

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL \_\_\_\_\_

By: Steagall

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 2021, Section 2-406, which relates to discharge for misconduct; creating exemption; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2021, Section 2-406, is amended to read as follows:

Section 2-406. DISCHARGE FOR MISCONDUCT.

A. An individual shall be disqualified for benefits if the individual has been discharged for misconduct connected with the individual's last work. If discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct as defined by this section. Such burden of proof is satisfied by the employer, or its designated representative, providing a signed affidavit, or presenting such other evidence which properly demonstrates the misconduct which resulted in the discharge. Once this burden is met, the burden then shifts to the discharged employee to prove that the facts are inaccurate or that

the facts as stated do not constitute misconduct as defined by this section. Disqualification under this section shall continue for the full period of unemployment next ensuing after the employee has been discharged for misconduct connected with the employee's work and until such individual has become reemployed and has earned wages equal to or in excess of ten (10) times the weekly benefit amount.

B. Acts which constitute misconduct under this section shall be limited to the following:

1. Any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to the employee's employment or contract of employment;

2. Unapproved or excessive absenteeism or tardiness;

3. Indifference to, breach of or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities;

4. Acts or omissions that place in jeopardy the health, life, or property of self or others;

5. Dishonesty;

6. Wrongdoing;

7. Violation of a law; or

8. A violation of a policy or rule enacted to ensure orderly and proper job performance or for the safety of self or others.

C. Any employee who declines to utilize or to receive administration of any drug, device, or biological product shall not be deemed to have engaged in misconduct pursuant to subsection B of this section solely on the basis of such declination.

D. Any misconduct violation as defined in subsection B of this section shall not require a prior warning from the employer. As long as the employee knew, or should have reasonably known, that a rule or policy of the employer was violated, the employee shall not be eligible for benefits.

~~D.~~ E. Any finding by a state or federal agency of any failure by the employee to meet the applicable civil, criminal or professional standards of the employee's profession shall create a rebuttable presumption of such misconduct, and benefits shall be denied, unless the employee can show, with clear and convincing evidence, that such misconduct did not occur, or the Oklahoma Employment Security Commission determines that such failure did not constitute misconduct as defined herein.

SECTION 2. This act shall become effective November 1, 2023.

59-1-6142            LRB            12/12/22