

ENGROSSED HOUSE
BILL NO. 1455

By: Settle of the House

and

Long (Lewis) of the
Senate

(workers' compensation - amending 85 O.S., Sections 2b, 3,
43 and 61 - securing compensation to employees -
codification - effective date)

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 2b, is
amended to read as follows:

Section 2b. A. All public entities of this state, their
agencies and instrumentalities, authorities and public trusts of
which they are beneficiaries shall provide workers' compensation to
their employees and elected officials engaged in either governmental
or proprietary functions in accordance with this section. Such
provision of compensation shall be paid for out of the funds of such
public entities.

1. The state and all its institutions of higher education,
departments, instrumentalities, institutions and public trusts of
which they are beneficiaries shall insure against their liability
for workers' compensation with the State Insurance Fund and shall
not insure with any other insurance carrier unless the State
Insurance Fund refuses to accept the risk when the application for
insurance is made, or unless specifically authorized by law.

The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries may self-insure under rules and regulations promulgated by the State Insurance Fund. Such self-insurance may only be obtained through the State Insurance Fund. The state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums quoted by the State Insurance Fund. The State Insurance Fund shall collect said premiums, pay all claims and provide for excess insurance. All dividends or profits accumulating from such self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.

2. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. Self-insure and make any appropriation of funds to cover their risk;
- b. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 or subsections B and C of Section 169 of Title 51 of the Oklahoma Statutes; or
- c. Secure compensation for their employees in the manner provided in the ~~Political Subdivision~~ Governmental Tort Claims Act, subsection C of Section 167 or subsection C of Section 169 of Title 51 of the Oklahoma Statutes.

As used in this section, "city" or "town" includes any public trust or authority of which the city or town is beneficiary.

3. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their

liability for workers' compensation with the State Insurance Fund; or through any combination of the following may:

- a. Self-insure and make any appropriation of funds to cover their risk;
- b. Secure reinsurance or excess insurance over and above a self-insured retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes; or
- c. Insure with other insurance carriers licensed in the State of Oklahoma.

B. In addition to any other provision of this section, city, county, city-county and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of said hospital prior to the inception date of a workers' compensation policy each year that such policy will result in a lower cost than one with the State Insurance Fund.

C. For purposes of the Workers' Compensation Act, all contracts of employment for state, county, municipal and state funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

D. Where a person who is employed by the state, a municipality or a county, or by any political subdivisions thereof, and who, while off-duty from said employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury of the person or his death arising out of and in the course of employment which occurs during the hours of his actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision

thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. Provided, further, the provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 17 of Enrolled House Bill No. 1002 of the 2nd Extraordinary Session of the 44th Oklahoma Legislature, 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, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, 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, limited liability company 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, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company 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, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company 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, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company 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, any or all of the limited liability company 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, members of a partnership, members of a limited liability company 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. Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses. "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 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. Injuries from repeated trauma or exposure must result from at least ninety (90) days trauma or exposure, causally connected with a single employment to be deemed to arise out of 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. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of injury. All evaluations shall include an apportionment of injury

causation. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto, adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto 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 or alternative to 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 may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation; 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;

14. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

15. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

16. "Certified workplace medical plan" means an organization of health care providers, certified by the Commissioner of Health, that has entered into a contractual agreement with a self-insured employer, group self-insurance association plan or an employer's workers' compensation insurance carrier to provide medical care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitated or pre-paid plans; and

17. "Treating physician" or "attending physician" means the licensed physician who has provided or is providing medical care to the injured employee.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 43, as amended by Section 33 of Enrolled House Bill No. 1002 of the 2nd Extraordinary Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 43. A. The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court.

~~Provided however, a claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier. Provided further however, with~~
With respect to disease or injury caused by repeated trauma causally connected with employment, a claim may be filed within two (2) years of the date of last trauma or hazardous exposure. ~~Provided further however, in~~ unless there has been medical treatment for the trauma or exposure. Where there has been medical treatment for the trauma or exposure, a claim shall be filed within two (2) years from the last date of trauma or exposure prior to the first medical treatment for that exposure. Where a claim for compensation has been made based on disease or injury caused by repeated trauma or exposure causally connected with employment, and no medical treatment has been provided for a period of six (6) months or longer, any claim for additional trauma or exposure shall constitute a new cause of action for purposes of establishing the date of injury. A claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier. In the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a claim may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date said condition first becomes

manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations.

B. When a claim for compensation has been filed with the Administrator as herein provided, unless the claimant shall in good faith request a hearing and final determination thereon within five (5) years from the date of filing thereof or within five (5) years from the date of last payment of compensation or wages in lieu thereof, same shall be barred as the basis of any claim for compensation under the Workers' Compensation Act and shall be dismissed by the Court for want of prosecution, which action shall operate as a final adjudication of the right to claim compensation thereunder. Provided, that any claims heretofore filed and pending on the effective date of the Workers' Compensation Act before the State Industrial Court shall likewise be barred after the expiration of five (5) years from the filing date or within five (5) years from the date of last payment of compensation or wages in lieu thereof.

C. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition shall extend for that period of time measured by the maximum number of weeks that could be awarded for the particular scheduled member where the change of condition occurred, or for three hundred (300) weeks in the case of injuries to the body or injuries not otherwise scheduled under the provisions of Section 22 of this title, and unless filed within said period of time after the date of the last order, shall be forever barred.

D. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Act and that workers' compensation counselor services are available at the Workers' Compensation Court. The form of the notice shall be prescribed by

the rules of the Court. No other notice to the employee shall be required other than said poster required by this section; provided that nothing in this subsection shall be construed to toll the Statute of Limitations provided above.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 2, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1994, Section 61), is amended to read as follows:

Section 61. A. An employer shall secure compensation to ~~his~~ the employees of the employer in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this ~~subsection~~ paragraph shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the

contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this ~~subsection~~ paragraph shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

3. By obtaining and keeping in force a workers' compensation equivalent insurance product approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to Section ~~4~~ 65 of this ~~act~~ title; ~~or~~

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

- a. less than one hundred employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
 - (1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
 - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.
- b. one hundred or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
 - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at

least an average of the yearly claims for the last three (3) years; or

- (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation; or

5. By furnishing to the employer's employees at the employer's expense a health insurance policy providing benefits at least equal to the minimum federal employees benefit package and disability insurance equal to one hundred percent (100%) of each employee's weekly wages and at least equal to all other benefits provided by the workers' compensation statutes. Any employer providing same is immune from civil action in district court resulting from an injury which is compensable under this title.

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.

C. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

D. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured or a group self-insurance association shall be subject to the perjury laws of this state.

E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

If a self-insured employer or a group self-insurance association or pool does not comply with an order of the Workers' Compensation Court within twenty (20) days after the order becomes final and the Court finds that the delay is willful or grossly negligent on the part of the employer, upon application to the Court by any injured party or upon the Court's own motion, the authority of the employer, association or pool to continue to act as a self-insured or group self-insurance association or pool may be suspended until the employer, association or pool is in compliance with the order. The self-insured employer or group self-insurance association or pool shall be liable for all costs and attorney fees associated with any suspension brought pursuant to this section.

SECTION 6. This act shall become effective November 1, 1995.

Passed the House of Representatives the 8th day of March, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate