

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2881

By: Dank

4
5 AS INTRODUCED

6 An Act relating to workers' compensation; making
7 workers' compensation insurance optional; requiring
8 certain notifications; requiring filing of notice
9 with Insurance Commissioner; requiring notice to
10 employees; requiring the posting of certain
11 information; prohibiting certain employer defenses;
12 amending 85 O.S. 2001, Section 2.1, which relates to
13 certain excluded employees; providing additional
14 employees; amending 85 O.S. 2001, Section 2.6, as
15 amended by Section 1, Chapter 213, O.S.L. 2009 (85
16 O.S. Supp. 2009, Section 2.6), which relates to
17 certain exemptions; providing additional exemption;
18 providing for codification; and providing an
19 effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1.5 of Title 85, unless there is
23 created a duplication in numbering, reads as follows:

24 A. Except for public employers and as otherwise provided by
law, an employer may elect to obtain workers' compensation insurance
coverage.

B. An employer who elects to obtain coverage shall be subject
to the provisions of Title 85 of the Oklahoma Statutes.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1.6 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An employer who does not obtain workers' compensation
5 insurance coverage shall notify the Workers' Compensation Court in
6 writing, in the time and as prescribed by the Insurance
7 Commissioner, that the employer elects not to obtain coverage.

8 B. The Insurance Commissioner shall prescribe forms to be used
9 for the employer notification and shall require the employer to
10 provide reasonable information to the division about the employer's
11 business.

12 C. The employer notification filing required under this section
13 shall be filed with the Insurance Department.

14 D. An employer commits an administrative violation if the
15 employer fails to comply with this section.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1.7 of Title 85, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Employers shall notify a new employee of the existence or
20 absence of workers' compensation insurance coverage at the time the
21 employee is hired.

22 B. Each employer shall post a notice of whether the employer
23 has workers' compensation insurance coverage at conspicuous
24 locations at the employer's place of business as necessary to

1 provide reasonable notice to the employees. The Insurance
2 Commissioner may adopt rules relating to the form and content of the
3 notice. The employer shall revise the notice when the information
4 contained in the notice is changed.

5 C. An employer who obtains workers' compensation insurance
6 coverage or whose coverage is terminated or canceled shall notify
7 each employee that the coverage has been obtained, terminated, or
8 canceled not later than fifteen (15) days after the date on which
9 the coverage, or the termination or cancellation of the coverage,
10 takes effect.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1.8 of Title 85, unless there is
13 created a duplication in numbering, reads as follows:

14 A. In an action against an employer who does not have workers'
15 compensation insurance coverage to recover damages for personal
16 injuries sustained by an employee in the course and scope of the
17 employment, it shall not be a defense that:

- 18 1. The employee was guilty of contributory negligence;
- 19 2. The employee assumed the risk of injury or death; or
- 20 3. The injury or death was caused by the negligence of a fellow
21 employee.

22 B. The employer may defend the action on the ground that the
23 injury was caused:

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1 1. By an act of the employee intended to bring about the
2 injury; or

3 2. While the employee was in a state of intoxication.

4 C. In an action described in subsection A of this section
5 against an employer who does not have workers' compensation
6 insurance coverage, the plaintiff shall prove negligence of the
7 employer or of an agent or servant of the employer acting within the
8 general scope of the agent's or servant's employment.

9 D. A cause of action described in subsection A of this section
10 shall not be waived by an employee before the employee's injury or
11 death. Any agreement by an employee to waive a cause of action or
12 any right described in subsection A of this section prior to the
13 employee's injury or death shall be void and unenforceable.

14 E. A cause of action described in subsection A of this section
15 may not be waived by an employee after the employee's injury unless:

16 1. The employee voluntarily enters into the waiver with
17 knowledge of the waiver's effect;

18 2. The waiver is entered into not earlier than ten (10)
19 business days after the date of the initial report of injury;

20 3. The employee, before signing the waiver, has received a
21 medical evaluation from a nonemergency care doctor; and

22 4. The waiver is in a writing under which the true intent of
23 the parties is specifically stated in the document.

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1 F. The waiver provisions required under subsection E of this
2 section shall be conspicuous and appear on the face of the
3 agreement. To be conspicuous, the waiver provisions must appear in
4 a type larger than the type contained in the body of the agreement
5 or in contrasting colors.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1.9 of Title 85, unless there is
8 created a duplication in numbering, reads as follows:

9 A. Except as otherwise provided by law, unless the employee
10 gives notice as provided by subsection B of this section, an
11 employee of an employer waives the employee's right of action at
12 common law or under a statute of this state to recover damages for
13 personal injuries or death sustained in the course and scope of the
14 employment.

15 B. An employee who desires to retain the common-law right of
16 action to recover damages for personal injuries or death shall
17 notify the employer in writing that the employee waives coverage
18 under this section and retains all rights of action under common
19 law. The employee must notify the employer not later than five (5)
20 days after the date on which the employee:

- 21 1. Begins the employment; or
- 22 2. Receives written notice from the employer that the employer
23 has obtained workers' compensation insurance coverage if the

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1 employer is not a covered employer at the time of the employment but
2 later obtains the coverage.

3 C. An employer may not require an employee to retain common-law
4 rights under this section as a condition of employment.

5 D. An employee who elects to retain the right of action or a
6 legal beneficiary of that employee may bring a cause of action for
7 damages for injuries sustained in the course and scope of the
8 employment under common law or under a statute of this state.

9 SECTION 6. AMENDATORY 85 O.S. 2001, Section 2.1, is
10 amended to read as follows:

11 Section 2.1 Commencing January 1, 1979, compensation provided
12 for in the Workers' Compensation Act shall be payable to an employee
13 for injuries arising out of and in the course of his employment.

14 ~~The~~ As provided in Section 1 of this act, any employer may elect to
15 obtain workers' compensation insurance. In addition, the Workers'
16 Compensation Act shall not apply to the following employees:

17 1. Any person who is employed as a domestic servant or as a
18 casual worker in and about a private home or household, which
19 private home or household had a gross annual payroll in the
20 preceding calendar year of less than Ten Thousand Dollars
21 (\$10,000.00) for such workers-;

22 2. Any person for whom an employer is liable under any Act of
23 Congress for providing compensation to employees for injuries,
24 disease or death arising out of and in the course of employment

1 including, but not limited to, the Federal Employees' Compensation
2 Act, the Federal Employers' Liability Act, the Longshoremen's and
3 Harbor Workers' Act and the Jones Act, to the extent his employees
4 are subject to such acts-;

5 3. Any person who is employed in agriculture or horticulture by
6 an employer who had a gross annual payroll in the preceding calendar
7 year of less than One Hundred Thousand Dollars (\$100,000.00) cash
8 wages for agricultural or horticultural workers-; or

9 4. Any person who is a licensed real estate sales associate or
10 broker, paid on a commission basis.

11 SECTION 7. AMENDATORY 85 O.S. 2001, Section 2.6, as
12 amended by Section 1, Chapter 213, O.S.L. 2009 (85 O.S. Supp. 2009,
13 Section 2.6), is amended to read as follows:

14 Section 2.6 ~~An~~ As provided in Section 1 of this act, any
15 employer may elect to obtain workers' compensation insurance. In
16 addition, an employer, as defined in Section 3 of this title, with
17 five or less total employees, all of whom are related by blood or
18 marriage to:

19 1. The employer if the employer is a natural person;

20 2. A general or limited partner if the partnership is the
21 employer;

22 3. The member of an association or limited liability company
23 responsible for forming the association or limited liability company
24 if the association or limited liability company is the employer; or

1 4. An incorporator of a corporation if the corporation is the
2 employer,
3 shall be exempt from the Workers' Compensation Act.

4 SECTION 8. This act shall become effective November 1, 2010.

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