

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2259

By: Sherrer

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6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2011, Section 311, which relates to employees
9 exempted from application of Workers' Compensation
Code; modifying exempt employee requirement; defining
term; and providing an effective date.

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

13 SECTION 1. AMENDATORY 85 O.S. 2011, Section 311, is
14 amended to read as follows:

15 Section 311. The Workers' Compensation Code shall not apply to
16 the following employees:

17 1. Any person for whom an employer is liable under any Act of
18 Congress for providing compensation to employees for injuries,
19 disease or death arising out of and in the course of employment
20 including, but not limited to, the Federal Employees' Compensation
21 Act, the Federal Employers' Liability Act, the Longshoremen's and
22 Harbor Workers' Act and the Jones Act, to the extent his or her
23 employees are subject to such acts;

1 2. Any person who is employed in agriculture or horticulture by
2 an employer who had a gross annual payroll in the preceding calendar
3 year of less than One Hundred Thousand Dollars (\$100,000.00) wages
4 for agricultural or horticultural workers, or any person who is
5 employed in agriculture or horticulture who is not engaged in
6 operation of motorized machines;

7 3. Any person who is a licensed real estate sales associate or
8 broker, paid on a commission basis;

9 4. Any person who is providing services in a medical care or
10 social services program, or who is a participant in a work or
11 training program, administered by the Department of Human Services,
12 unless the Department is required by federal law or regulations to
13 provide workers' compensation for such person. This paragraph shall
14 not be construed to include nursing homes;

15 5. Any person employed by an employer with five or less total
16 employees, all of whom are related by blood or marriage to the
17 employer, if the employer is a natural person or a general or
18 limited partnership, or an incorporator of a corporation if the
19 corporation is the employer;

20 6. Any person employed by an employer which is a youth sports
21 league which qualifies for exemption from federal income taxation
22 pursuant to federal law;

23 7. Sole proprietors, members of a partnership, individuals who
24 are party to a franchise agreement as set out by the Federal Trade

1 Commission franchise disclosure rule, 16 CFR 436.1 through 436.11,
2 members of a limited liability company who own at least ten percent
3 (10%) of the capital of the limited liability company or any
4 stockholder-employees of a corporation who own ten percent (10%) or
5 more stock in the corporation, unless they elect to be covered by a
6 policy of insurance covering benefits under the Workers'
7 Compensation Code;

8 8. Any person providing or performing voluntary service who
9 receives no wages for the services other than meals, drug or alcohol
10 rehabilitative therapy, transportation, lodging or reimbursement for
11 incidental expenses;

12 9. A person, commonly referred to as an owner-operator, who
13 owns or leases a truck-tractor or truck for hire, if the owner-
14 operator actually operates the truck-tractor or truck and if the
15 person contracting with the owner-operator is not the lessor of the
16 truck-tractor or truck. Provided, however, an owner-operator shall
17 not be precluded from workers' compensation coverage under the
18 Workers' Compensation Code if the owner-operator elects to
19 participate as a sole proprietor;

20 10. A person referred to as a drive-away owner-operator who
21 privately owns and utilizes a tow vehicle in drive-away operations
22 and operates independently for hire, if the drive-away owner-
23 operator actually utilizes the tow vehicle and if the person
24 contracting with the drive-away owner-operator is not the lessor of

1 the tow vehicle. Provided, however, a drive-away owner-operator
2 shall not be precluded from workers' compensation coverage under the
3 Workers' Compensation Code if the drive-away owner-operator elects
4 to participate as a sole proprietor; and

5 11. Any person who is employed as a ~~domestic servant or as a~~
6 ~~casual worker~~ residential employee in and about a private home or
7 household, ~~which private home or household had a gross annual~~
8 ~~payroll in the preceding calendar year of less than Ten Thousand~~
9 ~~Dollars (\$10,000.00) for such workers.~~ A "residential employee"
10 means any worker employed by the employer for less than fifty-two
11 (52) hours during the ninety (90) calendar days immediately
12 preceding the date of injury, or who earned less than One Hundred
13 Dollars (\$100.00) in wages from the employer during the ninety (90)
14 days immediately preceding the date of injury.

15 SECTION 2. This act shall become effective November 1, 2012.

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