

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2657

By: Jordan

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6 AS INTRODUCED

7 An Act relating to employee injuries; creating
8 Oklahoma Employee Injury Benefit Act; stating
9 legislative intent; defining terms; authorizing the
10 exemption of certain employers from certain
11 requirements; requiring certain notice; requiring the
12 payment of certain fee; directing Administrator of
13 the Workers' Compensation Court to collect and
14 maintain certain information; directing Administrator
15 to monitor compliance; directing Workers'
16 Compensation Court to maintain a list of exempt
17 employers; authorizing Administrator to require
18 certain confirmation; authorizing Administrator to
19 designate certain agent; authorizing Administrator to
20 adopt certain rules; authorizing Administrator to
21 prescribe certain forms; specifying information
22 required on forms; authorizing Court to contract with
23 the Oklahoma Employment Security Commission or the
24 Comptroller for certain assistance; directing
Commission and Comptroller to cooperate with Court;
directing employers to notify employees of certain
coverage; directing certain employers to post notices
regarding workers' compensation insurance;
authorizing Administrator to adopt certain rules;
specifying certain employers shall be required to
adopt a written benefit plan; specifying requirements
of plan; authorizing certain limitations of plan;
requiring compliance of plan with the Employee
Retirement Income Security Act; directing certain
employers to provide certain information to the
Administrator; specifying required insurance
coverage; requiring certain rating of insurance
companies; authorizing the payment for required
insurance in installments or lump sum; requiring
certain surety bonds; requiring certain rating of
insurer; specifying required amount of bonds;

1 requiring the filing of surety; authorizing the use
2 of surety bond for certain payments; specifying
3 requirements for the use of bond; directing
4 Administrator to promulgate certain rules; specifying
5 employer liability shall be exclusive; prohibiting
6 certain employees from claiming negligence against an
7 employer; authorizing certain intentional tort
8 claims; specifying intentional tort requirements;
9 specifying intoxication or illegal controlled
10 substance use shall create certain presumption;
11 specifying certain benefits paid shall offset other
12 award; specifying prohibiting certain claims;
13 prohibiting appeal for enforcement of certain
14 limitations; specifying employer responsibilities;
15 requiring certain employers to comply with Workers'
16 Compensation Code; specifying manner of resolution
17 for certain disputes; authorizing the establishment
18 of certain mediation or arbitration procedures for
19 certain disputes; specifying requirements; limiting
20 the establishment of certain rules and regulations;
21 providing for codification; and providing an
22 effective date.

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

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 7501 of Title 36, unless there
is created a duplication in numbering, reads as follows:

Sections 1 through 13 of this act shall be known and may be
cited as the "Oklahoma Employee Injury Benefit Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 7502 of Title 36, unless there
is created a duplication in numbering, reads as follows:

1 A. Provisions of the Oklahoma Employee Injury Benefit Act shall
2 be strictly construed without favoritism to any party.

3 B. It is the specific purpose and intent of the Legislature
4 that the Oklahoma Employee Injury Benefit Act shall:

5 1. Provide a fair and balanced alternative to the Workers'
6 Compensation Code for providing benefits to injured employees;

7 2. Encourage the prompt medical care and payment of
8 compensation for injured workers;

9 3. Promote the efficient resolution of occupational injuries;
10 and

11 4. Give employers the nonmandatory option of electing to become
12 subject to the Workers' Compensation Code or opting out of act.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 7503 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 As used in the Oklahoma Employee Injury Benefit Act:

17 1. "Accidental death and dismemberment" means any benefit
18 provided pursuant to Section 7 of this act;

19 2. "Act" means the Oklahoma Employee Injury Benefit Act, unless
20 otherwise stated;

21 3. "Administrator" means the Administrator of the Oklahoma
22 Workers' Compensation Court;

23 4. "Benefit plan" means a plan established by a qualified
24 employer under the requirements of Section 6 of this act;

1 5. "Court" means the Oklahoma Workers' Compensation Court, or
2 any successor, unless otherwise stated;

3 6. "Covered employee" means an employee whose employment with a
4 qualified employer is principally located within the state;

5 7. "Employee" means any person who is employed by and receives
6 pay by means of a salary, wage or commission directly from, an
7 employer and for whom an employer files a Form W-2 with the Internal
8 Revenue Service. This term does not include an independent
9 contractor or third-party agent;

10 8. "Employer", except when otherwise expressly stated, means a
11 person, partnership, association, limited liability company,
12 corporation, and the legal representatives of a deceased employer,
13 or the receiver or trustee of a person, partnership, association,
14 corporation or limited liability company, employing a person
15 included within the term employee as defined in the Oklahoma
16 Employee Injury Benefit Act;

17 9. "Occupational injury" means an injury including death or
18 occupational illness, causing internal or external harm to the body,
19 which is incurred in the course and scope of employment;

20 10. "Preinjury pay" means:

21 a. for salaried covered employees, regular periodic
22 salary from a qualified employer at the time of the
23 occupational injury, and
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1 b. for hourly covered employees, the average earnings
2 from a qualified employer for the six consecutive pay
3 periods immediately preceding the date of the
4 occupational injury; provided, however, that if the
5 covered employee has worked for a qualified employer
6 for less than six consecutive pay periods, or if the
7 earnings of the employee as of such date cannot be
8 reasonably determined, the six-pay-period average
9 shall be based on the earnings received over such
10 period by a similar covered employee of the qualified
11 employer. Preinjury pay shall include pay for overtime
12 and employee contributions, through salary reduction
13 or otherwise, to a 401(k) or similar arrangement,
14 cafeteria plan, or other pretax salary deferral
15 employee benefit plan. Preinjury pay shall not
16 include any bonuses, benefits, including, but not
17 limited to, employer contributions to any employee
18 benefit plans or matching contributions to a
19 retirement plan, or other extraordinary remuneration;
20 and

21 11. "Qualified employer" means an employer otherwise subject to
22 the Workers' Compensation Code that voluntarily elects not to
23 purchase workers' compensation insurance coverage and satisfies the
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1 requirements to become a qualified employer pursuant to the Oklahoma
2 Employee Injury Benefit Act.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 7504 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any employer may voluntarily elect to be exempt from the
7 Workers' Compensation Code and become a qualified employer by
8 satisfying the requirements of the Oklahoma Employee Injury Benefit
9 Act.

10 B. Any employer electing to become a qualified employer shall
11 notify the Workers' Compensation Court in writing that it is not
12 obtaining workers' compensation insurance coverage or has elected to
13 cease carrying workers' compensation coverage, as the case may be,
14 and the date that the election is to become effective, which may not
15 be sooner than the date that the qualified employer satisfies the
16 notice requirements described in Section 5 of this act. The
17 employer shall pay to the court a nonrefundable fee in the amount of
18 Five Hundred Dollars (\$500.00) which shall accompany the filing of
19 the written notice.

20 C. The Administrator of the Oklahoma Workers' Compensation
21 Court shall collect and maintain the information required pursuant
22 to the Oklahoma Employee Injury Benefit Act and shall monitor
23 compliance with the requirements of this section. The Court shall
24 note the date and time each notice is received by the Court and the

1 effective date of the election in the records of the Court. In
2 addition, the Court shall maintain a listing on its official website
3 of all employers who have voluntarily elected to be exempt from the
4 Workers' Compensation Code and the date and time the exemption
5 became effective; the listing shall be maintained so it is
6 accessible by the public.

7 D. The Administrator may require an employer or insurance
8 carrier subject to the Oklahoma Employee Injury Benefit Act to
9 identify or confirm an employer's coverage or qualified employer
10 status as necessary to achieve the purposes of the Oklahoma Employee
11 Injury Benefit Act.

12 E. The Administrator may designate an information collection
13 agent, implement an electronic reporting and public information
14 access program, and adopt rules as necessary to implement the
15 information collection requirements of the Oklahoma Employee Injury
16 Benefit Act.

17 F. The Administrator may prescribe forms to be used for the
18 employer notification and shall require the employer to provide its
19 name, address, contact person and phone, federal tax identification
20 number, claim administration contact information, bonding
21 information, and a listing of all covered business locations in the
22 state.

23 G. The Court may contract with the Oklahoma Employment Security
24 Commission or the Comptroller for assistance in collecting the

1 notification required pursuant to this section. Those agencies
2 shall cooperate with the Court in enforcing this section.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 7505 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A qualified employer shall notify each of its covered
7 employees in the manner provided in this section that it does or
8 does not have workers' compensation insurance coverage or that such
9 coverage has terminated or been cancelled.

10 1. The employer shall notify the employee of the existence or
11 absence of workers' compensation insurance coverage at the time the
12 employee is hired or any termination or cancellation of workers'
13 compensation insurance coverage.

14 2. The employer shall post a notice stating whether the
15 employer has workers' compensation insurance coverage at conspicuous
16 locations at the employer's place of business as necessary to
17 provide reasonable notice to employees.

18 B. The Administrator of the Oklahoma Workers' Compensation
19 Court may adopt rules relating to the form, content, and method of
20 deliver of the notice.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 7506 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. An employer voluntarily electing to become a qualified
2 employer shall adopt a written benefit plan that complies with the
3 requirements of this section. The benefit plan shall not become
4 effective until the date that the qualified employer first satisfies
5 the notice requirements of Section 5 of the Oklahoma Employee Injury
6 Benefit Act.

7 B. Except as provided in subsection C of this section, the
8 benefit plan shall provide for the payment of wage replacement,
9 medical death, and dismemberment benefits as a result of an
10 occupational injury, which are in at least the following amounts:

11 1. One Hundred Thousand Dollars (\$100,000.00) for medical
12 expenses, with coverage for one hundred four (104) weeks;

13 2. Eighty percent (80%) of the covered employee's pay for at
14 least one hundred four (104) weeks, with a maximum weekly wage
15 replacement benefit of not less than eighty percent (80%) of the
16 state average weekly wage, as determined by reference to the
17 Workers' Compensation Code;

18 3. A maximum combined medical and wage replacement benefit
19 limit of not less than Two Hundred Thousand Dollars (\$200,000.00);
20 and

21 4. Death and dismemberment benefits not less than the
22 requirements set forth in Section 7 of the Oklahoma Employee Injury
23 Benefit Act.

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1 C. The benefit plan may specify further limitations that reduce
2 the minimum benefits of subsection B of this section in the event of
3 a single occurrence resulting in injury to more than three
4 employees. The benefit plan shall pay benefits without regard to
5 whether the covered employee, the qualified employer, or a third
6 party caused the occupational injury.

7 D. The benefit plan shall comply with the requirements
8 applicable to an employee benefit plan that is governed by the
9 Employee Retirement Income Security Act of 1974 (ERISA), as amended.
10 Compliance is required in order for a qualified employer to be
11 protected by both ERISA and the exclusive remedy protection
12 contained in Section 9 of the Oklahoma Employee Injury Benefit Act.
13 The benefit plan shall be governed by and subject to ERISA. A
14 violation of ERISA if timely cured shall not act to deny qualified
15 employer status to an employer that otherwise meets the requirements
16 for a qualified employer.

17 E. The qualified employer shall provide to the Administrator
18 and all covered employees notice of the name or title, address, and
19 telephone number for the person to contact for injury benefit claims
20 administration, whether in-house at the qualified employer or a
21 third party administration.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 7507 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. A qualified employer shall provide, or cause to be provided,
2 insurance coverage to fund the death and dismemberment benefits
3 described in Section 6 of this act for the benefit of its covered
4 employees. The insurance company shall have an AM Best Rating of A-
5 or better. The death benefit shall be at least equal to the lesser
6 of:

- 7 1. Ten times the Covered Employee's base annual earnings; or
- 8 2. One Hundred Thousand Dollars (\$100,000.00).

9 The dismemberment benefit shall be at least equal to the
10 following:

- 11 a. for a loss resulting in quadriplegia, hemiplegia and
12 paraplegia one hundred percent (100%) of the
13 accidental death benefit,
- 14 b. for a loss of two or more members one hundred percent
15 (100%) of the accidental death benefit,
- 16 c. for a loss of one member fifty percent (50%) of the
17 accidental death benefit,
- 18 d. for a loss of the thumb and index finger of the same
19 hand twenty-five percent (25%) of the accidental death
20 benefit, and
- 21 e. for a loss of four fingers of the same hand twenty-
22 five percent (25%) of the accidental death benefit.

23 B. The insurance required pursuant to this section may be paid
24 out in either a lump sum or installment basis, over not more than

1 thirty-six (36) months. If two or more benefits are payable, only
2 the largest amount shall be paid. At the option of the qualified
3 employers, beneficiaries for any death benefit payment may be
4 determined either by the covered employee's written designation
5 prior to the date of loss or by the provisions of the insurance
6 policy or the benefit plan.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 7508 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A qualified employer shall obtain a surety bond from an
11 insurer qualified to do business in this state to protect its
12 covered employees from a failure to make medical and wage
13 replacement benefit payments under the benefit plan in the event of
14 the qualified employer's insolvency. The insurance company shall
15 have an AM Best Rating of A- or better. The bond shall be in an
16 amount equal to the lesser of:

- 17 1. Two Hundred Thousand Dollars (\$200,000.00); or
- 18 2. The deductible or self-insured retention amount on any
19 occupational injury or similar employer's indemnity insurance
20 purchased and maintained by the qualified employer to fund medical
21 and disability benefits under its benefits plan.

22 B. The surety shall be filed and held by the Administrator of
23 the Oklahoma Workers' Compensation Court and shall be conditioned to
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1 run solely and directly for the benefit of any covered employee of a
2 qualified employer.

3 C. The surety bond held by the Administrator may be used to
4 make a payment to or on behalf of a covered employee provided the
5 following requirements are met:

6 1. The covered employee sustained an occupational injury that
7 is covered by the qualified employer's benefit plan;

8 2. The covered employee's claim for payment of a specific
9 medical and wage, or medical or wage, replacement benefit amount has
10 been accepted by the plan administrator of the benefit plan or
11 acknowledged in a final judgment or court order assessing a specific
12 dollar figure for benefits payable under the benefit plan;

13 3. The covered employee is unable to receive payment from the
14 benefit plan or collect on the judgment or court order because the
15 qualified employer has filed for bankruptcy; and

16 4. The covered employee is listed as an unsecured creditor of
17 the qualified employer because of the acceptance of the claim by the
18 plan administrator of the benefit plan or judgment or court order
19 assessing a specific dollar figure for benefits payable under the
20 benefit plan.

21 D. The Administrator shall promulgate, by rule, the procedure
22 by which a covered employee may request and receive payment from the
23 security held by the Administrator.

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1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7509 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A qualified employer's liability under the benefit plan and
5 otherwise prescribed in the Oklahoma Employee Injury Benefit Act
6 shall be exclusive and in place of all other liability of the
7 qualified employer and any of its employees at common law or
8 otherwise, for a covered employee's occupational injury, loss of
9 services, or death, to the covered employee, or the spouse, personal
10 representative, parents, or dependents of the covered employee, or
11 any other person or where the qualified employer has failed to pay
12 or secure the payment of benefits for the covered employee as
13 provided for in the Oklahoma Employee Injury Benefit Act. The
14 exclusive remedy protections provided by the section shall be as
15 broad as the exclusive remedy protections of the Workers'
16 Compensation Code, and thus preclude other types of remedies
17 including, but not limited to, a covered employee's claim against a
18 qualified employer for negligence or other causes of action.

19 B. A qualified employer is only subject to liability in any
20 action brought by a covered employee or family members of a covered
21 employee for injury or death resulting from an occupational injury
22 if the injury or death is the result of an intentional tort of the
23 part of the qualified employer. An intentional tort shall exist
24 only if the covered employee is injured as a result of willful,

1 deliberate, specific intent of the qualified employer to cause the
2 injury. Allegations or proof that the qualified employer had
3 knowledge that the injury was substantially certain to result from
4 its conduct shall not constitute an intentional tort. The issue of
5 whether an act is an intentional tort shall be a question of law for
6 the court or the duly appointed arbitrator, as applicable.

7 C. An injured covered employee's positive test for intoxication
8 or use of an illegal controlled substance shall create a presumption
9 that the covered employee's intoxication or use of an illegally
10 controlled substance caused the covered employee's injury or death.

11 D. To prevent a double recovery, any benefits paid under a
12 qualified employer's benefit plan shall offset any other award
13 against the qualified employer pursuant to subsection B of this
14 section.

15 E. Any action by a covered employee or spouse, personal
16 representative, parents, or dependents of the covered employee based
17 on a claim against a qualified employer, other than one brought to
18 enforce the provisions of the benefit plan, arising out of any
19 occupational injury shall be filed no later than one (1) year from
20 the date of the injury or death giving rise to the action or be
21 barred.

22 F. Enforcement of a limitation on damages or attorney fees in
23 favor of a qualified employer in accordance with the Oklahoma
24 Employee Injury Benefit Act shall not be an appealable error.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7510 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A qualified employer, or its insurers, shall be responsible
5 for:

6 1. All benefits payable under the terms of its benefit plan;

7 2. The cost of insurance coverage for accidental death and
8 dismemberment;

9 3. Any damage awarded against the qualified employer for
10 intentional tort in accordance with and pursuant to Section 9 of
11 this act, or if applicable, Section 12 of this act, including any
12 prejudgment and postjudgment interest on the award and reasonable
13 court costs as may be lawfully awarded in the action; and

14 4. Reasonable attorney fees awarded against the qualified
15 employer pursuant to Section 12 of this act; provided that an award
16 of attorney fees in favor of a covered employee against a qualified
17 employer on a claim for intentional tort shall be limited to no more
18 than twenty percent (20%) of any lost earnings awarded to the
19 covered employee or spouse, personal representative, parents, or
20 dependents of the covered employee under the benefit plan and the
21 award.

22 B. An employer who is not a qualified employer shall comply
23 with the Workers' Compensation Code.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7511 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A covered employee and a qualified employer, or a covered
5 employee or a qualified employer shall resolve:

6 1. All occupational injury benefit disputes in accordance with
7 the terms of the qualified employer's benefit plan; and

8 2. All intentional tort claims through the appropriate state or
9 federal courts of Oklahoma, mediation, arbitration, or any other
10 form of alternative dispute resolution or settlement process
11 available by law.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 7512 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 To support the efficient resolution of any intentional tort
16 claims brought by a covered employee, a qualified employer may elect
17 to adopt and publish to employees, as a condition of continued
18 employment, a requirement for voluntary or mandatory mediation, or
19 voluntary or mandatory, final and binding arbitration of the claims;
20 provided, that the qualified employer may implement a mandatory,
21 final and binding arbitration requirement only if the requirement:

22 1. Does not waive any substantive legal right of the covered
23 employee, other than the right to jury trial and appeal through the
24 court system;

1 2. Does not create any unfair procedural advantages for the
2 qualified employer; and

3 3. Has been disclosed to the covered employee before the date
4 of an occupational injury.

5 SECTION 13. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 7513 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 The Oklahoma Workers' Compensation Court, its Administrator, the
9 state courts of Oklahoma and all other Oklahoma administrative
10 agencies shall not promulgate rules, regulations or any procedures
11 whatsoever related to design, documentation, implementation,
12 administration or funding of a qualified benefit plan, except as,
13 and only to the extent, necessary for the notice to state and notice
14 to employee requirements as set forth in the Oklahoma Employee
15 Injury Benefit Act.

16 SECTION 14. This act shall become effective November 1, 2012.

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18 53-2-8519 SDR 12/30/11

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