

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1789

By: Holt

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 3, as amended by Section 2, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 3), which relates to definitions; modifying definition; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 3, as amended by Section 2, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 3), is amended to read as follows:

Section 3. As used in the Workers' Compensation Act:

1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act.
2. "Court" means the Workers' Compensation Court.
3. "Employer", except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof,

employing a person included within the term "employee" as herein defined.

4. "Employee" means any person engaged in the employment of any person, firm or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any

policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors or members of a partnership or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker, except amateur radio operators who provide civil emergency communications for state government or a local government. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor.

5. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer for pecuniary gain or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker.

6. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act.

7. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Provided, only injuries having as their source a risk not purely personal but one that is reasonably connected with the conditions of employment shall be deemed to arise out of the employment.
- b. "Injury" or "personal injury" includes heart-related or perivascular injury, illness or death if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.
- c. "Injury" or "personal injury" shall not include mental injury that is unaccompanied by physical injury.

8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

9. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of paragraph 4 of subsection A of Section 61 of this title.

10. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease.

11. "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining physician shall not follow the guides based on race or ethnic origin and shall not deviate from said guides except as may be specifically provided for in the guides. These officially adopted guides shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides.

12. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee is or becomes physically suited and reasonably fitted by education, training or experience; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability.

13. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment.

SECTION 2. This act shall become effective September 1, 1993.

