

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2650

By: Sullivan

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation, amending 85
8 O.S. 2001, Section 12, as amended by Section 14,
9 Chapter 1, 1st Extraordinary Session, O.S.L. 2005,
10 (85 O.S. Supp. 2009, Section 12), which relates to
11 liability of certain employers; prohibiting immunity
12 for certain willful intentional injuries; defining
13 term; specifying burden of proof; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 85 O.S. 2001, Section 12, as
17 amended by Section 14, Chapter 1, O.S.L. 2005 (85 O.S. Supp. 2009,
18 Section 12), is amended to read as follows:

19 Section 12. The liability prescribed in Section 11 of this
20 title shall be exclusive and in place of all other liability of the
21 employer and any of his employees, any architect, professional
22 engineer, or land surveyor retained to perform professional services
23 on a construction project, at common law or otherwise, for such
24 injury, loss of services, or death, to the employee, or the spouse,
personal representative, parents, or dependents of the employee, or
any other person. If an employer has failed to secure the payment

1 of compensation for his injured employee, as provided for in this
2 title, an injured employee, or his legal representatives if death
3 results from the injury, may maintain an action in the courts for
4 damages on account of such injury, and in such action the defendant
5 may not plead or prove as a defense that the injury was caused by
6 the negligence of a fellow servant, or that the employee assumed the
7 risk of his employment, or that the injury was due to the
8 contributory negligence of the employee; provided:

9 (i) The immunity created by the provisions of this section shall
10 not extend to action by an employee, or the spouse, personal
11 representative, parents, or dependents of the employee, or any other
12 person against another employer, or its employees, on the same job
13 as the injured or deceased worker where such other employer does not
14 stand in the position of an intermediate or principal employer to
15 the immediate employer of the injured or deceased worker;

16 (ii) The immunity created by the provisions of this section
17 shall not extend to action against another employer, or its
18 employees, on the same job as the injured or deceased worker even
19 though such other employer may be considered as standing in the
20 position of a special master of a loaned servant where such special
21 master neither is the immediate employer of the injured or deceased
22 worker nor stands in the position of an intermediate or principal
23 employer to the immediate employer of the injured or deceased
24 worker; and

1 (iii) This provision shall not be construed to abrogate the
2 loaned servant doctrine in any respect other than that described in
3 paragraph (ii) of this section. This section shall not be construed
4 to relieve the employer from any other penalty provided for in this
5 title for failure to secure the payment of compensation provided for
6 in this title.

7 (iv) For the purpose of extending the immunity of this section,
8 any architect, professional engineer, or land surveyor shall be
9 deemed an intermediate or principal employer for services performed
10 at or on the site of a construction project, but this immunity shall
11 not extend to the negligent preparation of design plans and
12 specifications.

13 (v) Nothing contained herein shall abrogate any rights arising
14 under the Oklahoma Constitution.

15 (vi) The immunity created by the provisions of this section
16 shall not extend to action by the employee against the employer if
17 the injury resulted from the "willful intention" of the employer.
18 For purposes of this section, the term "willful intention" means the
19 following:

20 a. the employer committed a conscious, voluntary and
21 deliberate act with the specific intent of causing the
22 injury, and such act was the foreseeable, proximate
23 and actual cause of the injury; or
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1 b. a dangerous condition existed in the workplace; the
2 existence of such condition was a violation of the
3 Occupational Safety and Health Act of 1970 or its
4 regulations; the condition presented a high degree of
5 risk and a strong probability of serious injury or
6 death; the employer had actual knowledge that the
7 condition existed; the employer deliberately ignored
8 the condition with the specific intent that it would
9 result in the injury; and the condition was the
10 foreseeable, proximate and actual cause of the injury.

11 Allegations or proof that the employer acted with conduct that
12 constitutes negligence, no matter how gross or aggravated; or acted
13 with willful, wanton or reckless misconduct shall not constitute a
14 willful intention.

15 (vii) All claims made under paragraph (vi) of this section shall
16 be stated with sufficient particularity so that a reasonable person
17 would find it more probable that the employer acted with willful
18 intention than any other possible alternative. General averments of
19 willful intention and the elements thereof as described in paragraph
20 (vi) of this section shall not be sufficient to meet the pleading
21 requirements in this paragraph (vii).

22 SECTION 2. This act shall become effective November 1, 2010.

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