

1 ENGROSSED SENATE
2 BILL NO. 1818

By: Daniels of the Senate

3 and

4 O'Donnell of the House

5
6 An Act relating to workers' compensation; amending
7 Section 2, Chapter 208, O.S.L. 2013, as last amended
8 by Section 1, Chapter 476, O.S.L. 2019, Section 3,
9 Chapter 208, O.S.L. 2013, as amended by Section 2,
10 Chapter 476, O.S.L. 2019, Section 5, Chapter 208,
11 O.S.L. 2013, as amended by Section 3, Chapter 476,
12 O.S.L. 2019, Section 46, Chapter 208, O.S.L. 2019, as
13 amended by Section 18, Chapter 476, O.S.L. 2019 and
14 Section 80, Chapter 208, O.S.L. 2013, as amended by
15 Section 30, Chapter 476, O.S.L. 2019 (85A O.S. Supp.
16 2019, Sections 2, 3, 5, 46 and 80), which relate to
17 definitions, applicability, exclusive liability,
18 permanent partial disability schedule and review of
19 compensation judgments; modifying definitions;
20 modifying injury for which provisions apply;
21 conforming language; increasing maximum weekly limit
22 for certain disability awards; modifying requirements
23 for application for change of condition; updating
24 statutory references; and providing an effective
date.

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

19 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
20 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A
21 O.S. Supp. 2019, Section 2), is amended to read as follows:

22 Section 2. As used in the Administrative Workers' Compensation
23 Act:

1 1. "Actually dependent" means a surviving spouse, a child or
2 any other person who receives one-half (1/2) or more of his or her
3 support from the employee;

4 2. "Carrier" means any stock company, mutual company, or
5 reciprocal or interinsurance exchange authorized to write or carry
6 on the business of workers' compensation insurance in this state.
7 Whenever required by the context, the term "carrier" shall be deemed
8 to include duly qualified self-insureds or self-insured groups;

9 3. "Case management" means the ongoing coordination, by a case
10 manager, of health care services provided to an injured or disabled
11 worker, including but not limited to systematically monitoring the
12 treatment rendered and the medical progress of the injured or
13 disabled worker; ensuring that any treatment plan follows all
14 appropriate treatment protocols, utilization controls and practice
15 parameters; assessing whether alternative health care services are
16 appropriate and delivered in a cost-effective manner based upon
17 acceptable medical standards; and ensuring that the injured or
18 disabled worker is following the prescribed health care plan;

19 4. "Case manager" means a person who is a registered nurse with
20 a current, active unencumbered license from the Oklahoma Board of
21 Nursing, or possesses one or more of the following certifications
22 which indicate the individual has a minimum number of years of case
23 management experience, has passed a national competency test and
24

1 regularly obtains continuing education hours to maintain
2 certification:

- 3 a. Certified Disability Management Specialist (CDMS),
- 4 b. Certified Case Manager (CCM),
- 5 c. Certified Rehabilitation Registered Nurse (CRRN),
- 6 d. Case Manager - Certified (CMC),
- 7 e. Certified Occupational Health Nurse (COHN), or
- 8 f. Certified Occupational Health Nurse Specialist (COHN-
9 S);

10 5. "Certified workplace medical plan" means an organization of
11 health care providers or any other entity, certified by the State
12 Commissioner of Health, that is authorized to enter into a
13 contractual agreement with an employer, group self-insurance
14 association plan, an employer's workers' compensation insurance
15 carrier, third-party administrator or an insured to provide medical
16 care under the Administrative Workers' Compensation Act. Certified
17 plans shall only include plans which provide medical services and
18 payment for services on a fee-for-service basis to medical
19 providers;

20 6. "Child" means a natural or adopted son or daughter of the
21 employee under eighteen (18) years of age; or a natural or adopted
22 son or daughter of an employee eighteen (18) years of age or over
23 who is physically or mentally incapable of self-support; or any
24 natural or adopted son or daughter of an employee eighteen (18)

1 years of age or over who is actually dependent; or any natural or
2 adopted son or daughter of an employee between eighteen (18) and
3 twenty-three (23) years of age who is enrolled as a full-time
4 student in any accredited educational institution. The term "child"
5 includes a posthumous child, a child legally adopted or one for whom
6 adoption proceedings are pending at the time of death, an actually
7 dependent stepchild or an actually dependent acknowledged child born
8 out of wedlock;

9 7. "Claimant" means a person who claims benefits for an injury
10 or occupational disease pursuant to the provisions of the
11 Administrative Workers' Compensation Act;

12 8. "Commission" means the Workers' Compensation Commission;

13 9. a. "Compensable injury" means damage or harm to the
14 physical structure of the body, or damage or harm to
15 prosthetic appliances, including eyeglasses, contact
16 lenses, or hearing aids, of which the major cause is
17 either an accident, cumulative trauma or occupational
18 disease arising out of the course and scope of
19 employment. An "accident" means an event involving
20 factors external to the employee that:

21 (1) was unintended, unanticipated, unforeseen,
22 unplanned and unexpected,

23 (2) occurred at a specifically identifiable time and
24 place,

1 (3) occurred by chance or from unknown causes, ~~or~~

2 (4) was independent of sickness, mental incapacity,
3 bodily infirmity or any other cause.

4 b. "Compensable injury" does not include:

5 (1) injury to any active participant in assaults or
6 combats which, although they may occur in the
7 workplace, are the result of non-employment-
8 related hostility or animus of one, both, or all
9 of the combatants and which assault or combat
10 amounts to a deviation from customary duties;
11 provided, however, injuries caused by horseplay
12 shall not be considered to be compensable
13 injuries, except for innocent victims,

14 (2) injury incurred while engaging in or performing
15 or as the result of engaging in or performing any
16 recreational or social activities for the
17 employee's personal pleasure,

18 (3) injury which was inflicted on the employee at a
19 time when employment services were not being
20 performed or before the employee was hired or
21 after the employment relationship was terminated,

22 (4) injury if the accident was caused by the use of
23 alcohol, illegal drugs, or prescription drugs
24 used in contravention of physician's orders. If

1 a biological specimen is collected within twenty-
2 four (24) hours of the employee being injured or
3 reporting an injury, or if at any time after the
4 injury a biological specimen is collected by the
5 Oklahoma Office of the Chief Medical Examiner if
6 the injured employee does not survive for at
7 least twenty-four (24) hours after the injury and
8 the employee tests positive for intoxication, an
9 illegal controlled substance, or a legal
10 controlled substance used in contravention to a
11 treating physician's orders, or refuses to
12 undergo the drug and alcohol testing, there shall
13 be a rebuttable presumption that the injury was
14 caused by the use of alcohol, illegal drugs, or
15 prescription drugs used in contravention of
16 physician's orders. This presumption may only be
17 overcome if the employee proves by clear and
18 convincing evidence that his or her state of
19 intoxication had no causal relationship to the
20 injury,

- 21 (5) any strain, degeneration, damage or harm to, or
22 disease or condition of, the eye or
23 musculoskeletal structure or other body part
24 resulting from the natural results of aging,

1 osteoarthritis, arthritis, or degenerative
2 process including, but not limited to,
3 degenerative joint disease, degenerative disc
4 disease, degenerative
5 spondylosis/spondylolisthesis and spinal
6 stenosis, ~~or~~

7 (6) any preexisting condition except when the
8 treating physician clearly confirms an
9 identifiable and significant aggravation incurred
10 in the course and scope of employment, or

11 (7) any injury resulting from an idiopathic injury or
12 condition.

13 c. Where compensation is payable for an injury resulting
14 from cumulative trauma, the last employer in whose
15 employment the employee was last injuriously exposed
16 to the trauma during a period of at least ninety (90)
17 days or more, and the insurance carrier, if any, on
18 the risk when the employee was last so exposed under
19 such employer, shall alone be liable therefor, without
20 right to contribution from any prior employer or
21 insurance carrier. If there is no employer in whose
22 employment the employee was injuriously exposed to the
23 trauma for a period of at least ninety (90) days, then
24 the last employer in whose employment the employee was

1 last injuriously exposed to the trauma and the
2 insurance carrier, if any, on the risk when such
3 employee was last so exposed under such employer,
4 shall be liable therefor, with right to contribution
5 from any prior employer or insurance carrier.

6 d. A compensable injury shall be established by medical
7 evidence supported by objective findings as defined in
8 paragraph ~~34~~ 33 of this section.

9 ~~d.~~

10 e. The injured employee shall prove by a preponderance of
11 the evidence that he or she has suffered a compensable
12 injury.

13 ~~e.~~

14 f. Benefits shall not be payable for a condition which
15 results from a non-work-related independent
16 intervening cause following a compensable injury which
17 causes or prolongs disability, aggravation, or
18 requires treatment. A non-work-related independent
19 intervening cause does not require negligence or
20 recklessness on the part of a claimant.

21 ~~f.~~

22 g. An employee who suffers a compensable injury shall be
23 entitled to receive compensation as prescribed in ~~this~~
24 ~~act~~ the Administrative Workers' Compensation Act.

1 Notwithstanding other provisions of law, if it is
2 determined that a compensable injury did not occur,
3 the employee shall not be entitled to compensation
4 under ~~this act~~ the Administrative Workers'
5 Compensation Act;

6 10. "Compensation" means the money allowance payable to the
7 employee or to his or her dependents and includes the medical
8 services and supplies provided for in Section 50 of this title and
9 funeral expenses;

10 11. "Consequential injury" means injury or harm to a part of
11 the body that is a direct result of the injury or medical treatment
12 to the part of the body originally injured in the claim. The
13 Commission shall not make a finding of a consequential injury unless
14 it is established by objective medical evidence that medical
15 treatment for such part of the body is required;

16 12. "Continuing medical maintenance" means medical treatment
17 that is reasonable and necessary to maintain claimant's condition
18 resulting from the compensable injury or illness after reaching
19 maximum medical improvement. Continuing medical maintenance shall
20 not include diagnostic tests, surgery, injections, counseling,
21 physical therapy, or pain management devices or equipment;

22 13. "Course and scope of employment" means an activity of any
23 kind or character for which the employee was hired and that relates
24 to and derives from the work, business, trade or profession of an

1 employer, and is performed by an employee in the furtherance of the
2 affairs or business of an employer. The term includes activities
3 conducted on the premises of an employer or at other locations
4 designated by an employer and travel by an employee in furtherance
5 of the affairs of an employer that is specifically directed by the
6 employer. This term does not include:

- 7 a. an employee's transportation to and from his or her
8 place of employment,
- 9 b. travel by an employee in furtherance of the affairs of
10 an employer if the travel is also in furtherance of
11 personal or private affairs of the employee,
- 12 c. any injury occurring in a parking lot or other common
13 area adjacent to an employer's place of business
14 before the employee clocks in or otherwise begins work
15 for the employer or after the employee clocks out or
16 otherwise stops work for the employer unless the
17 employer owns or maintains exclusive control over the
18 area, or
- 19 d. any injury occurring while an employee is on a work
20 break, unless the injury occurs while the employee is
21 on a work break inside the employer's facility or in
22 an area owned by or exclusively controlled by the
23 employer and the work break is authorized by the
24 employee's supervisor;

1 14. "Cumulative trauma" means an injury to an employee that is
2 caused by the combined effect of repetitive physical activities
3 extending over a period of time in the course and scope of
4 employment. Cumulative trauma shall not mean fatigue, soreness or
5 general aches and pain that may have been caused, aggravated,
6 exacerbated or accelerated by the employee's course and scope of
7 employment. Cumulative trauma shall have resulted directly and
8 independently of all other causes;

9 15. "Death" means only death resulting from compensable injury
10 as defined in paragraph 9 of this section;

11 16. "Disability" means incapacity because of compensable injury
12 to earn, in the same or any other employment, substantially the same
13 amount of wages the employee was receiving at the time of the
14 compensable injury;

15 17. "Drive-away operations" includes every person engaged in
16 the business of transporting and delivering new or used vehicles by
17 driving, either singly or by towbar, saddle-mount or full-mount
18 method, or any combination thereof, with or without towing a
19 privately owned vehicle;

20 18. a. "Employee" means any person, including a minor, in the
21 service of an employer under any contract of hire or
22 apprenticeship, written or oral, expressed or implied,
23 but excluding one whose employment is casual and not
24 in the course of the trade, business, profession, or

1 occupation of his or her employer and excluding one
2 who is required to perform work for a municipality or
3 county or the state or federal government on having
4 been convicted of a criminal offense or while
5 incarcerated. "Employee" shall also include a member
6 of the Oklahoma National Guard while in the
7 performance of duties only while in response to state
8 orders and any authorized voluntary or uncompensated
9 worker, rendering services as a firefighter, law
10 enforcement officer or emergency management worker.
11 Travel by a police officer, fireman, or a member of a
12 first aid or rescue squad, in responding to and
13 returning from an emergency, shall be deemed to be in
14 the course of employment.

15 b. The term "employee" shall not include:

16 (1) any person for whom an employer is liable under
17 any Act of Congress for providing compensation to
18 employees for injuries, disease or death arising
19 out of and in the course of employment including,
20 but not limited to, the Federal Employees'
21 Compensation Act, the Federal Employers'
22 Liability Act, the Longshore and Harbor Workers'
23 Compensation Act and the Jones Act, to the extent
24 his or her employees are subject to such acts,

1 (2) any person who is employed in agriculture,
2 ranching or horticulture by an employer who had a
3 gross annual payroll in the preceding calendar
4 year of less than One Hundred Thousand Dollars
5 (\$100,000.00) wages for agricultural, ranching or
6 horticultural workers, or any person who is
7 employed in agriculture, ranching or horticulture
8 who is not engaged in operation of motorized
9 machines. This exemption applies to any period
10 of time for which such employment exists,
11 irrespective of whether or not the person is
12 employed in other activities for which the
13 exemption does not apply. If the person is
14 employed for part of a year in exempt activities
15 and for part of a year in nonexempt activities,
16 the employer shall be responsible for providing
17 workers' compensation only for the period of time
18 for which the person is employed in nonexempt
19 activities,

20 (3) any person who is a licensed real estate sales
21 associate or broker, paid on a commission basis,

22 (4) any person who is providing services in a medical
23 care or social services program, or who is a
24 participant in a work or training program,

1 administered by the Department of Human Services,
2 unless the Department is required by federal law
3 or regulations to provide workers' compensation
4 for such person. This division shall not be
5 construed to include nursing homes,

6 (5) any person employed by an employer with five or
7 fewer total employees, all of whom are related
8 within the second degree by blood or marriage to
9 the employer, all of whom are dependents living
10 in the household of the employer, or all of whom
11 are a combination of such relatives and
12 dependents. If the employer is not a natural
13 person such relative shall be related within the
14 second degree by blood or marriage to a person
15 who owns fifty percent (50%) or more of the
16 employer, or such dependent shall be in the
17 household of a person who owns fifty percent
18 (50%) or more of the employer,

19 (6) any person employed by an employer which is a
20 youth sports league which qualifies for exemption
21 from federal income taxation pursuant to federal
22 law,

23 (7) sole proprietors, members of a partnership,
24 individuals who are party to a franchise

1 agreement as set out by the Federal Trade
2 Commission franchise disclosure rule, 16 CFR
3 436.1 through 436.11, members of a limited
4 liability company who own at least ten percent
5 (10%) of the capital of the limited liability
6 company or any stockholder-employees of a
7 corporation who own ten percent (10%) or more
8 stock in the corporation, unless they elect to be
9 covered by a policy of insurance covering
10 benefits under the Administrative Workers'
11 Compensation Act,

12 (8) any person providing or performing voluntary
13 service who receives no wages for the services
14 other than meals, drug or alcohol rehabilitative
15 therapy, transportation, lodging or reimbursement
16 for incidental expenses except for volunteers
17 specifically provided for in subparagraph a of
18 this paragraph,

19 (9) a person, commonly referred to as an owner-
20 operator, who owns or leases a truck-tractor or
21 truck for hire, if the owner-operator actually
22 operates the truck-tractor or truck and if the
23 person contracting with the owner-operator is not
24 the lessor of the truck-tractor or truck.

1 Provided, however, an owner-operator shall not be
2 precluded from workers' compensation coverage
3 under the Administrative Workers' Compensation
4 Act if the owner-operator elects to participate
5 as a sole proprietor,

6 (10) a person referred to as a drive-away owner-
7 operator who privately owns and utilizes a tow
8 vehicle in drive-away operations and operates
9 independently for hire, if the drive-away owner-
10 operator actually utilizes the tow vehicle and if
11 the person contracting with the drive-away owner-
12 operator is not the lessor of the tow vehicle.

13 Provided, however, a drive-away owner-operator
14 shall not be precluded from workers' compensation
15 coverage under the Administrative Workers'
16 Compensation Act if the drive-away owner-operator
17 elects to participate as a sole proprietor, and

18 (11) any person who is employed as a domestic servant
19 or as a casual worker in and about a private home
20 or household, which private home or household had
21 a gross annual payroll in the preceding calendar
22 year of less than Fifty Thousand Dollars
23 (\$50,000.00) for such workers;

1 19. "Employer" means a natural person, partnership,
2 association, limited liability company, corporation, and the legal
3 representatives of a deceased employer, or the receiver or trustee
4 of a person, partnership, association, corporation, or limited
5 liability company, departments, instrumentalities and institutions
6 of this state and divisions thereof, counties and divisions thereof,
7 public trusts, boards of education and incorporated cities or towns
8 and divisions thereof, employing a person included within the term
9 "employee" as defined in this section. Employer may also mean the
10 employer's workers' compensation insurance carrier, if applicable.
11 Except as provided otherwise, ~~this act~~ the Administrative Workers'
12 Compensation Act applies to all public and private entities and
13 institutions;

14 20. "Employment" includes work or labor in a trade, business,
15 occupation or activity carried on by an employer or any authorized
16 voluntary or uncompensated worker rendering services as a
17 firefighter, peace officer or emergency management worker;

18 21. "Evidence-based" means expert-based, literature-supported
19 and outcomes validated by well-designed randomized trials when such
20 information is available and which uses the best available evidence
21 to support medical decision making;

22 22. "Gainful employment" means the capacity to perform
23 employment for wages for a period of time that is not part-time,
24 occasional or sporadic;

1 23. "Idiopathic" means an injury or condition, where neither
2 the cause, nor the resulting injury bears any special relation to
3 the work or to the conditions under which the act was being
4 performed and though it occurs in the course of the employment, does
5 not arise out of the employment;

6 24. "Impaired self-insurer" means a private self-insurer or
7 group self-insurance association that fails to pay its workers'
8 compensation obligations, or is financially unable to do so and is
9 the subject of any proceeding under the Federal Bankruptcy Reform
10 Act of 1978, and any subsequent amendments or is the subject of any
11 proceeding in which a receiver, custodian, liquidator,
12 rehabilitator, trustee or similar officer has been appointed by a
13 court of competent jurisdiction to act in lieu of or on behalf of
14 the self-insurer;

15 ~~24.~~ 25. "Incapacity" means inadequate strength or ability to
16 perform a work-related task;

17 ~~25.~~ 26. "Insurance Commissioner" means the Insurance
18 Commissioner of the State of Oklahoma;

19 ~~26.~~ 27. "Insurance Department" means the Insurance Department
20 of the State of Oklahoma;

21 ~~27.~~ 28. "Major cause" means more than fifty percent (50%) of
22 the resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of ~~this act~~ the Administrative Workers' Compensation Act and shall
3 not create a separate cause of action outside ~~this act~~ the
4 Administrative Workers' Compensation Act;

5 ~~28.~~ 29. "Maximum medical improvement" means that no further
6 material improvement would reasonably be expected from medical
7 treatment or the passage of time;

8 ~~29.~~ 30. "Medical services" means those services specified in
9 Section 50 of this title;

10 ~~30.~~ 31. "Misconduct" shall include the following:

- 11 a. unexplained absenteeism or tardiness,
- 12 b. willful or wanton indifference to or neglect of the
13 duties required,
- 14 c. willful or wanton breach of any duty required by the
15 employer,
- 16 d. the mismanagement of a position of employment by
17 action or inaction,
- 18 e. actions or omissions that place in jeopardy the
19 health, life, or property of self or others,
- 20 f. dishonesty,
- 21 g. wrongdoing,
- 22 h. violation of a law, or
- 23 i. a violation of a policy or rule adopted to ensure
24 orderly work or the safety of self or others;

1 ~~31.~~ 32.

2 a. (1) "Objective findings" are those findings which
3 cannot come under the voluntary control of the
4 patient.

5 (2) (a) When determining permanent disability, a
6 physician, any other medical provider, an
7 administrative law judge, the Commission or
8 the courts shall not consider complaints of
9 pain.

10 (b) For the purpose of making permanent
11 disability ratings to the spine, physicians
12 shall use criteria established by the Sixth
13 Edition of the American Medical Association
14 "Guides to the Evaluation of Permanent
15 Impairment".

16 (3) (a) Objective evidence necessary to prove
17 permanent disability in occupational hearing
18 loss cases may be established by medically
19 recognized and accepted clinical diagnostic
20 methodologies, including, but not limited
21 to, audiological tests that measure air and
22 bone conduction thresholds and speech
23 discrimination ability.

1 (b) Any difference in the baseline hearing
2 levels shall be confirmed by subsequent
3 testing; provided, however, such test shall
4 be given within four (4) weeks of the
5 initial baseline hearing level test but not
6 before five (5) days after being adjusted
7 for presbycusis.

8 b. Medical opinions addressing compensability and
9 permanent disability shall be stated within a
10 reasonable degree of medical certainty;

11 ~~32.~~ 33. "Official Disability Guidelines" or "ODG" means the
12 current edition of the Official Disability Guidelines and the ODG
13 Treatment in Workers' Comp as published by the Work Loss Data
14 Institute;

15 ~~33.~~ 34. "Permanent disability" means the extent, expressed as a
16 percentage, of the loss of a portion of the total physiological
17 capabilities of the human body as established by competent medical
18 evidence and based on the Sixth Edition of the American Medical
19 Association guides to the evaluation of impairment, if the
20 impairment is contained therein;

21 ~~34.~~ 35. "Permanent partial disability" means a permanent
22 disability or loss of use after maximum medical improvement has been
23 reached which prevents the injured employee, who has been released
24 to return to work by the treating physician, from returning to his

1 or her pre-injury or equivalent job. All evaluations of permanent
2 partial disability must be supported by objective findings;

3 ~~35.~~ 36. "Permanent total disability" means, based on objective
4 findings, incapacity, based upon accidental injury or occupational
5 disease, to earn wages in any employment for which the employee may
6 become physically suited and reasonably fitted by education,
7 training, experience or vocational rehabilitation provided under
8 ~~this act~~ the Administrative Workers' Compensation Act. Loss of both
9 hands, both feet, both legs, or both eyes, or any two thereof, shall
10 constitute permanent total disability;

11 ~~36.~~ 37. "Preexisting condition" means any illness, injury,
12 disease, or other physical or mental condition, whether or not work-
13 related, for which medical advice, diagnosis, care or treatment was
14 recommended or received preceding the date of injury;

15 ~~37.~~ 38. "Pre-injury or equivalent job" means the job that the
16 claimant was working for the employer at the time the injury
17 occurred or any other employment offered by the claimant's employer
18 that pays at least one hundred percent (100%) of the employee's
19 average weekly wage;

20 ~~38.~~ 39. "Private self-insurer" means a private employer that
21 has been authorized to self-insure its workers' compensation
22 obligations pursuant to ~~this act~~ the Administrative Workers'
23 Compensation Act, but does not include group self-insurance
24 associations authorized by ~~this act~~ the Administrative Workers'

1 Compensation Act, or any public employer that self-insures pursuant
2 to ~~this act~~ the Administrative Workers' Compensation Act;

3 ~~39.~~ 40. "Prosthetic" means an artificial device used to replace
4 a part or joint of the body that is lost or injured in an accident
5 or illness covered by ~~this act~~ the Administrative Workers'
6 Compensation Act;

7 ~~40.~~ 41. "Scheduled member" or "member" means hands, fingers,
8 arms, legs, feet, toes, and eyes. In addition, for purposes of the
9 Multiple Injury Trust Fund only, "scheduled member" means hearing
10 impairment;

11 ~~41.~~ 42. "Scientifically based" involves the application of
12 rigorous, systematic, and objective procedures to obtain reliable
13 and valid knowledge relevant to medical testing, diagnoses and
14 treatment; is adequate to justify the general conclusions drawn; and
15 has been accepted by a peer-review journal or approved by a panel of
16 independent experts through a comparably rigorous, objective, and
17 scientific review;

18 ~~42.~~ 43. "State average weekly wage" means the state average
19 weekly wage determined by the Oklahoma Employment Security
20 Commission in the preceding calendar year. If such determination is
21 not available, the Commission shall determine the wage annually
22 after reasonable investigation;

23 ~~43.~~ 44. "Subcontractor" means a person, firm, corporation or
24 other legal entity hired by the general or prime contractor to

1 perform a specific task for the completion of a work-related
2 activity;

3 ~~44.~~ 45. "Surgery" does not include an injection, or the forcing
4 of fluids beneath the skin, for treatment or diagnosis;

5 ~~45.~~ 46. "Surviving spouse" means the employee's spouse by
6 reason of a legal marriage recognized by the State of Oklahoma or
7 under the requirements of a common law marriage in this state, as
8 determined by the Workers' Compensation Commission;

9 ~~46.~~ 47. "Temporary partial disability" means an injured
10 employee who is temporarily unable to perform his or her job, but
11 may perform alternative work offered by the employer;

12 ~~47.~~ 48. "Time of accident" or "date of accident" means the time
13 or date of the occurrence of the accidental incident from which
14 compensable injury, disability, or death results; and

15 ~~48.~~ 49. "Wages" means money compensation received for
16 employment at the time of the accident, including the reasonable
17 value of board, rent, housing, lodging, or similar advantage
18 received from the employer and includes the amount of tips required
19 to be reported by the employer under Section 6053 of the Internal
20 Revenue Code and the regulations promulgated pursuant thereto or the
21 amount of actual tips reported, whichever amount is greater.

22 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
23 2013, as amended by Section 2, Chapter 476, O.S.L. 2019 (85A O.S.
24 Supp. 2019, Section 3), is amended to read as follows:

1 Section 3. A. Every employer and every employee, unless
2 otherwise specifically provided in ~~this act~~ the Administrative
3 Workers' Compensation Act, shall be subject and bound to the
4 provisions of the Administrative Workers' Compensation Act and every
5 employer shall pay or provide benefits according to the provisions
6 of ~~this act~~ the Administrative Workers' Compensation Act for the
7 ~~accidental~~ compensable injury or death of an employee arising out of
8 and in the course of his or her employment, without regard to fault
9 for such injury, if the employee's contract of employment was made
10 or if the injury occurred within this state. If an employee makes a
11 claim for an injury in another jurisdiction, the employee is
12 precluded from his or her right of action under the Administrative
13 Workers' Compensation Act unless the Workers' Compensation
14 Commission determines that there is a change in circumstances that
15 creates a good cause to bring the claim under the Administrative
16 Workers' Compensation Act; provided, however, that the employee may
17 not receive duplicate benefits to those received in the foreign
18 jurisdiction and the employee's right to bring a claim under ~~this~~
19 ~~act~~ the Administrative Workers' Compensation Act shall be subject to
20 the limitations period for bringing a claim pursuant to paragraph 1
21 of subsection A of Section 69 of this title. Nothing in ~~this act~~
22 the Administrative Workers' Compensation Act shall be construed to
23 conflict with any valid Act of Congress governing the liability of
24 employers for injuries received by their employees.

1 B. The State of Oklahoma accepts the provisions of the Acts of
2 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
3 Section 290, and hereby extends the territorial jurisdiction of the
4 Administrative Workers' Compensation Act of this state to all lands
5 and premises within the exterior boundaries of this state which the
6 Government of the United States of America owns or holds by deed or
7 act of cession, and to all purchases, projects, buildings,
8 constructions, improvements and property within the exterior
9 boundaries of this state belonging to the Government of the United
10 States of America, in the same manner and to the same extent as if
11 the premises were under the exclusive jurisdiction of this state,
12 subject only to the limitations placed thereon by the Acts of
13 Congress.

14 C. The Administrative Workers' Compensation Act shall apply
15 only to claims for injuries and death ~~based on accidents~~ which occur
16 on or after February 1, 2014.

17 D. The Workers' Compensation Code in effect before February 1,
18 2014, shall govern all rights in respect to claims for injuries and
19 death ~~based on accidents~~ occurring before February 1, 2014.

20 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
21 2013, as amended by Section 3, Chapter 476, O.S.L. 2019 (85A O.S.
22 Supp. 2019, Section 5), is amended to read as follows:

23 Section 5. A. The rights and remedies granted to an employee
24 subject to the provisions of the Administrative Workers'

1 Compensation Act shall be exclusive of all other rights and remedies
2 of the employee, his legal representative, dependents, next of kin,
3 or anyone else claiming rights to recovery on behalf of the employee
4 against the employer, or any principal, officer, director, employee,
5 stockholder, partner, or prime contractor of the employer on account
6 of injury, illness, or death. Negligent acts of a co-employee may
7 not be imputed to the employer. No role, capacity, or persona of
8 any employer, principal, officer, director, employee, or stockholder
9 other than that existing in the role of employer of the employee
10 shall be relevant for consideration for purposes of ~~this act~~ the
11 Administrative Workers' Compensation Act, and the remedies and
12 rights provided by ~~this act~~ the Administrative Workers' Compensation
13 Act shall be exclusive regardless of the multiple roles, capacities,
14 or personas the employer may be deemed to have.

15 B. Exclusive remedy shall not apply if:

- 16 1. An employer fails to secure the payment of compensation due
17 to the employee as required by ~~this act~~ the Administrative Workers'
18 Compensation Act. An injured employee, or his or her legal
19 representative in case death results from the injury, may, at his or
20 her option, elect to claim compensation under ~~this act~~ the
21 Administrative Workers' Compensation Act or to maintain a legal
22 action in court for damages on account of the injury or death; or
- 23 2. The injury was caused by an intentional tort committed by
24 the employer. An intentional tort shall exist only when the

1 employee is injured as a result of willful, deliberate, specific
2 intent of the employer to cause such injury. Allegations or proof
3 that the employer had knowledge that the injury was substantially
4 certain to result from the employer's conduct shall not constitute
5 an intentional tort. The employee shall plead facts that show it is
6 at least as likely as it is not that the employer acted with the
7 purpose of injuring the employee. The issue of whether an act is an
8 intentional tort shall be a question of law.

9 C. The immunity from civil liability described in subsection A
10 of this section shall apply regardless of whether the injured
11 employee is denied compensation or deemed ineligible to receive
12 compensation under ~~this act~~ the Administrative Workers' Compensation
13 Act.

14 D. If an employer has failed to secure the payment of
15 compensation for his or her injured employee as provided for in ~~this~~
16 ~~act~~ the Administrative Workers' Compensation Act, an injured
17 employee, or his or her legal representative if death results from
18 the injury, may maintain an action in the district court for damages
19 on account of such injury.

20 E. The immunity created by the provisions of this section shall
21 not extend to action against another employer, or its employees, on
22 the same job as the injured or deceased worker where such other
23 employer does not stand in the position of an intermediate or
24

1 principal employer to the immediate employer of the injured or
2 deceased worker.

3 F. The immunity created by the provisions of this section shall
4 not extend to action against another employer, or its employees, on
5 the same job as the injured or deceased worker even though such
6 other employer may be considered as standing in the position of a
7 special master of a loaned servant where such special master neither
8 is the immediate employer of the injured or deceased worker nor
9 stands in the position of an intermediate or principal employer to
10 the immediate employer of the injured or deceased worker.

11 G. This section shall not be construed to abrogate the loaned
12 servant doctrine in any respect other than that described in
13 subsection F of this section. Nothing in ~~this act~~ the
14 Administrative Workers' Compensation Act shall be construed to
15 relieve the employer from any other penalty provided for in ~~this act~~
16 the Administrative Workers' Compensation Act for failure to secure
17 the payment of compensation under ~~this act~~ the Administrative
18 Workers' Compensation Act.

19 H. For the purpose of extending the immunity of this section,
20 any architect, professional engineer, or land surveyor shall be
21 deemed an intermediate or principal employer for services performed
22 at or on the site of a construction project, but this immunity shall
23 not extend to the negligent preparation of design plans and
24 specifications.

1 I. If the employer has failed to secure the payment of
2 compensation as provided in ~~this act~~ the Administrative Workers'
3 Compensation Act or in the case of an intentional ~~to~~ act, the
4 injured employee or his or her legal representative may maintain an
5 action either before the Commission or in the district court, but
6 not both.

7 SECTION 4. AMENDATORY Section 46, Chapter 208, O.S.L.
8 2013, as amended by Section 18, Chapter 476, O.S.L. 2019 (85A O.S.
9 Supp. 2019, Section 46), is amended to read as follows:

10 Section 46. A. An injured employee who is entitled to receive
11 permanent partial disability compensation under Section 45 of this
12 title shall receive compensation for each part of the body in
13 accordance with the number of weeks for the scheduled loss set forth
14 below.

15 1. Arm amputated at the elbow, or between the elbow and
16 shoulder, two hundred seventy-five (275) weeks;

17 2. Arm amputated between the elbow and wrist, two hundred
18 twenty (220) weeks;

19 3. Leg amputated at the knee, or between the knee and the hip,
20 two hundred seventy-five (275) weeks;

21 4. Leg amputated between the knee and the ankle, two hundred
22 twenty (220) weeks;

23 5. Hand amputated, two hundred twenty (220) weeks;

24 6. Thumb amputated, sixty-six (66) weeks;

- 1 7. First finger amputated, thirty-nine (39) weeks;
- 2 8. Second finger amputated, thirty-three (33) weeks;
- 3 9. Third finger amputated, twenty-two (22) weeks;
- 4 10. Fourth finger amputated, seventeen (17) weeks;
- 5 11. Foot amputated, two hundred twenty (220) weeks;
- 6 12. Great toe amputated, thirty-three (33) weeks;
- 7 13. Toe other than great toe amputated, eleven (11) weeks;
- 8 14. Eye enucleated, in which there was useful vision, two
9 hundred seventy-five (275) weeks;
- 10 15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 11 16. Loss of hearing of both ears, three hundred thirty (330)
12 weeks; and
- 13 17. Loss of one testicle, fifty-three (53) weeks; loss of both
14 testicles, one hundred fifty-eight (158) weeks.

15 B. The permanent partial disability rate of compensation for
16 amputation or permanent total loss of use of a scheduled member
17 specified in this section shall be seventy percent (70%) of the
18 employee's average weekly wage, not to exceed Three Hundred Fifty
19 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
20 (\$360.00) on July 1, 2021, multiplied by the number of weeks as set
21 forth in this section, regardless of whether or not the injured
22 employee is able to return to his or her pre-injury job.

23 C. Other cases: In cases in which the Workers' Compensation
24 Commission finds an injury to a part of the body not specifically

1 covered by the foregoing provisions of this section, the employee
2 may be entitled to compensation for permanent partial disability.
3 The compensation ordered paid shall be seventy percent (70%) of the
4 employee's average weekly wage, not to exceed Three Hundred Fifty
5 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
6 (\$360.00) on July 1, 2021, for the number of weeks which the partial
7 disability of the employee bears to ~~three hundred fifty (350)~~ three
8 hundred sixty (360) weeks.

9 D. 1. Compensation for amputation of the first phalange of a
10 digit shall be one-half (1/2) of the compensation for the amputation
11 of the entire digit.

12 2. Compensation for amputation of more than one phalange of a
13 digit shall be the same as for amputation of the entire digit.

14 E. 1. Compensation for the permanent loss of eighty percent
15 (80%) or more of the vision of an eye shall be the same as for the
16 loss of an eye.

17 2. In all cases of permanent loss of vision, the use of
18 corrective lenses may be taken into consideration in evaluating the
19 extent of loss of vision.

20 F. Compensation for amputation or loss of use of two or more
21 digits or one or more phalanges of two or more digits of a hand or a
22 foot may be proportioned to the total loss of use of the hand or the
23 foot occasioned thereby but shall not exceed the compensation for
24 total loss of a hand or a foot.

1 G. Compensation for permanent total loss of use of a member
2 shall be the same as for amputation of the member.

3 H. The sum of all permanent partial disability awards,
4 excluding awards against the Multiple Injury Trust Fund, shall not
5 exceed ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

6 SECTION 5. AMENDATORY Section 80, Chapter 208, O.S.L.
7 2013, as amended by Section 30, Chapter 476, O.S.L. 2019 (85A O.S.
8 Supp. 2019, Section 80), is amended to read as follows:

9 Section 80. A. A final order for permanent disability is a
10 final adjudication of all issues pending in the claim unless
11 reserved in the order or by operation of law. Except where a joint
12 petition settlement has been approved, the Workers' Compensation
13 Commission may review any compensation judgment, award, or decision.
14 Such review may be done upon application for a change of condition
15 for the worse at any time within six (6) months from the date of the
16 last order in which monetary benefits were awarded or active medical
17 treatment was provided, on the Commission's own motion or on the
18 application of any party in interest, and unless filed within such
19 period of time shall be forever barred. On review, the Commission
20 may make a judgment or award terminating, continuing, decreasing, or
21 increasing for the future the compensation previously awarded,
22 subject to the maximum limits provided for in this title. An order
23 denying an application to reopen a claim shall not extend the period
24 of time set out in this title for reopening the claim. A failure to

1 comply with a medical treatment plan ordered by the Commission shall
2 bar the reopening of a claim. An application for a finding of a
3 change of condition for the better may be filed at any time for good
4 cause shown.

5 B. The review and subsequent award shall be made in accordance
6 with the procedure prescribed in Sections 69 through 78 of this
7 title. No review shall affect any compensation paid under a prior
8 order, judgment or award.

9 C. The Commission may correct any clerical error in any
10 compensation judgment or award within one (1) year from the date of
11 its issuance.

12 D. Aging and the effects of aging on a compensable injury are
13 not to be considered in determining whether there has been a change
14 in physical condition. Aging or the effect of aging on a
15 compensable injury shall not be considered in determining permanent
16 disability under this section or any other section in ~~this act~~ the
17 Administrative Workers' Compensation Act.

18 SECTION 6. This act shall become effective November 1, 2020.
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