

1 STATE OF OKLAHOMA

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

3 SENATE BILL 469

By: Bingman

4
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 and providing an effective date.

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

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

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

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

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

24

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

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

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

22 ~~(v)~~ 5. If, as provided in this section, the employer has failed
23 to secure the payment of compensation as provided for in Section 61
24 of this title or in the case of an intentional tort, the injured

1 employee or his legal representative may maintain an action either
2 in the Workers' Compensation Court or in the courts, but not both;
3 and

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

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

7
8 53-1-440 CD 1/18/2011 4:23:40 PM

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24