STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 2867

By: Pae

AS INTRODUCED

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

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

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

Section 198.1 A. It shall be unlawful for any employer within the State of Oklahoma to willfully pay wages to women employees at a rate less than the rate at which he the employer pays any employee of the opposite sex for comparable work on jobs which have 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
by quantity or quality of production; or a differential based on any
factor other than sex.

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

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

D. Any employer, or agent thereof, found to have discriminated
against an employee, interviewee or job applicant shall be deemed
guilty of a misdemeanor and shall, upon conviction thereof, be
punished by a fine of not less than Five Thousand Dollars
($5,000.00) nor more than Fifty Thousand Dollars ($50,000.00) and,
at judicial discretion, imprisoned in the county jail for not more than ten (10) days. The convicted party shall pay punitive damages to the victim of no less than twice the amount of the fine. The convicted party shall also pay compensatory damages to the victim in the form of one and one-half (1 and 1/2) times the amount of any lost or foregone wages. The convicted party shall pay all attorney fees, related medical fees, court costs and other billed legal costs of the victim.

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

Section 198.2 It shall be the duty of the Commissioner of Labor to enforce the provisions of this act. The Commissioner shall create an electronic complaint submission form on the Internet website of the Department of Labor pertaining to the reporting and evidence-gathering of wage and employment discrimination. The electronic complaint submission form is to be displayed in a conspicuous manner on the Internet website. The Commissioner is further instructed to provide complainants with resources instructing them of their rights under state law, federal law and, if applicable, municipal ordinance. Whenever the Commissioner is informed of any violations of this act, it shall be his or her duty to investigate same and, in his or her discretion, said Commissioner is hereby authorized to institute proceedings for the enforcement of penalties herein provided before any court of
competent jurisdiction. Any employer who violates the provisions of
this act shall be deemed guilty of a misdemeanor and shall, upon
conviction thereof, be punished by a fine of not less than
Twenty-five Dollars ($25.00) Five Thousand Dollars ($5,000.00) nor
more than One Hundred Dollars ($100.00) Twenty Thousand Dollars
($20,000.00) and, at judicial discretion, imprisoned in the county
jail for not more than five (5) days. The convicted party shall pay
punitive damages to the victim of no less than twice the amount of
the fine. The convicted party shall also pay compensatory damages
to the victim in the form of one and one-half (1 and 1/2) times the
amount of any lost or foregone wages. The convicted party shall pay
all attorney fees, related medical fees, court costs and other
billed legal costs of the victim.

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

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

1. The employee has filed, or has expressed intent of filing, a
complaint with his or her employer, or the Commissioner of Labor or
his or her authorized representative, to enforce any provision of
Sections 71 through 198.2 of this title;
2. The employee has caused to be instituted a proceeding or investigation related to an alleged violation of any provision of Sections 71 through 198.2 of this title; or

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

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

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

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

C. Every person convicted of violating a prohibition provision of this section shall be guilty, on their first offense, of a misdemeanor for retaliation and fined not less than Fifty Dollars ($50.00) Ten Thousand Dollars ($10,000.00) nor more than Two Hundred Dollars ($200.00) Fifty Thousand Dollars ($50,000.00) or imprisoned in the county jail for not less than five (5) days nor more than
thirty (30) days, or both. **Every person convicted of violating a**
provision of this section shall be guilty, on their second or
subsequent offense, of a misdemeanor for retaliation and fined not
less than Twenty Thousand Dollars ($20,000.00) nor more than One
Hundred Thousand Dollars ($100,000.00) and imprisoned in the county
jail for not less than five (5) days nor more than thirty (30) days.
Upon any conviction, the party convicted of retaliation shall pay
punitive damages to the victim of no less than twice the amount of
the fine. The party convicted of retaliation shall also pay
compensatory damages to the victim in the form of one and one-half
(1 and 1/2) times the amount of any lost or foregone wages. The
party convicted of retaliation shall pay all attorney fees, related
medical fees, court costs and other billed legal costs of the
victim. The courts are instructed to inform a guilty party, upon
sentencing, that the State of Oklahoma does not and will not
tolerate retaliation against employees who choose to exercise their
legal rights.

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