

Employer LINC™

LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS

EMPLOYMENT LAW UPDATE 05.19.2011

LABOR & EMPLOYMENT PRACTICE GROUP

Charlie Plumb, Group Leader
charlie.plumb@mcafeetaft.com
(918) 574-3003

Michael K. Avery
michael.avery@mcafeetaft.com
(405) 270-6012

Timothy J. Bomhoff
tim.bomhoff@mcafeetaft.com
(405) 552-2339

Heidi Slinkard Brasher
heidi.brasher@mcafeetaft.com
(918) 574-3012

Brandon L. Buchanan
brandon.buchanan@mcafeetaft.com
(405) 552-2307

Vickie J. Buchanan
vickie.buchanan@mcafeetaft.com
(405) 552-2331

Jared M. Burden
jared.burden@mcafeetaft.com
(918) 574-3026

Brian A. Burget
brian.burget@mcafeetaft.com
(405) 552-2205

John A. Burkhardt
john.burkhardt@mcafeetaft.com
(918) 574-3001

Todd Court
todd.court@mcafeetaft.com
(405) 552-2330

Reuben Davis
reuben.davis@mcafeetaft.com
(918) 574-3008

Mark Folger
mark.folger@mcafeetaft.com
(405) 552-2327

Sam R. Fulkerson
sam.fulkerson@mcafeetaft.com
(405) 552-2369

Lauren Barghols Hanna
lauren.hanna@mcafeetaft.com
(405) 552-2343

Michael F. Lauderdale
michael.lauderdale@mcafeetaft.com
(405) 552-2257

Oklahoma's employment discrimination laws rewritten

They say you can't put the genie back in the bottle, but that's not always true. After several years of effort, the Oklahoma Legislature has finally rewritten Oklahoma's employment discrimination laws, and put the "genie" of public policy tort back in the bottle, so to speak.

In short, the Legislature significantly revised the Oklahoma Anti-Discrimination Act to *eliminate* public policy tort lawsuits based on traditional protected classifications, such as when a former employee claims termination based on age, race, national origin, gender, or disability, or retaliation related to those protected classifications, and then demands a million dollars for emotional distress and punitive damages. Now, there will be no more of that.

Labor and employment attorneys from McAfee & Taft, led by Sam Fulkerson, played a major role in assisting The State Chamber of Oklahoma in revising the Oklahoma Anti-Discrimination Act and pushing the new law through the legislative process.

Highlights of the new law include the following:

- The Oklahoma Anti-Discrimination Act now provides for the "exclusive remedy" for individuals alleging discrimination in employment on the basis of race, color, national origin, sex, religion, creed, age, disability or genetic information, and related retaliation claims.
- All common law claims, such as public policy tort, are eliminated and persons may only bring statutory claims under the Act.
- The definition of "employer," i.e. persons or entities that can be subject to statutory claims, has been revised to exclude individuals; only legal entities, institutions or organizations may be named as defendants in such claims.
- The definition of "employee" has been revised as to explicitly exclude independent contractors.
- Employers of any size, to include employers with only one employee, may be subject to statutory claims (which was necessary because the Oklahoma Supreme Court has interpreted the Oklahoma Constitution to require that all employers, regardless of size, be subject to some type of liability for employment discrimination).

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- The former statutory claim for handicap discrimination under the Act has been eliminated.
- The Act has been revised to explicitly incorporate all defenses available to employers under federal employment law.
- Damages in statutory claims have been limited to equitable relief, to include injunctions, such as orders of reinstatement or hiring of employees, back pay, and liquidated damages limited to a doubling of back pay. Further, the Act no longer allows for emotional distress damages or punitive damages under statutory claims.
- The statute explicitly allows the court to allow either a prevailing plaintiff or defendant a “reasonable attorney” fee.”

Oklahoma Governor Mary Fallin signed the statutory revision into law on May 18, 2011, and the new law goes into effect November 1, 2011. Oklahoma employers still will be subject to public policy tort claims, with emotional distress and punitive damages exposure, through October 31, 2011. From that point forward, however, the types of claims, and available relief, for employment discrimination claimants will be limited as described above.

As always, the attorneys at McAfee & Taft stand ready to assist you with any questions you may have.

To learn more about these changes as well as other workplace-related legislation which made its way through the Oklahoma Legislature this year, please make plans to join us for a complimentary EmployerLINC webinar on Thursday, June 9, 2011, titled “**For Better or Worse: Oklahoma Legislature Lays Down New Laws for Employers.**” Visit <http://events.employerlinc.com> for more information and to register.



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OKLAHOMA LEGISLATURE LAYS DOWN NEW LAWS FOR EMPLOYERS
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This employment law update has been provided for information of clients and friends of McAfee & Taft. It does not provide legal advice, and it is not intended to create a lawyer-client relationship. Readers should not act upon the information in this newsletter without seeking professional counsel.

Andrew S. Long
andy.long@mcafeetaft.com
(405) 552-2293

Kathy R. Neal
kathy.neal@mcafeetaft.com
(918) 574-3020

Tony G. Puckett
tony.puckett@mcafeetaft.com
(405) 552-2251

Tamara S. Pullin
tamara.pullin@mcafeetaft.com
(405) 552-2290

Natalie K. Ramsey
natalie.ramsey@mcafeetaft.com
(405) 552-2325

Paul A. Ross
paul.ross@mcafeetaft.com
(405) 552-2383

Kristin M. Simpsen
kristin.simpsen@mcafeetaft.com
(405) 552-2395

Joshua W. Solberg
josh.solberg@mcafeetaft.com
(405) 552-2345

Mark D. Spencer
mark.spencer@mcafeetaft.com
(405) 552-2368

Curtis J. Thomas
curtis.thomas@mcafeetaft.com
(405) 552-2351

Peter T. Van Dyke
peter.vandyke@mcafeetaft.com
(405) 552-2211

Susan E. Walker
susan.walker@mcafeetaft.com
(918) 574-3014

Dara K. Wanzer
dara.wanzer@mcafeetaft.com
(405) 552-2340

James R. Webb
jim.webb@mcafeetaft.com
(405) 552-2246

Nathan L. Whatley
nathan.whatley@mcafeetaft.com
(405) 552-2365

Amy D. White
amy.white@mcafeetaft.com
(405) 552-2337

Sharolyn C. Whiting-Ralston
sharolyn.ralston@mcafeetaft.com
(918) 574-3035

Elizabeth Scott Wood
elizabeth.wood@mcafeetaft.com
(405) 552-2270

McAfee & Taft
ATTORNEYS & COUNSELORS

www.mcafeetaft.com