

1 ENGROSSED SENATE
2 BILL NO. 1520

By: Bingman of the Senate

3 and

4 Jordan of the House

5
6 [workers' compensation benefits - annual affidavit -
7 effective date]
8

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

10 SECTION 1. AMENDATORY 85 O.S. 2011, Section 333, is
11 amended to read as follows:

12 Section 333. A. The determination of permanent impairment or
13 disability shall be the responsibility of the Workers' Compensation
14 Court. Any claim by an employee for compensation for permanent
15 partial impairment must be supported by competent medical testimony
16 of the treating physician who is a medical doctor or a doctor of
17 osteopathy or a qualified independent medical examiner which shall
18 be supported by objective medical findings, as defined in ~~this act~~
19 the Workers' Compensation Code, and which shall include an
20 evaluation by a physician stating his or her opinion of the
21 employee's percentage of permanent partial impairment and whether or
22 not the impairment is job-related and caused by the accidental
23 injury or occupational disease. A physician's opinion of the nature
24 and extent of permanent partial impairment to parts of the body

1 other than scheduled members must be based solely on criteria
2 established by the American Medical Association's "Guides to the
3 Evaluation of Permanent Impairment", Fifth Edition, or any
4 subsequent edition approved by the Administrator after public
5 hearing and review by the Physician Advisory Committee, hereinafter
6 referred to as "Guides". A copy of any written evaluation shall be
7 sent to both parties within seven (7) days of issuance. Medical
8 opinions addressing compensability and permanent impairment must be
9 stated within a reasonable degree of medical certainty. For
10 purposes of this section, "physician" has the same meaning as
11 defined in Section ~~26~~ 326 of this ~~act~~ title and includes a person
12 licensed by another state who would be qualified to be a licensed
13 physician under the laws of this state. Any party may submit the
14 report of an evaluating physician.

15 B. Permanent partial impairment shall not be allowed to a part
16 of the body for which no medical treatment has been received. A
17 determination of permanent impairment or disability made by the
18 Court which is not supported by objective medical findings provided
19 by a treating physician who is a medical doctor or doctor of
20 osteopathy or a qualified independent medical examiner shall be
21 considered an abuse of discretion.

22 C. The Physician Advisory Committee may recommend the adoption
23 of a method or system to evaluate permanent impairment that shall
24 deviate from, be used in place of, or in combination with the

1 Guides. Such recommendation shall be made to the Administrator of
2 the Workers' Compensation Court who may adopt the recommendation in
3 part or in whole. The adopted method or system shall be submitted
4 by the Administrator to the Governor, the Speaker of the House of
5 Representatives and the President Pro Tempore of the Senate within
6 the first ten (10) legislative days of a regular session of the
7 Legislature. Such method or system so submitted shall be subject to
8 disapproval by joint or concurrent resolution of the Legislature
9 during the legislative session in which submitted. If disapproved,
10 the existing method of determining permanent partial impairment
11 shall continue in effect. If the Legislature takes no action on the
12 method or system submitted by the Administrator, the method or
13 system shall become operative ten (10) days following the
14 adjournment of the Legislature.

15 D. The examining physician shall not deviate from the Guides or
16 any alternative thereto except as may be specifically provided for
17 in the Guides or modifications to the Guides adopted pursuant to
18 subsection C of this section.

19 E. In cases of permanent partial impairment, the compensation
20 shall be seventy percent (70%) of the employee's average weekly
21 wages, and shall be paid to the employee for the period prescribed
22 by the following schedule:

23 Thumb: For the loss of thumb, sixty-six (66) weeks.
24

1 First Finger: For the loss of the first finger, commonly called
2 the index finger, thirty-nine (39) weeks.

3 Second Finger: For the loss of a second finger, thirty-three
4 (33) weeks.

5 Third Finger: For the loss of a third finger, twenty-two (22)
6 weeks.

7 Fourth Finger: For the loss of a fourth finger, commonly called
8 the little finger, seventeen (17) weeks.

9 Phalange of Thumb or Finger: The loss of the first phalange of
10 the thumb or finger shall be considered equal to the loss of one-
11 half (1/2) of such thumb or finger, and compensation shall be one-
12 half (1/2) of the amount above specified; the loss of more than one
13 phalange shall be considered as the loss of the entire thumb or
14 finger; provided, however, that in no case shall the amount received
15 for more than one finger exceed the amount provided in this schedule
16 for the loss of a hand.

17 Great Toe: For the loss of a great toe, thirty-three (33) weeks.

18 Other Toes: For the loss of one of the toes other than the great
19 toe, eleven (11) weeks.

20 Phalange of Toe: The loss of the first phalange of any toe shall
21 be considered to be equal to the loss of one-half (1/2) of such toe,
22 and compensation shall be one-half (1/2) of the amount specified.
23 The loss of more than one phalange shall be considered as the loss
24 of the entire toe.

1 Hand: For the loss of a hand, two hundred twenty (220) weeks.

2 Arm: For the loss of an arm, two hundred seventy-five (275)
3 weeks. Provided, that for the purposes of the arm as a scheduled
4 member, the arm shall mean that part of the body that extends from
5 the surgical neck of the humerus and includes the elbow joint.

6 Foot: For the loss of a foot, two hundred twenty (220) weeks.

7 Leg: For the loss of a leg, two hundred seventy-five (275)
8 weeks. Provided, that for the purposes of the leg as a scheduled
9 member, the leg shall mean that part of the body that extends from
10 the surgical neck of the femur and includes the knee joint.

11 Eye: For the loss of an eye, two hundred seventy-five (275)
12 weeks.

13 Deafness: Deafness from industrial cause, including occupations
14 which are hazardous to hearing, accident or sudden trauma, three
15 hundred thirty (330) weeks, and total deafness of one ear from
16 industrial cause, including occupations which are hazardous to
17 hearing, accident or sudden trauma, one hundred ten (110) weeks.

18 Any examining physician shall only evaluate deafness or hearing
19 impairment in accordance with the latest publication of the American
20 Medical Association's "Guides to the Evaluation of Permanent
21 Impairment" in effect at the time of the injury or alternative
22 method provided for under provisions of ~~this act~~ the Workers'
23 Compensation Code.

1 Loss of Use: Permanent loss of use of a thumb, finger, toe, arm,
2 hand, foot, leg or eye shall be considered as the equivalent of the
3 loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

4 For the permanent partial loss of use of a member, loss of
5 hearing or sight of an eye, seventy percent (70%) of the employee's
6 average weekly wage during that portion of the number of weeks in
7 the foregoing schedule provided for the loss of such member or sight
8 of an eye which the partial loss of use thereof bears to the total
9 loss of use of such member, loss of hearing or sight of an eye.

10 Amputations: Amputation between the elbow and the wrist shall be
11 considered as the equivalent of the loss of a hand. Amputation
12 between the knee and the ankle shall be considered as the loss of a
13 foot. Amputation at or above the elbow shall be considered as the
14 loss of an arm. Amputation at or above the knee shall be considered
15 as the loss of a leg.

16 Hernia: In case of an injury resulting in the first or second
17 hernia in the same area of the body, there shall be no award of
18 permanent partial impairment. Payment of benefits in such cases
19 shall be limited to temporary total disability compensation for six
20 (6) weeks, and all necessary medical costs including, but not
21 limited to, the cost of surgery. A claimant who has had surgery for
22 a hernia may petition the Workers' Compensation Court for one
23 extension of temporary total disability compensation and the Court
24 may order such an extension, not to exceed six (6) additional weeks,

1 if the treating physician indicates such an extension is
2 appropriate, or as agreed to by all parties. An award for temporary
3 total disability or permanent partial impairment may be entered by
4 the Court if an injury results in a third hernia, or more, in the
5 same area of the body.

6 Other cases: In cases in which the Court finds an injury to a
7 part of the body not specifically covered by the foregoing
8 provisions of this section, the employee may be entitled to
9 compensation for permanent partial impairment. The compensation
10 ordered paid shall be seventy percent (70%) of the employee's
11 average weekly wage for the number of weeks which the partial
12 disability of the employee bears to five hundred (500) weeks. No
13 permanent disability shall be awarded unless there is objective
14 medical evidence of a permanent anatomical abnormality. In
15 determining the existence of such an abnormality, the Court may
16 consider if there is credible medical evidence that the ability of
17 the employee to earn wages at the same level as before the injury
18 has been permanently impaired.

19 F. The compensation payments under the provisions of the
20 Workers' Compensation Code for permanent partial impairment shall
21 not:

22 1. Exceed the sum of Three Hundred Twenty-three Dollars
23 (\$323.00) per week for injuries occurring on or after August 27,
24

1 2010, through August 26, 2015, or fifty percent (50%) of the state's
2 average weekly wage beginning August 27, 2015;

3 2. At any time be less than One Hundred Fifty Dollars (\$150.00)
4 per week for injuries occurring on or after August 27, 2010.

5 G. Previous Disability: The fact that an employee has suffered
6 previous disability or impairment or received compensation therefor
7 shall not preclude the employee from compensation for a later
8 accidental personal injury or occupational disease. In the event
9 there exists a previous impairment, including a previous non-work-
10 related injury or condition which produced permanent disability and
11 the same is aggravated or accelerated by an accidental personal
12 injury or occupational disease, compensation for permanent
13 disability shall be only for such amount as was caused by such
14 accidental personal injury or occupational disease and no additional
15 compensation shall be allowed for the preexisting disability or
16 impairment. The sum of all permanent partial impairment awards,
17 excluding awards against the Multiple Injury Trust Fund, shall not
18 exceed five hundred twenty (520) weeks, except for awards for
19 amputations and disability to the parts of the body for which
20 surgery was received in the latest injury.

21 H. No payments on any permanent partial impairment order shall
22 begin until payments on any preexisting permanent partial impairment
23 orders have been completed.

24

1 I. Any person receiving disability benefits from an employer or
2 the employer's insurance carrier, regardless of whether proceedings
3 have been initiated by the filing of a Form 3, shall file with the
4 Workers' Compensation Court, twelve (12) months after receipt of the
5 first benefit and every year thereafter, an affidavit under penalty
6 of perjury stating that he or she has not been gainfully employed
7 and is not capable of gainful employment, and stating that there has
8 been no change in income from any source during the previous twelve
9 (12) months. Such affidavit shall be on a form promulgated by the
10 Workers' Compensation Court. Failure to file the affidavit shall
11 result in the suspension of benefits and shall create a rebuttable
12 presumption for the termination of benefits until the person shows
13 by a preponderance of the evidence that he or she is not employed or
14 capable of employment and there has been no change in income.
15 Failure to file an affidavit as required by this subsection shall be
16 recorded on the permanent record of the person's case for suspension
17 of benefits, and the Workers' Compensation Court shall make written
18 findings of fact as to the evidence considered in rebutting the
19 presumption against the suspension or termination of benefits.

20 SECTION 2. AMENDATORY 85 O.S. 2011, Section 342, is
21 amended to read as follows:

22 Section 342. Within the time prescribed by Section ~~48~~ 318 of
23 this ~~act~~ title, the Workers' Compensation Court may find that the
24 injured employee has suffered a change of condition for the worse or

1 better and amend any prior order involving temporary total
2 disability, additional permanent partial impairment, permanent total
3 disability, and medical benefits. Provided, that any change of
4 condition shall only be found to those body parts adjudicated by the
5 previous award or as a result of a consequential injury and must be
6 proved by objective medical evidence of a change of condition.
7 Additional permanent partial impairment awarded after a change of
8 condition and the permanent partial impairment from the previous
9 award shall not exceed five hundred twenty (520) weeks, except for
10 additional permanent partial impairment resulting from amputation or
11 surgery as a result of the change of condition. The Workers'
12 Compensation Court shall include a statement on all forms for
13 notices and instructions to employers and employees informing
14 employees that they shall promptly comply with the requirements of
15 this section.

16 SECTION 3. This act shall become effective November 1, 2012.

17
18
19
20
21
22
23
24

