

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1601

By: Roach of the House

and

Henry of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85 O.S. 1991, Section 63.1, as amended by Section 1, Chapter 105, O.S.L. 1992 (85 O.S. Supp. 1996, Section 63.1), which relates to the Workers' Compensation Act; modifying the penalties for failure to provide workers' compensation insurance; removing certain discretion regarding penalties; providing a penalty for knowingly requiring an employee or subcontractor to obtain a Certificate of Noncoverage under certain circumstances; amending Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996 (40 O.S. Supp. 1996, Section 415.1), which relates to Certificates of Noncoverage; modifying certain eligibility requirements for Certificates of Noncoverage; exempting certain employers from the Workers' Compensation Act; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 63.1, as amended by Section 1, Chapter 105, O.S.L. 1992 (85 O.S. Supp. 1996, Section 63.1), is amended to read as follows:

Section 63.1 A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 61 of this title shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or ~~his~~ designee, of ~~not more than~~ Two Hundred Fifty Dollars (\$250.00) per employee for a first offense, ~~and~~ unless the employer secures workers' compensation insurance within thirty (30) days after receiving

notice of the violation. If the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation, the employer shall be liable for a civil penalty of Fifty Dollars (\$50.00) per employee. An employer shall be liable to for a civil penalty of not more than Five Hundred Dollars (\$500.00) per employee for a second or subsequent offense. Provided, the maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for all related series of violations. All civil penalties collected shall be deposited in the "Workers' Compensation Enforcement Revolving Fund" created by this section and shall be used to enforce the provisions of the Workers' Compensation Act.

B. After an employer is cited for two offenses of failing to obtain workers' compensation insurance, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the Department of Labor administrative rules and procedures, against employers who continue to fail or refuse to obtain workers' compensation insurance as required by law. The Commissioner of Labor shall have the authority to require the cessation of activities of an employer whose employees are not covered by workers' compensation insurance until the violating employer shall obtain workers' compensation insurance for its employees; provided that an employer who has made application for workers' compensation coverage with either the State Insurance Fund or a private insurance carrier, and who, through no fault of ~~his own~~ the employer, has not received notice that such coverage has commenced, shall not be made to cease operations, as provided for in this section, until a determination has been made concerning his application for workers' compensation coverage. Any order to cease and desist issued by the Commissioner may be enforced in district court. The district court may issue the Commissioner an injunction without bond, for the purposes of enforcing this section.

C. The Commissioner of Labor or his designee shall assess and collect any civil penalty incurred under subsection A of this section and, in his discretion, may remit, mitigate or negotiate

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said penalty. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of Section 61 of this title or has otherwise attempted to remedy the consequences of the said violation. Individual proceedings shall be conducted pursuant to the provisions of Section 63.2 of this title.

D. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Workers' Compensation Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies collected by the Department pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

E. No hospital or health provider shall charge more for a workers' compensation claim than for the same service not involving workers' compensation.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 63.1a of Title 85, unless there is created a duplication in numbering, reads as follows:

In addition to any other penalty prescribed by law, any employer who knowingly and willfully requires an employee or subcontractor to obtain a Certificate of Noncoverage under 415.1 of Title 40 of the Oklahoma Statutes when the employee or subcontractor is not eligible for a Certificate of Noncoverage shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or the Commissioner's designee, of not more than Five Hundred Dollars (\$500.00) for a first offense, and shall be liable for a civil penalty of not more than One Thousand Dollars (\$1,000.00) for a second or subsequent offense.

SECTION 3. AMENDATORY Section 20, Chapter 349, O.S.L. 1993, as last amended by Section 16, Chapter 363, O.S.L. 1996 (40 O.S. Supp. 1996, Section 415.1), is amended to read as follows:

Section 415.1 A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may apply to the Commissioner of Labor for a "~~Certificate of Non-Coverage~~ Noncoverage Under the Workers' Compensation Act". Applications shall be made on forms prescribed by the Commissioner and shall be accompanied by a nonrefundable application fee in an amount to be set by the Commissioner by rule not to exceed Ten Dollars (\$10.00).

B. The Commissioner of Labor shall issue a certificate to any individual who the Commissioner finds, after reasonable inquiry, to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. Issuance of the certificate by the Commissioner shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act.

C. The Commissioner of Labor shall develop necessary procedures for determining eligibility for the certificates which shall include, but not be limited to, a requirement that the applicant, if a sole proprietor, provide documentation that the applicant paid both the employer's share and the employee's share of social security income tax as proof that the applicant is exempt from the requirements of the Workers' Compensation Act. If a sole proprietor does not pay social security income tax, the sole proprietor shall provide other documentation as proof of eligibility.

D. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate.

E. 1. Knowingly providing false information to the Department of Labor for the purpose of obtaining a "~~Certificate of Non-Coverage~~ Noncoverage Under the Workers' Compensation Act"

shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

2. Application forms for such certificates shall conspicuously state on the front thereof in at least ten-point bold-faced print that it is a crime to falsify information on the form.

3. The Commissioner of Labor shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commissioner shall cooperate with the Fraud Unit in any investigation involving certificates issued pursuant to this section.

F. Application fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Enforcement Revolving Fund.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2.6 of Title 85, unless there is created a duplication in numbering, reads as follows:

An employer with five or less total employees, all of whom are related by blood or marriage to the employer, will be exempt from the Workers' Compensation Act.

SECTION 5. This act shall become effective November 1, 1997.

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