions; providing for penalties;
12 requiring Commissioner of Labor to create electronic
13 complaint submission form regarding employment
14 discrimination; modifying penalties; modifying
15 prohibition of certain actions against employees;
16 modifying penalties; and providing an effective date.

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

18 SECTION 1. AMENDATORY 40 O.S. 2011, Section 198.1, is
19 amended to read as follows:

20 Section 198.1 A. It shall be unlawful for any employer within
21 the State of Oklahoma to willfully pay wages to ~~women~~ employees at a
22 rate less than the rate at which ~~he~~ the employer pays any employee
23 of the opposite sex for comparable work on jobs which have
24 comparable requirements relating to skill, effort and
responsibility, except where such payment is made pursuant to a
seniority system; a merit system; a system which measures earnings

1 by quantity or quality of production; or a differential based on any
2 factor other than sex.

3 B. It shall be unlawful to discriminate in the selection of job
4 applications, interviewing of job applicants, hiring of job
5 applicants, firing of employees, treatment of employees, or payment
6 of wages on the basis of race, color, sex, gender, age, religion,
7 national origin, mental or physical disability, genetic information,
8 sexual orientation, prior arrests excluding convictions, military
9 status, domestic violence victim status, political activity or
10 political affiliation. Failing to hire, refusing to hire, making
11 work conditions exceptionally unbearable, instilling fear,
12 segregating, and any definition of discrimination as defined by 42
13 U.S.C., Section 21 are considered nonexhaustive definitions of
14 discrimination for the purposes of this section.

15 C. An employer that acts exclusively as a religious not-for-
16 profit organization, whose primary purpose is to advocate the
17 beliefs of a religion, shall be exempt from the provisions in
18 subsection B of this section pertaining to discrimination on the
19 basis of religion or sexual orientation.

20 D. Any employer, or agent thereof, found to have discriminated
21 against an employee, interviewee or job applicant shall be deemed
22 guilty of a misdemeanor and shall, upon conviction thereof, be
23 punished by a fine of not less than Five Thousand Dollars
24 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) and,

1 at judicial discretion, imprisoned in the county jail for not more
2 than ten (10) days. The convicted party shall pay punitive damages
3 to the victim of no less than twice the amount of the fine. The
4 convicted party shall also pay compensatory damages to the victim in
5 the form of one and one-half (1 and 1/2) times the amount of any
6 lost or foregone wages. The convicted party shall pay all attorney
7 fees, related medical fees, court costs and other billed legal costs
8 of the victim.

9 SECTION 2. AMENDATORY 40 O.S. 2011, Section 198.2, is
10 amended to read as follows:

11 Section 198.2 It shall be the duty of the Commissioner of Labor
12 to enforce the provisions of this act. The Commissioner shall
13 create an electronic complaint submission form on the Internet
14 website of the Department of Labor pertaining to the reporting and
15 evidence-gathering of wage and employment discrimination. The
16 electronic complaint submission form is to be displayed in a
17 conspicuous manner on the Internet website. The Commissioner is
18 further instructed to provide complainants with resources
19 instructing them of their rights under state law, federal law and,
20 if applicable, municipal ordinance. Whenever the Commissioner is
21 informed of any violations thereof of this act, it shall be his or
22 her duty to investigate same and, in his or her discretion, said
23 Commissioner is hereby authorized to institute proceedings for the
24 enforcement of penalties herein provided before any court of

1 competent jurisdiction. Any employer who violates the provisions of
2 this act shall be deemed guilty of a misdemeanor and shall, upon
3 conviction thereof, be punished by a fine of not less than
4 ~~Twenty-five Dollars (\$25.00)~~ Five Thousand Dollars (\$5,000.00) nor
5 more than ~~One Hundred Dollars (\$100.00)~~ Twenty Thousand Dollars
6 (\$20,000.00) and, at judicial discretion, imprisoned in the county
7 jail for not more than five (5) days. The convicted party shall pay
8 punitive damages to the victim of no less than twice the amount of
9 the fine. The convicted party shall also pay compensatory damages
10 to the victim in the form of one and one-half (1 and 1/2) times the
11 amount of any lost or foregone wages. The convicted party shall pay
12 all attorney fees, related medical fees, court costs and other
13 billed legal costs of the victim.

14 SECTION 3. AMENDATORY 40 O.S. 2011, Section 199, is
15 amended to read as follows:

16 Section 199. A. It shall be a misdemeanor for any employer, as
17 defined in Section 165.1 of this title, or his or her agent to
18 discharge, penalize or in any other manner discriminate against any
19 employee because:

20 1. The employee has filed, or has expressed intent of filing, a
21 complaint with his or her employer, ~~or~~ the Commissioner of Labor or
22 his or her authorized representative, to enforce any provision of
23 ~~Sections 71 through 198.2~~ of this title;

24

1 2. The employee has caused to be instituted a proceeding or
2 investigation related to an alleged violation of any provision of
3 ~~Sections 71 through 198.2~~ of this title; or

4 3. The employee has testified or ~~is about to~~ may reasonably
5 testify in an investigation or proceeding under this title.

6 B. Every employer, as defined in Section 165.1 of this title,
7 or his or her agent shall be guilty of a misdemeanor if:

8 1. The filing of a complaint with the employer, Commissioner of
9 Labor or his or her authorized representative, or the taking of any
10 action directly related to the complaint by any employee is a
11 substantial and material factor in the discharge, penalization of or
12 any other discrimination against the employee by the employer or his
13 agent; or

14 2. The employer or his or her agent has acted in a manner which
15 has the effect of discouraging, restraining, intimidating,
16 threatening, coercing or interfering with any employee in the
17 exercise of the employee's rights contained in ~~Sections 71 through~~
18 ~~198.2~~ of this title.

19 C. Every person convicted of violating a ~~prohibition~~ provision
20 of this section shall be guilty, on their first offense, of a
21 misdemeanor for retaliation and fined not less than ~~Fifty Dollars~~
22 ~~(\$50.00)~~ Ten Thousand Dollars (\$10,000.00) nor more than ~~Two Hundred~~
23 ~~Dollars (\$200.00)~~ Fifty Thousand Dollars (\$50,000.00) or imprisoned
24 in the county jail for not less than five (5) days nor more than

1 thirty (30) days, or both. Every person convicted of violating a
2 provision of this section shall be guilty, on their second or
3 subsequent offense, of a misdemeanor for retaliation and fined not
4 less than Twenty Thousand Dollars (\$20,000.00) nor more than One
5 Hundred Thousand Dollars (\$100,000.00) and imprisoned in the county
6 jail for not less than five (5) days nor more than thirty (30) days.
7 Upon any conviction, the party convicted of retaliation shall pay
8 punitive damages to the victim of no less than twice the amount of
9 the fine. The party convicted of retaliation shall also pay
10 compensatory damages to the victim in the form of one and one-half
11 (1 and 1/2) times the amount of any lost or foregone wages. The
12 party convicted of retaliation shall pay all attorney fees, related
13 medical fees, court costs and other billed legal costs of the
14 victim. The courts are instructed to inform a guilty party, upon
15 sentencing, that the State of Oklahoma does not and will not
16 tolerate retaliation against employees who choose to exercise their
17 legal rights.

18 SECTION 4. This act shall become effective November 1, 2020.

19

20 57-2-9136 LRB 10/30/19

21

22

23

24