

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1185

By: Long of the Senate  
and  
Toure of the House

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85

O.S. 1991, Section 5, as last amended by Section 21, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as last amended by Section 4, Chapter 363, O.S.L. 1996, and Section 64, as last amended by Section 6, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1997, Sections 5, 14.2 and 64), which relate to the Workers' Compensation Act; prohibiting employer from taking certain actions against certain employee; modifying and clarifying language; modifying employer's duty to provide notice of certain rights; requiring certain information to be provided on certain form; transferring certain duties to the Commissioner of Health; requiring a certain form; requiring written notice of certain option to certain employers; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 5, as last amended by Section 21, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1997, Section 5), is amended to read as follows:

Section 5. A. ~~1.~~ No person, firm, partnership ~~or,~~ corporation, or other entity may discharge, discriminate against, or take any adverse employment action including, but not limited to, termination of benefits against any employee because the employee has in good faith filed:

1. Filed a claim, ~~or has retained;~~

2. Retained a lawyer ~~to represent him in said~~ for representation regarding a claim, instituted;

3. Instituted or caused to be instituted, ~~in good faith,~~ any proceeding under the provisions of this title, or has testified

4. Testified or is about to testify in any ~~such~~ proceeding under the provisions of this title which relates to the employee's past or present employment.

~~2.~~ B. No person, firm, partnership ~~or,~~ corporation, or other entity may discharge ~~an~~ any employee during a period of temporary total disability solely on the basis of absence from work.

~~B.~~ C. No ~~employer~~ person, firm, partnership, corporation, or other entity shall be required to rehire or retain any employee who is determined to be physically unable to perform ~~his~~ assigned duties. The failure of an employer to rehire or retain any such employee shall in no manner be deemed a violation of this section.

~~C.~~ D. No person, firm, partnership ~~or,~~ corporation, or other entity may discharge any employee because the employee has in good faith elected to participate or not to participate in a certified workplace medical plan as provided in Section 14 of this title.

SECTION 2. AMENDATORY Section 24, Chapter 1, 2nd

Extraordinary Session, O.S.L. 1994, as last amended by Section 4, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1997, Section 14.2), is amended to read as follows:

Section 14.2 A. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has contracted with a workplace medical plan that is certified by the Commissioner of Health as provided in Section 14.3 of this title, an employee shall exercise the election for which provision is made in subsection C of Section 14 of this title. If a self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified workplace medical plan shall be selected with the approval of both parties signatory to the collective bargaining agreement. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan.

B. Qualified employers shall, when a contract of employment is made ~~or on~~ and prior to the annual open enrollment date for the insurer's certified workplace medical plan, provide the employee with written notice of and the opportunity to ~~enroll in the plan or to indicate the employee's desire to select a physician pursuant to paragraph 1 of~~ make the election for which provision is made in subsection C of Section 14 of this title. The written notice must be given by the employer in the form and manner prescribed by the Commissioner of Health. The election must be made ~~in writing~~ on the form specified in subsection C of this section and must be signed by the employee:

1. Within thirty (30) days of employment;

2. Within thirty (30) days after an employee receives notice that a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier ~~implements~~ has implemented a certified workplace medical plan; or

3. On or prior to the annual open enrollment date of the certified workplace medical plan.

~~B.~~ C. 1. If an employee elects not to enroll in the certified workplace medical plan, the employee shall, on the election form, provide a list of physicians who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title. The employee's list of physicians may be updated on the election form made available to the employee prior to the annual open enrollment date of the certified workplace medical plan.

2. ~~Procedures and forms for enrollment shall be provided by the self-insured employer, group self-insurance association plan, insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund and the form for making the election for which provision is made in subsection C of Section 14 of this title shall be prescribed by the Commissioner of Health; however, the election form shall:~~

a. be provided to the employee at least thirty (30) days prior to the date when the employee must make the election,

b. fully inform the employee of the employee's right to participate or not to participate in the certified workplace medical plan and the consequences of such election insofar as the availability of medical care is concerned,

- c. fully inform the employee that the employee cannot be discharged by the employer because the employee has in good faith elected to participate or not to participate in the certified workplace medical plan, and
- d. provide adequate space for the employee to list physicians, by category of physician as specified in subsection D of Section 14 of this title, who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title.

D. The burden for notification of an employee's enrollment in a certified workplace medical plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified workplace medical plan for one (1) calendar year. The employee may opt out of the plan, effective on the next annual open enrollment date only if the employee is changing to a physician selected pursuant to the requirements of paragraph 1 of subsection C of Section 14 of this title. However, if the date of the injury falls under a period of enrollment in a certified workplace medical plan, treatment must be rendered under the certified workplace medical plan treatment contract.

E. The provisions of this section shall not preclude ~~the~~:

1. An employee from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of attending physician within the certified workplace medical plan or for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan. ~~Nor shall the provisions of this section preclude an; or~~

2. An employee from seeking emergency medical treatment as provided in Section 14 of this title.

F. The provisions of this section shall not apply to treatment received by an employee for an accepted accidental injury or occupational disease for which treatment began prior to November 4, 1994.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 64, as last amended by Section 6, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 1997, Section 64), is amended to read as follows:

Section 64. A. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workers' compensation insurance in this state shall contain a provision setting forth the right of the Administrator to enforce in the name of the people of the State of Oklahoma, for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of ~~said~~ the compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

B. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier, that jurisdiction of the employer shall, for the purpose incorporated in this title, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions incorporated in this title.

C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

D. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in amounts ranging from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

2. If an insured employer exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for the medical benefits paid for each claim of work injury suffered by an injured employee.

3. The Insurance Commissioner,    in exercising ~~his~~ the authority to approve the form of the policy to be issued,    shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the injured worker or insurer.

4. The insurer shall pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from the insured employer for the deductible amount.

5. If the insured employer does not reimburse the deductible amount directly to the insurer within sixty (60) days of a written demand therefor, the insurer shall pay the compensable medical claim and may seek to recover the full amount of such claim from the insured employer.

6. Claim amounts up to Five Hundred Dollars (\$500.00) annually which are paid under the medical benefits deductible pursuant to this subsection shall be excluded from the calculation of the insured employer's experience modifier.

7. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.

E. Every such policy issued to a sole proprietor, partnership, limited liability company, or corporation must disclose to the potential purchaser in writing the option to 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 for the purpose of workers' compensation insurance coverage by endorsing the policy in accordance with Section 3 of this title.

F. Every contract or agreement of an employer the purpose of which is to indemnify ~~him~~ the employer from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or ~~his~~ the employer's officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for in this title.

~~F.~~ G. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under this title shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to ~~him~~ the employer or by sending it by mail, by registered letter, addressed to the employer at ~~his or its~~ the employer's last-known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder

who has obtained other compensation insurance, as evidenced by filing in compliance with Section 61 of this title, and no intervening rights of any employee are involved, omission of a predecessor insurer to file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 4. This act shall become effective November 1, 1998.

46-2-11229            JAK