HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1258 By: Moore of the House

and

Brown of the Senate

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; providing insurance carriers with options for payment of indemnity benefits; requiring promulgation of rules; amending 85 O.S. 2011, Sections 332, 345 and 356, which relate to the Workers' Compensation Code; providing insurance carriers with options for payment of indemnity benefits; amending 85 O.S. 2011, Section 383, which relates to CompSource Oklahoma; providing CompSource Oklahoma with options for payment of indemnity benefits; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 367.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

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A. Beginning January 1, 2014, any insurance carrier, including CompSource Oklahoma, that makes payments of weekly income benefits to employees for temporary or permanent disability shall have the option to issue checks, make direct deposits or issue debit cards for payment of indemnity benefits.

B. The Administrator of the Workers' Compensation Court, in consultation with the CompSource Oklahoma President and Chief Executive Officer, shall promulgate rules for the implementation of this section.

SECTION 2. AMENDATORY 85 O.S. 2011, Section 332, is amended to read as follows:

Section 332. A. In cases of temporary total disability, the injured employee shall be paid seventy percent (70%) of his or her average weekly wages, but not in excess of the state's average weekly wage, during continuance thereof; provided, there shall be no payment for the first seven (7) days of the initial period of temporary total disability unless the Workers' Compensation Court declares the employee to be temporarily totally disabled for more than twenty one (21) days. In that event, compensation shall be due from the first day of the period of temporary total disability. Total payments of compensation for temporary total disability shall not exceed one hundred fifty-six (156) weeks, except if the Court makes a finding of a consequential injury. In that event, the Court

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may order an additional period of temporary total disability not to exceed fifty-two (52) weeks. Any party may request overpayment or underpayment of temporary total disability compensation.

B. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Court to be injured, or in the event that the employee, without a valid excuse, misses three consecutive medical treatment appointments, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If there is no objection within ten (10) days, temporary total disability compensation shall be terminated. If, however, an objection to the termination is filed by the employee within ten (10) days, the Court shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall continue or be terminated. The Court shall terminate temporary total disability unless the employee proves the existence of a valid excuse for his or her failure to comply with medical orders of the treating physician or his or her abandonment of medical care. The Court may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker,

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unless agreed upon by the parties. The employer shall bear the cost of the independent medical examination.

C. There shall be a rebuttable presumption in favor of the treating physician's opinions on the issue of temporary disability and need for medical treatment. This presumption shall continue unless rebutted by clear and convincing evidence to the contrary of a qualified independent medical examiner.

D. The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall first provide temporary total disability benefits to employees injured on the job under their policy of workers' compensation insurance. At the option of the employee, temporary total disability benefits shall then be supplemented by any sick or annual leave available to the injured employee to the extent that the injured employee shall receive full wages during the employee's temporary absence from work; provided, the provisions of this subsection shall not preclude an employee from receiving any benefits to which the employee is entitled under the State Employees Disability Program Act, Section 1331 et seq. of Title 74 of the Oklahoma Statutes.

E. If the employer has actual notice of the injury and the injury is not disputed and weekly temporary total disability benefit payments are not commenced within ten (10) days or if any subsequent

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installment of temporary total disability benefits is not made within ten (10) days after it becomes due, the insurer of the employer shall pay to the employee a penalty of fifteen percent (15%) of the unpaid or delayed weekly benefits.

F. The physician who renders treatment to the employee shall notify the employee and employer or the employer's insurer in writing within seven (7) days after the employee has reached maximum medical improvement and is released from active medical care.

G. If the employee is capable of returning to modified light duty work, the physician shall within seven (7) days notify the employee and the employer or the employer's insurer thereof in writing. In the event that the treating physician releases a claimant for light-duty work and provides written restrictions from normal work duties, and the employer makes a good-faith offer in writing to provide a light-duty position at the same rate of pay that the claimant was receiving at the time of the injury, and the claimant refuses to accept the light-duty assignment, the claimant is not entitled to temporary total disability; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and that temporary benefits will be discontinued fifteen (15) days after the date of the notice. The employee, upon receipt of the notice, may seek a hearing before the Court. The Court shall grant

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an expedited hearing within five (5) days of any application by the employee. At the hearing, the Court may enter an order allowing the discontinuation of the benefits, denying the discontinuance of the benefits or temporarily denying the discontinuance of the benefits pending further hearing. An order denying or temporarily denying the discontinuation of temporary benefits shall be based on a finding by the Court that probable cause exists to believe the work does not meet the conditions of the treating physician's restrictions or that the restrictions are unreasonable.

H. Any person receiving temporary disability benefits from an employer or the employer's insurance carrier shall within seven (7) days report in writing to the employer or insurance carrier any change in a material fact or the amount of income he or she is receiving or any change in his or her employment status, occurring during the period of receipt of the benefits.

I. An employee convicted of a misdemeanor or felony in this state or any other jurisdiction shall not be entitled to temporary total disability benefits during any period of incarceration. Upon confirmation of the employee's incarceration, temporary total disability may be terminated by the employer or insurance carrier without an order of the Court. The provisions of this subsection shall not apply to any benefits awarded to an inmate for compensable injuries sustained by the inmate while in the employ of a private

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for-profit employer or while employed in private prison industries, involving a for-profit employer, which deal in interstate commerce or which sell products or services to the federal government.

J. In case of temporary partial disability, an injured employee shall receive seventy percent (70%) of the difference between the employee's average weekly wages and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of the partial disability. Total payments of temporary partial disability may not exceed one hundred fifty-six (156) weeks. In no event shall the total payment of wages and temporary partial disability exceed eighty percent (80%) of the average weekly wage of the injured employee at the time of the accident.

K. In case of a nonsurgical soft tissue injury, in which the employer has provided medical care within seven (7) days after receipt of oral or written notice of the injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. A claimant who has been recommended by a treating physician for one or more injections may petition the Court for one extension of temporary total disability compensation and the Court may order an extension, not to exceed eight (8) additional weeks. A claimant who has been recommended by a treating physician

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for surgery for a soft tissue injury may petition the Court for one extension of temporary total disability compensation and the Court may order an extension, not to exceed sixteen (16) additional weeks, if the treating physician indicates that an extension is appropriate or as agreed to by all parties. In the event the surgery is not performed within ninety (90) days of the approval of the surgery by the employer or employer's insurance carrier or an order of the Court authorizing the surgery, the benefits for the extension period shall be terminated by the Court, unless the Court finds the delay was beyond the control of the claimant. In the event surgery is performed, the period of temporary total disability is subject to the limitations established by subsection A of this section. This subsection shall apply to all cases coming before the Court after ~~the effective date of this act~~ August 26, 2011, regardless of the date of injury.

L. For purposes of this section, "soft tissue injury" means damage to one or more of the tissues that surround bones and joints. Soft tissue injury includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury. Soft tissue injury does not include any of the following:

1. Injury to or disease of the spine, spinal discs, spinal nerves or spinal cord, where corrective surgery is performed;

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2. Brain or closed-head injury as evidenced by:

a. sensory or motor disturbances,

b. communication disturbances,

c. complex integrated disturbances of cerebral function,

d. episodic neurological disorders, or

e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph; or

3. Any joint replacement.

M. In all cases of nonsurgical soft tissue injury, the employee shall only be entitled to temporary total disability compensation as set out in subsection K of this section, unless there is objective medical evidence of a permanent anatomical abnormality. In determining the existence of such an abnormality, the Court may consider if there is credible medical evidence that the ability of the employee to earn wages at the same level as before the injury has been impaired. This subsection shall apply to all cases coming before the Court after ~~the effective date of this act~~ August 26, 2011, regardless of the date of injury.

N. Notwithstanding any other section of the Workers' Compensation Code, temporary disability compensation shall be payable without an award by the Court. The first payment of temporary disability compensation shall become due on the tenth day

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after the employer has received notice of injury. Beginning January 1, 2014, any insurance carrier making payment pursuant to this subsection shall have the option to issue checks, make direct deposits or issue debit cards for payment of indemnity benefits.

O. Payments for temporary total disability or temporary partial disability shall not constitute admission by the employer or insurance carrier as to liability for benefits or any issue.

P. No employee may receive temporary total disability benefits covering the same period of time for which unemployment benefits as provided by the Oklahoma Employment Security Commission are received by the employee or for which short term disability benefits are received by the employee by reason of a policy of insurance provided by the employer.

SECTION 3. AMENDATORY 85 O.S. 2011, Section 345, is amended to read as follows:

Section 345. A. Awards for permanent partial impairment shall be made for the total number of weeks of compensation which the Workers' Compensation Court shall find the claimant will be entitled to receive, less any sums previously paid which the Court may find to be a proper credit thereon. When the award becomes final, the whole sum or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving

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beneficiary entitled to the proceeds as provided in Section ~~49~~ 349 of this ~~act~~ title. All awards shall be paid by periodic installments as determined by the Court. Whenever an injured person receives an award for permanent partial impairment, the injured employee or claimant, for good cause shown, may have the award commuted to a lump-sum payment by permission of the Court. The lump-sum payment shall not exceed twenty-five percent (25%) of the total award. The balance of the total award shall be paid in periodic installments.

B. Awards for permanent total disability shall entitle the claimant to receive weekly income benefits for the period prescribed in Section ~~36~~ 336 of this ~~act~~ title. When an award for permanent total disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in Section ~~49~~ 349 of this ~~act~~ title. Permanent total disability awards shall not be commuted to a lump-sum payment.

C. All weekly or periodic payments shall be made through the use of United States legal tender, negotiable instruments payable on demand or negotiable drafts, debit cards or direct deposit. Failure for ten (10) days to pay any final award or any portion thereof as ordered shall immediately entitle the beneficiary to an order

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finding the respondent and insurance carrier to be in default and all unpaid portions, including future periodic installments unpaid, shall immediately become due.

D. An award for disability may be made after the death of the injured employee, when death results from causes other than the injury. If an employee dies as a result of a compensable injury or an occupational disease, any unaccrued portions of an award or order shall abate.

E. In the event salary or any other remuneration is paid in lieu of temporary total disability compensation during the period of temporary total disability or for any other period of time, no respondent or insurance carrier shall be allowed to deduct from the amount of the award for permanent partial or permanent total disability any amounts paid for temporary total disability, nor shall the respondent or insurance carrier be given credit for future benefits under the Workers' Compensation Code.

SECTION 4. AMENDATORY 85 O.S. 2011, Section 356, is amended to read as follows:

Section 356. A. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workers' compensation insurance in this state shall contain a provision setting forth the right of the Administrator of the

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Workers' Compensation Court to enforce in the name of the state, for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of the compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

B. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier, that jurisdiction of the employer shall, for the purpose incorporated in ~~this act~~ the Workers' Compensation Code, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions incorporated in ~~this act~~ the Workers' Compensation Code.

C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve

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the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

D. Every such policy issued on or after January 1, 2014, shall contain a provision that gives the insurance carrier the option to issue checks, make direct deposits or issue debit cards for payment of indemnity benefits.

E. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in amounts ranging from Five Hundred Dollars ($500.00) to Two Thousand Five Hundred Dollars ($2,500.00) in increments of Five Hundred Dollars ($500.00). The policy issued may also include separate provisions giving the insured employer the option of choosing a deductible amount for indemnity benefits in amounts ranging from Five Hundred Dollars ($500.00) to Two Thousand Five Hundred Dollars ($2,500.00) in increments of Five Hundred Dollars ($500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

2. If an insured employer exercises the option and chooses a medical benefits deductible or indemnity benefits deductible, the insured employer shall be liable for the amount of the deductible or deductibles for the medical or indemnity benefits paid for each claim of work injury suffered by an injured employee.

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3. The Insurance Commissioner, in exercising the authority to approve the form of the policy to be issued, shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the injured worker or insurer.

4. The insurer shall pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from the insured employer for the deductible amount. The insurer shall pay the entire cost of the indemnity benefits as if no deductible were in place and then seek reimbursement from the insured employer for the deductible amount.

5. If the insured employer does not reimburse the deductible amount directly to the insurer within sixty (60) days of a written demand therefor, the insurer shall pay the compensable medical claim or indemnity benefit and may seek to recover the full amount of such claim from the insured employer.

6. Claim amounts up to Five Hundred Dollars ($500.00) annually which are paid under the medical benefits deductible or indemnity benefits deductible pursuant to this subsection shall be excluded from the calculation of the insured employer's experience modifier.

7. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.

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~~E.~~ F. Every such policy issued to a sole proprietor, partnership, limited liability company, corporation, or other business entity must disclose to the potential purchaser in writing the option to elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members, or any or all stockholder-employees as employees for the purpose of workers' compensation insurance coverage by endorsing the policy in accordance with ~~this act~~ the Workers' Compensation Code.

~~F.~~ G. Every contract or agreement of an employer the purpose of which is to indemnify the employer from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or the employer's officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for in ~~this act~~ the Workers' Compensation Code.

~~G.~~ H. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under ~~this act~~ the Workers' Compensation Code shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to the

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employer or by sending it by mail, by registered letter, addressed to the employer at the employer's last-known place of residence; provided that, if the employer is a partnership, then such notice may be so given to any one of the partners, and if the employer is a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder who has obtained other compensation insurance, as evidenced by filing in compliance with ~~this act~~ the Workers' Compensation Code, and no intervening rights of any employee are involved, omission of a predecessor insurer to file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 5. AMENDATORY 85 O.S. 2011, Section 383, is amended to read as follows:

Section 383. A. All receipts of money, with the exception of investment income, shall be deposited in the CompSource Oklahoma fund in the State Treasury. The CompSource Oklahoma President and Chief Executive Officer, subject to the direction of the Board of Managers, shall have the responsibility for the management of the CompSource Oklahoma fund, and may transfer monies used for investment purposes from the CompSource Oklahoma fund in the State

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Treasury to the custodian bank or trust company of CompSource Oklahoma.

B. 1. All benefits, other than indemnity benefits payable on or after January 1, 2014, payable pursuant to the provisions of the bylaws of CompSource Oklahoma, and refunds of premiums and overpayments, shall be paid from CompSource Oklahoma upon warrants or vouchers signed by two persons designated by the CompSource Oklahoma President and Chief Executive Officer. Beginning January 1, 2014, CompSource Oklahoma shall have the option of issuing checks, making direct deposits or issuing debit cards for payment of indemnity benefits.

2. Every check, draft, warrant, or other instrument drawn for the payment of temporary total disability benefits by CompSource Oklahoma shall contain on its face in a contrasting color of ink the following:

WARNING: It is a felony to knowingly receive money under false pretenses by accepting temporary total disability benefits while working at the same or a similar job. If you are employed or receiving wages, you should consult CompSource Oklahoma or if you are represented by an attorney you should consult your attorney BEFORE presenting this instrument to any other person for payment.

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3. The CompSource Oklahoma President and Chief Executive Officer may transfer monies from the custodian bank or trust company of CompSource Oklahoma to the CompSource Oklahoma fund in the State Treasury for the purposes specified in this subsection.

SECTION 6. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2013 - DO PASS, As Amended and Coauthored.

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