

Oklahoma

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

A new law allows private employers to have a veterans' preference employment policy that expresses their preference for a veteran over another qualified applicant or employee in terms of hiring, promoting, or retaining an employee during a reduction in force. To be valid, a policy must be written and applied uniformly to all such employment decisions.

Under the law, a veteran is a person who served on active duty in the U.S. Armed Forces who was discharged or released with an honorable discharge. A private employer can require a veteran to submit a U.S. Department of Defense Form 214, or a similarly effective form used by the Department relating to separation from military service.

If a policy is adopted, applying the preference will not be considered a violation of any state or local equal employment opportunity law or regulation.

40 Okl. St. § 801 (Effective Date 11/01/2015).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

No new laws or regulations enacted in 2015 or 2016.

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

A. Commercial Drivers and Hand Held Mobile Telephones

Oklahoma law prohibits use of a cell phone or an electronic communication device to write, send, or read a text-based communication while operating a commercial motor vehicle. The new law expands on this prohibition by making it a serious traffic offense to operate a commercial motor vehicle while using a hand-held mobile telephone. "Operate" means operating on a street or highway, including while temporarily stationary because of traffic, a traffic control device or other momentary delays. Operating does not include when the driver of a commercial motor vehicle has moved the vehicle to the side of or off a street or highway and has halted in a location where the vehicle can safely remain stationary. The statute does not address hands-free use of a cell phone or electronic communication device.

47 Okl. St. § 6-205.2 (Effective Date 11/01/2015).

B. Texting While Driving

Oklahoma has enacted a generally applicable law prohibiting texting while driving. The new law makes it unlawful for any person to operate a motor vehicle on any street or highway within this state while using a hand-held electronic communication device to manually compose, send or read an electronic text message while the motor vehicle is in motion. "Electronic communication device" means an electronic device that permits the user to manually transmit a communication of written text by means other than through an oral transfer or wire communication. "Compose," "send" or "read" with respect to a text message means the manual entry, sending or retrieval of a text message to communicate with any person or device.

The prohibition against using an electronic communications device while driving does not apply if the driver is using the device for the sole purpose of communicating with law enforcement, fire services, or emergency medical services regarding an imminent emergency situation.

The new law does not prohibit use of a GPS system, and also permits use of an electronic communication device via hands-free technology. The statutory definition of "electronic communications device" does not include a device that is physically or electronically integrated into a motor vehicle or a voice-operated global positioning or navigation system that is affixed to a motor vehicle, or a hands-free device that allows the user to write, send or read a text message without the use of either hand except to activate, deactivate or initiate a feature or function.

47 Okl. St. § 11-901d (Effective Date 11/01/2015).

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

A. Seasonal Worker Unemployment

Oklahoma provides unemployment benefits to eligible workers during periods of unemployment. The new law limits the benefits that seasonal workers can receive by allowing seasonal workers to receive unemployment compensation only for periods of unemployment that occur during the normal seasonal work period. Seasonal workers can no longer collect unemployment for the period between two successive normal seasonal work periods if the employer provides a reasonable assurance that the worker will be re-hired for the next seasonal work period.

The law places many obligations on employers to receive a designation as a seasonal employer and to notify seasonal workers of their rights:

- Employers must apply for "seasonal employer" designation from the Oklahoma Employment Security Commission at least 20 days before the normal seasonal work period begins and must display a copy of the application on their premises.
- If the Commission grants the designation, the employer must give notice to each employee of the employer's status as a seasonal employer and the beginning and ending dates of the employer's normal seasonal work period within the first seven days of employment.
- Employers must provide notice of reasonable assurance of re-hiring in writing on or before the last day of the employee's seasonal employment.

If, after receiving reasonable assurance, the worker is not re-employed during the next season, the worker can apply for retroactive unemployment benefits for the time of unemployment.

- Employers must provide notice on or before the last day of work for the season if the employer plans to issue a notice of reasonable assurance. They must also provide notice to each employee advising employees to file an initial application for unemployment benefits at the end of the current seasonal work period and to file weekly continued claims thereafter to receive retroactive benefits if he or she is not reemployed by the employer in the next normal seasonal work period. The notice must be in a separate document written in clear and concise language.
- Employers must provide written notice to each employee at the time of hire if the employee will be a seasonal worker and must provide notice of any subsequent change in the employee's status as a seasonal worker.

The law does not apply to employers in the construction industry.

40 Okl. St. § 2-422 (Effective Date 11/01/2016).

B. Franchisor Not an Employer of Franchisee's Employees

The new law amends Oklahoma franchise law to clarify that a franchisor is not the employer of the franchisee or the franchisee's employees. The law adopts the definitions of franchisee, franchisee, and franchisor defined under federal law. Thus, a franchisee is any person who is granted a franchise, and a franchisor is any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, the definition of "franchisor" includes subfranchisors. For purposes of this definition, a subfranchisor is a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance.

59 Okl. St. § 6005 (Effective Date 11/01/2016).

C. Notifying Successor Employers about Outstanding Unemployment Contributions, Interest, Penalties, and Fees

Oklahoma has amended an unemployment statute governing successor and predecessor employers. The law requires a predecessor employer to provide the successor employer, before a business is sold, written notice of all current or delinquent unemployment contributions, interest, penalties and fees. If notice is not provided, the predecessor employer can be subject to a penalty. The amendments additionally provide that, if notice is not provided or the notice given is knowingly false or fraudulent, the successor employer is entitled to actual damages and expenses incurred from the predecessor employer.

40 Okl. St. § 3-111 (Effective Date 11/01/2015).

40 Okl. St. § 3-111 Repealed. (Effective Date 11/01/2016).