

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1357

By: Newport

AS INTRODUCED

An Act relating to workers' compensation; amending Title 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 11), which relates to employer liability; modifying exception to employer liability in event of drug or alcohol abuse by employee; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 11), is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or another;

2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor;

3. An injury ~~resulting directly from the use~~ which occurs when an employee is using or abuse of abusing alcohol, illegal drugs or chemicals, or ~~the abuse of abusing~~ prescription drugs; provided,

~~this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury~~ the employee is unable to prove by a preponderance of the evidence that the use or abuse of drugs, alcohol or prescription drugs was not a cause of the injury. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence; and

4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided, however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent

contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by the independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such

compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO<sub>2</sub>) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 2. This act shall become effective November 1, 2001.

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