

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 468

By: Bingman

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2001, Section 12, as last amended by Section 3,
9 Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010, Section
10 12), which relates to liability; clarifying language;
11 making language gender neutral; and providing an
12 effective date.

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

14 SECTION 1. AMENDATORY 85 O.S. 2001, Section 12, as last
15 amended by Section 3, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010,
16 Section 12), is amended to read as follows:

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

1 of an intentional tort, or where the employer has failed to secure
2 the payment of compensation for the injured employee as provided for
3 in Section 61 of this title. An intentional tort shall exist only
4 when the employee is injured as a result of willful, deliberate,
5 specific intent of the employer to cause such injury. Allegations
6 or proof that the employer had knowledge that such injury was
7 substantially certain to result from its conduct shall not
8 constitute an intentional tort. The issue of whether an act is an
9 intentional tort shall be a question of law for the court. If an
10 employer has failed to secure the payment of compensation for his or
11 her injured employee, as provided for in Section 61 of this title,
12 an injured employee, or his or her legal representatives if death
13 results from the injury, may maintain an action in the courts for
14 damages on account of such injury, and in such action the defendant
15 may not plead or prove as a defense that the injury was caused by
16 the negligence of a fellow servant, or that the employee assumed the
17 risk of his or her employment, or that the injury was due to the
18 contributory negligence of the employee; provided:

19 ~~(i)~~ 1. The immunity created by the provisions of this section
20 shall not extend to action by an employee, or the spouse, personal
21 representative, parents, or dependents of the employee, or any other
22 person against another employer, or its employees, on the same job
23 as the injured or deceased worker where such other employer does not
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1 stand in the position of an intermediate or principal employer to
2 the immediate employer of the injured or deceased worker;

3 ~~(ii)~~ 2. The immunity created by the provisions of this section
4 shall not extend to action against another employer, or its
5 employees, on the same job as the injured or deceased worker even
6 though such other employer may be considered as standing in the
7 position of a special master of a loaned servant where such special
8 master neither is the immediate employer of the injured or deceased
9 worker nor stands in the position of an intermediate or principal
10 employer to the immediate employer of the injured or deceased
11 worker; ~~and~~

12 ~~(iii)~~ 3. This provision shall not be construed to abrogate the
13 loaned servant doctrine in any respect other than that described in
14 paragraph ~~(ii)~~ 2. of this section. This section shall not be
15 construed to relieve the employer from any other penalty provided
16 for in this title for failure to secure the payment of compensation
17 provided for in this title-;

18 ~~(iv)~~ 4. For the purpose of extending the immunity of this
19 section, any architect, professional engineer, or land surveyor
20 shall be deemed an intermediate or principal employer for services
21 performed at or on the site of a construction project, but this
22 immunity shall not extend to the negligent preparation of design
23 plans and specifications-;

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1 ~~(v)~~ 5. If, as provided in this section, the employer has failed
2 to secure the payment of compensation as provided for in Section 61
3 of this title or in the case of an intentional tort, the injured
4 employee or his or her legal representative may maintain an action
5 either in the Workers' Compensation Court or in the courts, but not
6 both; and

7 ~~(vi)~~ 6. Nothing contained herein shall abrogate any rights
8 arising under the Oklahoma Constitution.

9 SECTION 2. This act shall become effective November 1, 2011.

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