

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1051

By: Holt

4  
5  
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.

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

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  
24

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  
24

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

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

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

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

55-2-2872 NP 1/13/2016 4:19:22 PM