

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 2ND CONFERENCE COMMITTEE
4 SUBSTITUTE

4 FOR ENGROSSED

5 HOUSE BILL NO. 2205

By: Echols of the House

6 and

7 Sykes of the Senate

8
9
10 2ND CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending
12 Sections 2, 3, 7, 18, 19, as amended by Section 4,
13 H.J.R. No. 1096, p. 1745, O.S.L. 2014, 21, 22, 38,
14 45, as amended by Section 2, Chapter 390, O.S.L.
15 2015, 46, 56, 62, 68, 71, 78, 80, 108, 109, 110, as
16 amended by Section 4, Chapter 390, O.S.L. 2015, 111
17 and 118, as amended by Section 6, Chapter 390, O.S.L.
18 2015, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2015,
19 Sections 2, 3, 7, 18, 19, 21, 22, 38, 45, 46, 56, 62,
20 68, 71, 78, 80, 201, 202, 203, 204 and 211), which
21 relate to the Administrative Workers' Compensation
22 Act and the Oklahoma Employee Injury Benefit Act;
23 modifying definitions; clarifying applicability of
24 act; modifying jurisdictional requirement for certain
claims; establishing liability for damages for
certain violations; specifying burden of proof for
certain violations; limiting certain exemplary or
punitive damage awards; expanding methods of
providing certain notice; modifying procedure for
replacement of disqualified Commissioners; modifying
certain powers of the Commission; modifying duties of
the Commission; providing procedure for Affidavit of
Exempt Status; requiring issuance of certain
certificate; modifying procedures for confirmation of
certain status; modifying procedures for certain
notification; modifying grounds for termination of
temporary total disability awards; modifying

1 compensation for temporary partial disability awards;
2 modifying requirements for award of permanent partial
3 permanent partial disability; providing employer
4 options regarding treating physicians; clarifying
5 time limit on injections; modifying time limit for
6 certain notice; providing for appointment of
7 administrative law judge to en banc panel under
8 certain circumstances; providing for payment for
9 prescription drugs during appeal process; providing
10 for reimbursement under certain circumstances;
11 modifying procedure and requirements for case review
12 by the Workers' Compensation Commission; modifying
13 definitions; modifying procedures for application for
14 certain employer status; requiring certain notice;
15 specifying fee schedule for certain groups; modifying
16 requirements for certain benefit plans; clarifying
17 applicability of certain insurance coverage;
18 conforming language; modifying procedures for appeal
19 of denial of certain claims; requiring maintenance of
20 certain records; requiring certain notice;
21 establishing filing fee for certain appeals;
22 providing for codification; and providing an
23 effective date.
24

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

SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2015, Section 2), is amended to read as
follows:

Section 2. As used in the Administrative Workers' Compensation
Act:

1 1. "Actually dependent" means a surviving spouse, a child or
2 any other person who receives one-half (1/2) or more of his or her
3 support from the employee;

4 2. "Carrier" means any stock company, mutual company, or
5 reciprocal or interinsurance exchange authorized to write or carry
6 on the business of workers' compensation insurance in this state.
7 Whenever required by the context, the term "carrier" shall be deemed
8 to include duly qualified self-insureds or self-insured groups;

9 3. "Case management" means the ongoing coordination, by a case
10 manager, of health care services provided to an injured or disabled
11 worker, including but not limited to systematically monitoring the
12 treatment rendered and the medical progress of the injured or
13 disabled worker; ensuring that any treatment plan follows all
14 appropriate treatment protocols, utilization controls and practice
15 parameters; assessing whether alternative health care services are
16 appropriate and delivered in a cost-effective manner based upon
17 acceptable medical standards; and ensuring that the injured or
18 disabled worker is following the prescribed health care plan;

19 4. "Case manager" means a person who is a registered nurse with
20 a current, active unencumbered license from the Oklahoma Board of
21 Nursing, or possesses one or more of the following certifications
22 which indicate the individual has a minimum number of years of case
23 management experience, has passed a national competency test and
24

1 regularly obtains continuing education hours to maintain
2 certification:

- 3 a. Certified Disability Management Specialist (CDMS),
- 4 b. Certified Case Manager (CCM),
- 5 c. Certified Rehabilitation Registered Nurse (CRRN),
- 6 d. Case Manager - Certified (CMC),
- 7 e. Certified Occupational Health Nurse (COHN), or
- 8 f. Certified Occupational Health Nurse Specialist (COHN-
9 S);

10 5. "Certified workplace medical plan" means an organization of
11 health care providers or any other entity, certified by the State
12 Commissioner of Health, that is authorized to enter into a
13 contractual agreement with an employer, group self-insurance
14 association plan, an employer's workers' compensation insurance
15 carrier, third-party administrator or an insured to provide medical
16 care under the Administrative Workers' Compensation Act. Certified
17 plans shall only include plans which provide medical services and
18 payment for services on a fee-for-service basis to medical
19 providers;

20 6. "Child" means a natural or adopted son or daughter of the
21 employee under eighteen (18) years of age; or a natural or adopted
22 son or daughter of an employee eighteen (18) years of age or over
23 who is physically or mentally incapable of self-support; or any
24 natural or adopted son or daughter of an employee eighteen (18)

1 years of age or over who is actually dependent; or any natural or
2 adopted son or daughter of an employee between eighteen (18) and
3 twenty-three (23) years of age who is enrolled as a full-time
4 student in any accredited educational institution. The term "child"
5 includes a posthumous child, a child legally adopted or one for whom
6 adoption proceedings are pending at the time of death, an actually
7 dependent stepchild or an actually dependent acknowledged child born
8 out of wedlock;

9 7. "Claimant" means a person who claims benefits for an injury
10 or occupational disease pursuant to the provisions of the
11 Administrative Workers' Compensation Act;

12 8. "Commission" means the Workers' Compensation Commission;

13 9. a. "Compensable injury" means damage or harm to the
14 physical structure of the body, or prosthetic
15 appliances, including eyeglasses, contact lenses, or
16 hearing aids, caused solely as the result of either an
17 accident, cumulative trauma or occupational disease
18 arising out of the course and scope of employment. An
19 "accident" means an event involving factors external
20 to the employee that:

21 (1) was unintended, unanticipated, unforeseen,
22 unplanned and unexpected,

23 (2) occurred at a specifically identifiable time and
24 place,

- 1 (3) occurred by chance or from unknown causes, and
2 (4) was independent of sickness, mental incapacity,
3 bodily infirmity or any other cause.

4 b. "Compensable injury" does not include:

- 5 (1) injury to any active participant in assaults or
6 combats which, although they may occur in the
7 workplace, are the result of non-employment-
8 related hostility or animus of one, both, or all
9 of the combatants and which assault or combat
10 amounts to a deviation from customary duties;
11 provided, however, injuries caused by horseplay
12 shall not be considered to be compensable
13 injuries, except for innocent victims,
- 14 (2) injury incurred while engaging in or performing
15 or as the result of engaging in or performing any
16 recreational or social activities for the
17 employee's personal pleasure,
- 18 (3) injury which was inflicted on the employee at a
19 time when employment services were not being
20 performed or before the employee was hired or
21 after the employment relationship was terminated,
- 22 (4) injury where the accident was caused by the use
23 of alcohol, illegal drugs, or prescription drugs
24 used in contravention of physician's orders. If,

1 within twenty-four (24) hours of being injured or
2 reporting an injury, an employee tests positive
3 for intoxication, an illegal controlled
4 substance, or a legal controlled substance used
5 in contravention to a treating physician's
6 orders, or refuses to undergo the drug and
7 alcohol testing, there shall be a rebuttable
8 presumption that the injury was caused by the use
9 of alcohol, illegal drugs, or prescription drugs
10 used in contravention of physician's orders.
11 This presumption may only be overcome if the
12 employee proves by objective, clear and
13 convincing evidence that his or her state of
14 intoxication had no causal relationship to the
15 injury,

- 16 (5) any strain, degeneration, damage or harm to, or
17 disease or condition of, the eye or
18 musculoskeletal structure or other body part
19 resulting from the natural results of aging,
20 osteoarthritis, arthritis, or degenerative
21 process including, but not limited to,
22 degenerative joint disease, degenerative disc
23 disease, degenerative
24

1 spondylosis/spondylolisthesis and spinal
2 stenosis, or

3 (6) any preexisting condition except when the
4 treating physician clearly confirms an
5 identifiable and significant aggravation incurred
6 in the course and scope of employment.

7 c. The definition of "compensable injury" shall not be
8 construed to limit or abrogate the right to recover
9 for mental injuries as described in Section 13 of this
10 ~~act~~ title, heart or lung injury or illness as
11 described in Section 14 of this ~~act~~ title, or
12 occupational diseases as described in Section 65 of
13 this ~~act~~ title.

14 d. A compensable injury shall be established by medical
15 evidence supported by objective findings as defined in
16 paragraph ~~30~~ 31 of this section.

17 e. The injured employee shall prove by a preponderance of
18 the evidence that he or she has suffered a compensable
19 injury.

20 f. Benefits shall not be payable for a condition which
21 results from a non-work-related independent
22 intervening cause following a compensable injury which
23 causes or prolongs disability, aggravation, or
24 requires treatment. A non-work-related independent

1 intervening cause does not require negligence or
2 recklessness on the part of a claimant.

3 g. An employee who suffers a compensable injury shall be
4 entitled to receive compensation as prescribed in this
5 act. Notwithstanding other provisions of law, if it
6 is determined that a compensable injury did not occur,
7 the employee shall not be entitled to compensation
8 under this act;

9 10. "Compensation" means the money allowance payable to the
10 employee or to his or her dependents and includes the medical
11 services and supplies provided for in Section 50 of this ~~act~~ title
12 and funeral expenses;

13 11. "Consequential injury" means injury or harm to a part of
14 the body that is a direct result of the injury or medical treatment
15 to the part of the body originally injured in the claim. The
16 Commission shall not make a finding of a consequential injury unless
17 it is established by objective medical evidence that medical
18 treatment for such part of the body is required;

19 12. "Continuing medical maintenance" means medical treatment
20 that is reasonable and necessary to maintain claimant's condition
21 resulting from the compensable injury or illness after reaching
22 maximum medical improvement. Continuing medical maintenance shall
23 not include diagnostic tests, surgery, injections, counseling,
24 physical therapy, or pain management devices or equipment;

1 13. "Course and scope of employment" means an activity of any
2 kind or character for which the employee was hired and that relates
3 to and derives from the work, business, trade or profession of an
4 employer, and is performed by an employee in the furtherance of the
5 affairs or business of an employer. The term includes activities
6 conducted on the premises of an employer or at other locations
7 designated by an employer and travel by an employee in furtherance
8 of the affairs of an employer that is specifically directed by the
9 employer. This term does not include:

- 10 a. an employee's transportation to and from his or her
11 place of employment,
- 12 b. travel by an employee in furtherance of the affairs of
13 an employer if the travel is also in furtherance of
14 personal or private affairs of the employee,
- 15 c. any injury occurring in a parking lot or other common
16 area adjacent to an employer's place of business
17 before the employee clocks in or otherwise begins work
18 for the employer or after the employee clocks out or
19 otherwise stops work for the employer, or
- 20 d. any injury occurring while an employee is on a work
21 break, unless the injury occurs while the employee is
22 on a work break inside the employer's facility and the
23 work break is authorized by the employee's supervisor;

24

1 14. "Cumulative trauma" means an injury to an employee that is
2 caused by the combined effect of repetitive physical activities
3 extending over a period of time in the course and scope of
4 employment. Cumulative trauma shall not mean fatigue, soreness or
5 general aches and pain that may have been caused, aggravated,
6 exacerbated or accelerated by the employee's course and scope of
7 employment. Cumulative trauma shall have resulted directly and
8 independently of all other causes and the employee shall have
9 completed at least one hundred eighty (180) days of continuous
10 active employment with the employer;

11 15. "Death" means only death resulting from compensable injury
12 as defined in paragraph 9 of this section;

13 16. "Disability" means incapacity because of compensable injury
14 to earn, in the same or any other employment, substantially the same
15 amount of wages the employee was receiving at the time of the
16 compensable injury;

17 17. "Drive-away operations" includes every person engaged in
18 the business of transporting and delivering new or used vehicles by
19 driving, either singly or by towbar, saddle-mount or full-mount
20 method, or any combination thereof, with or without towing a
21 privately owned vehicle;

22 18. a. "Employee" means any person, including a minor, in the
23 service of an employer under any contract of hire or
24 apprenticeship, written or oral, expressed or implied,

1 but excluding one whose employment is casual and not
2 in the course of the trade, business, profession, or
3 occupation of his or her employer and excluding one
4 who is required to perform work for a municipality or
5 county or the state or federal government on having
6 been convicted of a criminal offense or while
7 incarcerated. "Employee" shall also include a member
8 of the Oklahoma National Guard while in the
9 performance of duties only while in response to state
10 orders and any authorized voluntary or uncompensated
11 worker, rendering services as a firefighter, peace
12 officer or emergency management worker. Travel by a
13 policeman, fireman, or a member of a first aid or
14 rescue squad, in responding to and returning from an
15 emergency, shall be deemed to be in the course of
16 employment.

17 b. The term "employee" shall not include:

18 (1) any person for whom an employer is liable under
19 any Act of Congress for providing compensation to
20 employees for injuries, disease or death arising
21 out of and in the course of employment including,
22 but not limited to, the Federal Employees'
23 Compensation Act, the Federal Employers'
24 Liability Act, the Longshore and Harbor Workers'

1 Compensation Act and the Jones Act, to the extent
2 his or her employees are subject to such acts,

3 (2) any person who is employed in agriculture or
4 horticulture by an employer who had a gross
5 annual payroll in the preceding calendar year of
6 less than One Hundred Thousand Dollars

7 (\$100,000.00) wages for agricultural or
8 horticultural workers, or any person who is
9 employed in agriculture or horticulture who is
10 not engaged in operation of motorized machines,

11 (3) any person who is a licensed real estate sales
12 associate or broker, paid on a commission basis,

13 (4) any person who is providing services in a medical
14 care or social services program, or who is a
15 participant in a work or training program,
16 administered by the Department of Human Services,
17 unless the Department is required by federal law
18 or regulations to provide workers' compensation
19 for such person. This division shall not be
20 construed to include nursing homes,

21 (5) any person employed by an employer with five or
22 fewer total employees, all of whom are related by
23 blood or marriage to the employer, if the
24 employer is a natural person or a general or

- 1 limited partnership, or an incorporator of a
2 corporation if the corporation is the employer,
3 (6) any person employed by an employer which is a
4 youth sports league which qualifies for exemption
5 from federal income taxation pursuant to federal
6 law,
7 (7) sole proprietors, members of a partnership,
8 individuals who are party to a franchise
9 agreement as set out by the Federal Trade
10 Commission franchise disclosure rule, 16 CFR
11 436.1 through 436.11, members of a limited
12 liability company who own at least ten percent
13 (10%) of the capital of the limited liability
14 company or any stockholder-employees of a
15 corporation who own ten percent (10%) or more
16 stock in the corporation, unless they elect to be
17 covered by a policy of insurance covering
18 benefits under the Administrative Workers'
19 Compensation Act,
20 (8) any person providing or performing voluntary
21 service who receives no wages for the services
22 other than meals, drug or alcohol rehabilitative
23 therapy, transportation, lodging or reimbursement
24 for incidental expenses except for volunteers

1 specifically provided for in subparagraph a of
2 this paragraph,

3 (9) a person, commonly referred to as an owner-
4 operator, who owns or leases a truck-tractor or
5 truck for hire, if the owner-operator actually
6 operates the truck-tractor or truck and if the
7 person contracting with the owner-operator is not
8 the lessor of the truck-tractor or truck.

9 Provided, however, an owner-operator shall not be
10 precluded from workers' compensation coverage
11 under the Administrative Workers' Compensation
12 Act if the owner-operator elects to participate
13 as a sole proprietor,

14 (10) a person referred to as a drive-away owner-
15 operator who privately owns and utilizes a tow
16 vehicle in drive-away operations and operates
17 independently for hire, if the drive-away owner-
18 operator actually utilizes the tow vehicle and if
19 the person contracting with the drive-away owner-
20 operator is not the lessor of the tow vehicle.

21 Provided, however, a drive-away owner-operator
22 shall not be precluded from workers' compensation
23 coverage under the Administrative Workers'
24

1 Compensation Act if the drive-away owner-operator
2 elects to participate as a sole proprietor, and
3 (11) any person who is employed as a domestic servant
4 or as a casual worker in and about a private home
5 or household, which private home or household had
6 a gross annual payroll in the preceding calendar
7 year of less than Fifty Thousand Dollars
8 (\$50,000.00) for such workers;

9 19. "Employer" means a person, partnership, association,
10 limited liability company, corporation, and the legal
11 representatives of a deceased employer, or the receiver or trustee
12 of a person, partnership, association, corporation, or limited
13 liability company, departments, instrumentalities and institutions
14 of this state and divisions thereof, counties and divisions thereof,
15 public trusts, boards of education and incorporated cities or towns
16 and divisions thereof, employing a person included within the term
17 "employee" as defined in this section. Employer may also mean the
18 employer's workers' compensation insurance carrier, if applicable.
19 Except as provided otherwise, this act applies to all public and
20 private entities and institutions. Employer shall not include a
21 qualified employer with an employee benefit plan as provided under
22 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
23 ~~120~~ 213 of this ~~act~~ title;

1 20. "Employment" includes work or labor in a trade, business,
2 occupation or activity carried on by an employer or any authorized
3 voluntary or uncompensated worker rendering services as a
4 firefighter, peace officer or emergency management worker;

5 21. "Evidence-based" means expert-based, literature-supported
6 and outcomes validated by well-designed randomized trials when such
7 information is available and which uses the best available evidence
8 to support medical decision making;

9 22. "Gainful employment" means the capacity to perform
10 employment for wages for a period of time that is not part-time,
11 occasional or sporadic;

12 23. "Impaired self-insurer" means a private self-insurer or
13 group self-insurance association that fails to pay its workers'
14 compensation obligations, or is financially unable to do so and is
15 the subject of any proceeding under the Federal Bankruptcy Reform
16 Act of 1978, and any subsequent amendments or is the subject of any
17 proceeding in which a receiver, custodian, liquidator,
18 rehabilitator, trustee or similar officer has been appointed by a
19 court of competent jurisdiction to act in lieu of or on behalf of
20 the self-insurer;

21 24. "Incapacity" means inadequate strength or ability to
22 perform a work-related task;

23 25. "Insurance Commissioner" means the Insurance Commissioner
24 of the State of Oklahoma;

1 26. "Insurance Department" means the Insurance Department of
2 the State of Oklahoma;

3 27. "Major cause" means more than fifty percent (50%) of the
4 resulting injury, disease or illness. A finding of major cause
5 shall be established by a preponderance of the evidence. A finding
6 that the workplace was not a major cause of the injury, disease or
7 illness shall not adversely affect the exclusive remedy provisions
8 of this act and shall not create a separate cause of action outside
9 this act;

10 28. "Maximum medical improvement" means that no further
11 material improvement would reasonably be expected from medical
12 treatment or the passage of time;

13 29. "Medical services" means those services specified in
14 Section 50 of this ~~act~~ title;

15 30. "Misconduct" shall include the following:

- 16 a. unexplained absenteeism or tardiness,
- 17 b. willful or wanton indifference to or neglect of the
18 duties required,
- 19 c. willful or wanton breach of any duty required by the
20 employer,
- 21 d. the mismanagement of a position of employment by
22 action or inaction,
- 23 e. actions or omissions that place in jeopardy the
24 health, life, or property of self or others,

- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

31. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

(2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".

(3) (a) Objective evidence necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited

1 to, audiological tests that measure air and
2 bone conduction thresholds and speech
3 discrimination ability.

4 (b) Any difference in the baseline hearing
5 levels shall be confirmed by subsequent
6 testing; provided, however, such test shall
7 be given within four (4) weeks of the
8 initial baseline hearing level test but not
9 before five (5) days after being adjusted
10 for presbycusis.

11 b. Medical opinions addressing compensability and
12 permanent disability shall be stated within a
13 reasonable degree of medical certainty;

14 32. "Official Disability Guidelines" or "ODG" means the current
15 edition of the Official Disability Guidelines and the ODG Treatment
16 in Workers' Comp as published by the Work Loss Data Institute;

17 33. "Permanent disability" means the extent, expressed as a
18 percentage, of the loss of a portion of the total physiological
19 capabilities of the human body as established by competent medical
20 evidence and based on the current edition of the American Medical
21 Association guides to the evaluation of impairment, if the
22 impairment is contained therein;

23 34. "Permanent partial disability" means a permanent disability
24 ~~or loss of use~~ after maximum medical improvement has been reached

1 ~~which prevents the injured employee, who has been released to return~~
2 ~~to work by the treating physician, from returning to his or her pre-~~
3 ~~injury or equivalent job.~~ All evaluations of permanent partial
4 disability must be supported by objective findings;

5 35. "Permanent total disability" means, based on objective
6 findings, incapacity, based upon accidental injury or occupational
7 disease, to earn wages in any employment for which the employee may
8 become physically suited and reasonably fitted by education,
9 training, experience or vocational rehabilitation provided under
10 this act. Loss of both hands, both feet, both legs, or both eyes,
11 or any two thereof, shall constitute permanent total disability;

12 36. "Preexisting condition" means any illness, injury, disease,
13 or other physical or mental condition, whether or not work-related,
14 for which medical advice, diagnosis, care or treatment was
15 recommended or received preceding the date of injury;

16 37. "Pre-injury or equivalent job" means the job that the
17 claimant was working for the employer at the time the injury
18 occurred or any other employment offered by the claimant's employer
19 that pays at least one hundred percent (100%) of the employee's
20 average weekly wage;

21 38. "Private self-insurer" means a private employer that has
22 been authorized to self-insure its workers' compensation obligations
23 pursuant to this act, but does not include group self-insurance
24

1 associations authorized by this act, or any public employer that
2 self-insures pursuant to this act;

3 39. "Prosthetic" means an artificial device used to replace a
4 part or joint of the body that is lost or injured in an accident or
5 illness covered by this act;

6 40. "Scheduled member" or "member" means hands, fingers, arms,
7 legs, feet, toes, and eyes. In addition, for purposes of the
8 Multiple Injury Trust Fund only, "scheduled member" means hearing
9 impairment;

10 41. "Scientifically based" involves the application of
11 rigorous, systematic, and objective procedures to obtain reliable
12 and valid knowledge relevant to medical testing, diagnoses and
13 treatment; is adequate to justify the general conclusions drawn; and
14 has been accepted by a peer-review journal or approved by a panel of
15 independent experts through a comparably rigorous, objective, and
16 scientific review;

17 42. "State average weekly wage" means the state average weekly
18 wage determined by the Oklahoma Employment Security Commission in
19 the preceding calendar year. If such determination is not
20 available, the Commission shall determine the wage annually after
21 reasonable investigation;

22 43. "Subcontractor" means a person, firm, corporation or other
23 legal entity hired by the general or prime contractor to perform a
24 specific task for the completion of a work-related activity;

1 44. "Surgery" does not include an injection, or the forcing of
2 fluids beneath the skin, for treatment or diagnosis;

3 45. "Surviving spouse" means the employee's spouse by reason of
4 a legal marriage recognized by the State of Oklahoma or under the
5 requirements of a common law marriage in this state, as determined
6 by the Workers' Compensation Commission;

7 46. "Temporary partial disability" means an injured employee
8 who is temporarily unable to perform his or her job, but may perform
9 alternative work offered by the employer;

10 47. "Time of accident" or "date of accident" means the time or
11 date of the occurrence of the accidental incident from which
12 compensable injury, disability, or death results; ~~and~~

13 48. "Total loss of use" means a one-hundred-percent permanent
14 partial disability rating to the specific body part; and

15 49. "Wages" means money compensation received for employment at
16 the time of the accident, including the reasonable value of board,
17 rent, housing, lodging, or similar advantage received from the
18 employer and includes the amount of tips required to be reported by
19 the employer under Section 6053 of the Internal Revenue Code and the
20 regulations promulgated pursuant thereto or the amount of actual
21 tips reported, whichever amount is greater.

22 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2015, Section 3), is amended to read as
24 follows:

1 Section 3. A. Every employer ~~and every employee, unless~~
2 ~~otherwise specifically provided in this act,~~ shall be subject and
3 bound to the provisions of the Administrative Workers' Compensation
4 Act shall pay or provide benefits according to the provisions of
5 this act for the accidental injury or death of an employee arising
6 out of and in the course of his or her employment, without regard to
7 fault for such injury, if the employee's contract of employment was
8 made or if the injury occurred within this state. If an employee
9 makes claim for an injury in another jurisdiction and a final
10 adjudication is entered in the case, the employee is precluded from
11 his or her right of action under the Administrative Workers'
12 Compensation Act of this state. If the employee brings an action in
13 this state prior to a final adjudication in another jurisdiction,
14 any receipt of benefits in the other jurisdiction shall not bar the
15 action in this state; provided, however, in no event shall the
16 Workers' Compensation Commission grant benefits that duplicate those
17 paid by the employer or insurance carrier in the other jurisdiction.
18 ~~However, nothing~~ Nothing in this act shall be construed to conflict
19 with any valid Act of Congress governing the liability of employers
20 for injuries received by their employees.

21 B. The State of Oklahoma accepts the provisions of the Acts of
22 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
23 Section 290, and hereby extends the territorial jurisdiction of the
24 Administrative Workers' Compensation Act to all lands and premises

1 within the exterior boundaries of this state which the Government of
2 the United States of America owns or holds by deed or act of
3 cession, and to all purchases, projects, buildings, constructions,
4 improvements and property within the exterior boundaries of this
5 state belonging to the Government of the United States of America,
6 in the same way and to the same extent as if the premises were under
7 the exclusive jurisdiction of this state, subject only to the
8 limitations placed thereon by the Acts of Congress.

9 C. This act shall apply only to claims for injuries and death
10 based on accidents which occur on or after ~~the effective date of~~
11 ~~this act~~ February 1, 2014.

12 ~~C.~~ D. The Workers' Compensation Code in effect before ~~the~~
13 ~~effective date of this act~~ February 1, 2014, shall govern all rights
14 in respect to claims for injuries and death based on accidents
15 occurring before ~~the effective date of this act~~ February 1, 2014.

16 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2015, Section 7), is amended to read as
18 follows:

19 Section 7. A. An employer may not discriminate or retaliate
20 against an employee when the employee has in good faith:

- 21 1. Filed a claim under this act;
- 22 2. Retained a lawyer for representation regarding a claim under
23 this act;

24

1 3. Instituted or caused to be instituted any proceeding under
2 the provisions of this act; or

3 4. Testified or is about to testify in any proceeding under the
4 provisions of this act.

5 ~~B. The Commission shall have exclusive jurisdiction to hear and
6 decide claims based on subsection A of this section.~~

7 ~~C. If the Commission determines that the defendant violated
8 subsection A of this section, the Commission may award the employee
9 back pay up to a maximum of One Hundred Thousand Dollars~~

10 ~~(\$100,000.00)~~ If a district court of this state determines that an
11 employer violated a provision of this section, such employer shall
12 be liable for reasonable compensatory damages suffered by an
13 employee as a result of the violation. The employee shall have the
14 burden of proof to show such violation by a preponderance of the
15 evidence. Interim earnings or amounts earnable with reasonable
16 diligence by the person discriminated against shall reduce the back
17 pay compensatory damages otherwise allowable. Exemplary or punitive
18 damage awards made pursuant to this section shall not exceed One
19 Hundred Thousand Dollars (\$100,000.00).

20 ~~D. C.~~ The prevailing party shall be entitled to recover costs
21 and a reasonable attorney fee.

22 ~~E. D.~~ No employer may discharge an employee during a period of
23 temporary total disability for the sole reason of being absent from
24

1 work or for the purpose of avoiding payment of temporary total
2 disability benefits to the injured employee.

3 ~~F.~~ E. Notwithstanding any other provision of this section, an
4 employer shall not be required to rehire or retain an employee who,
5 after temporary total disability has been exhausted, is determined
6 by a physician to be physically unable to perform his or her
7 assigned duties, or whose position is no longer available.

8 ~~G.~~ F. This section shall not be construed as establishing an
9 exception to the employment at will doctrine.

10 ~~H.~~ G. The remedies provided for in this section shall be
11 exclusive with respect to any claim arising out of the conduct
12 described in subsection A of this section.

13 SECTION 4. AMENDATORY Section 18, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2015, Section 18), is amended to read as
15 follows:

16 Section 18. A. No hospital, physician, or other health care
17 provider shall bill or attempt to collect any fee or any portion of
18 a fee for services rendered to an employee due to a work-related
19 injury or report to any credit-reporting agency any failure of the
20 employee to make the payment, when a claim for compensation has been
21 filed under this act and the hospital, physician, or health care
22 provider has received actual notice given in writing by the employee
23 or the employee's representative. Actual notice shall be deemed
24 received by the hospital, physician, or health care provider five

1 (5) days after mailing by certified mail or sending by facsimile,
2 electronic mail or other electronic means with confirmation of
3 receipt by the employee or his or her representative to the
4 hospital, physician, or health care provider.

5 B. The notice shall include:

- 6 1. The name of the employer;
- 7 2. The name of the insurer, if known;
- 8 3. The name of the employee receiving the services;
- 9 4. The general nature of the injury, if known; and
- 10 5. Where a claim has been filed, the claim number, if known.

11 C. When an injury or bill is found to be noncompensable under
12 this act, the hospital, physician, or other health care provider
13 shall be entitled to pursue the employee for any unpaid portion of
14 the fee or other charges for authorized services provided to the
15 employee. Any applicable statute of limitations for an action for
16 the fees or other charges shall be tolled from the time notice is
17 given to the hospital, physician, or other health care provider
18 until a determination of noncompensability in regard to the injury
19 which is the basis of the services is made, or if there is an
20 appeal, until a final determination of noncompensability is rendered
21 and all appeal deadlines have passed.

22 D. This section shall not ~~avoid~~ void, modify, or amend any
23 other section or subsection of this ~~act~~ title.

24

1 E. An order by the Commission under this section shall stay all
2 proceedings for collection.

3 SECTION 5. AMENDATORY Section 19, Chapter 208, O.S.L.
4 2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014
5 (85A O.S. Supp. 2015, Section 19), is amended to read as follows:

6 Section 19. A. There is hereby created the Oklahoma Workers'
7 Compensation Commission, an executive agency of the State of
8 Oklahoma, which shall have the exclusive responsibility and duty to
9 carry out the provisions of this act, except as otherwise provided.

10 B. The Commission shall consist of three (3) full-time
11 commissioners, each of whom must have been involved in the workers'
12 compensation field for at least three (3) years, appointed by the
13 Governor: one of whom is chosen from a slate of three selected by
14 the Speaker of the House of Representatives, with all three
15 confirmed by the Senate. The term of each appointee shall be six
16 (6) years to administer the provisions of this act. The Governor
17 may request a subsequent slate of nominees from the Speaker of the
18 House of Representatives if a suitable nominee is not found. Any or
19 all of the commissioners may be reappointed for additional six-year
20 terms upon reconfirmation by the Senate. However, the initial
21 commissioners shall serve staggered terms of two (2), four (4), and
22 six (6) years, respectively, as determined by the Governor. If the
23 Legislature is not in session at the time of appointment, the
24 appointment shall be subject to confirmation by the Senate upon

1 convening of the next regular session of the Legislature.
2 Membership on the Commission shall be a full-time position and no
3 commissioner shall have any other employment, unless authorized or
4 excused by law. Each commissioner shall receive a salary equal to
5 that paid to a district judge of this state; provided however, the
6 commissioners shall not receive any increase in salary as a result
7 of the provisions of Section 1 of ~~this resolution~~ House Joint
8 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
9 Legislature.

10 C. The Commission shall have the authority to adopt reasonable
11 rules within its respective areas of responsibility including the
12 rules of procedure for administrative hearings, after notice and
13 public hearing, for effecting the purposes of this act, in
14 accordance with the Oklahoma Administrative Procedures Act. All
15 rules, upon adoption, shall be published and be made available to
16 the public and, if not inconsistent with the law, shall be binding
17 in the administration of this act.

18 D. The principal office of the Commission shall be situated in
19 the City of Oklahoma City in quarters assigned by the Office of
20 Management and Enterprise Services. The Commission shall maintain
21 and keep open, during reasonable business hours, the office in
22 Oklahoma City, for the transaction of business, at which office its
23 official records and papers shall be kept. The Commission or any
24 commissioner may hold hearings in any city of this state.

1 E. The Governor shall appoint one of the commissioners to be
2 chair of the Commission. In addition to other duties, the chair of
3 the Commission shall have the following powers and duties:

4 1. To organize, direct and develop the administrative work of
5 the administrative law judges, including but not limited to
6 docketing, clerical, technical and financial work and establishment
7 of hours of operation;

8 2. To employ administrative staff for the Commission, within
9 budgetary limitation; and

10 3. Such other duties and responsibilities authorized by law or
11 as the Commission may prescribe.

12 F. All appeals or disputes arising from actions of the
13 Commission shall be governed by provisions of this act and the
14 Commission shall not be subject to the provisions of the Oklahoma
15 Administrative Procedures Act, except as provided in this ~~act~~ title.

16 G. ~~When any commissioner of the Commission is disqualified for~~
17 ~~any reason to hear and participate in the determination of any~~
18 ~~matter pending before the Commission, the Governor shall appoint a~~
19 ~~qualified person to hear and participate in the decision on the~~
20 ~~particular matter. The special commissioner so appointed shall have~~
21 ~~all authority and responsibility with respect to the particular~~
22 ~~matter before the Commission as if the person were a regular~~
23 ~~commissioner of the Commission but shall have no authority or~~
24 ~~responsibility with respect to any other matter before the~~

1 ~~Commission. A person appointed as a special commissioner of the~~
2 ~~Commission under the provisions of this subsection shall be entitled~~
3 ~~to receive a per diem equal to the annual salary of the~~
4 ~~commissioners prorated for the number of days he or she serves in~~
5 ~~the capacity of a special commissioner of the Commission.~~
6 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~
7 ~~to occur, the position shall be filled pursuant to the provisions of~~
8 ~~this section~~ The power of the Commission to decide issues of fact
9 does not include the power to determine the constitutionality of
10 provisions of this title or the constitutionality of application of
11 the provisions of this title.

12 SECTION 6. AMENDATORY Section 21, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2015, Section 21), is amended to read as
14 follows:

15 Section 21. A. Commissioners shall be considered officers and
16 shall take the oath prescribed by the Oklahoma Constitution and the
17 laws of this state.

18 B. 1. A majority of the Workers' Compensation Commission shall
19 constitute a quorum for the transaction of business, and vacancies
20 shall not impair the right of the remaining commissioners to
21 exercise all the powers of the full Commission, so long as a
22 majority remains.

23 2. Any investigation, inquiry, or hearing which the Commission
24 is authorized to hold or undertake may be held or undertaken by or

1 before any one commissioner of the Commission, or appointee acting
2 for him or her, under authorization of the Commission.

3 C. The Commission shall have a seal for authentication of its
4 judgments, awards, and proceedings, on which shall be inscribed the
5 words: "Workers' Compensation Commission, State of Oklahoma".

6 D. Except with respect to the Commission's authority to hear
7 appeals of decisions from administrative law judges other than as
8 provided pursuant to subsection B of Section 78 of this title, any
9 reference in this ~~act~~ title to the Commission's ability to hear and
10 decide the rights of interested parties under this ~~act~~ title shall
11 not prevent it from delegating that responsibility to an
12 administrative law judge.

13 SECTION 7. AMENDATORY Section 22, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2015, Section 22), is amended to read as
15 follows:

16 Section 22. A. 1. For the purpose of administering the
17 provisions of this ~~act~~ title, the Workers' Compensation Commission
18 is authorized:

- 19 a. to make rules necessary for the administration and
20 operation of the Commission,
21 b. to appoint and fix the compensation of temporary
22 technical assistants, medical and legal advisers,
23 clerical assistants and other officers and employees,
24 and

1 c. to make such expenditures, including those for
2 personal service, rent, books, periodicals, office
3 equipment, and supplies, and for printing and binding
4 as may be necessary.

5 2. a. ~~Before~~ The Commission shall vote on any substantive
6 change to any form and the effective date of such
7 substantive change.

8 b. The Commission shall comply with the provisions of the
9 Administrative Procedures Act applicable to the filing
10 and publication requirements for rules before the
11 adoption, prescription, amendment, modification, or
12 repeal of any rule, ~~regulation, or form,~~ the
13 Commission shall give at least thirty (30) days'
14 notice of its intended action.

15 ~~b. The notice shall include a statement of the terms or~~
16 ~~substance of the intended action or description of the~~
17 ~~subjects and issues involved, and the time, place, and~~
18 ~~manner in which interested persons may present their~~
19 ~~views thereon.~~

20 ~~c. The notice shall be mailed to any person specified by~~
21 ~~law or who shall have requested advance notice of~~
22 ~~rule-making proceedings.~~

23 ~~3. The Commission shall afford all interested persons a~~
24 ~~reasonable opportunity to submit written data, views, or arguments,~~

1 ~~and, if the Commission in its discretion shall so direct, oral~~
2 ~~testimony or argument.~~

3 ~~4. Each rule, regulation, or form adopted by the Commission~~
4 ~~shall be effective twenty (20) days after adoption unless a later~~
5 ~~date is specified by law or in the rule itself.~~

6 ~~5. All expenditures of the Commission in the administration of~~
7 ~~this act shall be allowed and paid from the Workers' Compensation~~
8 ~~Fund on the presentation of itemized vouchers approved by the~~
9 ~~Commission.~~

10 B. 1. The Commission may appoint as many persons as may be
11 necessary to be administrative law judges and in addition may
12 appoint such examiners, investigators, medical examiners, clerks,
13 and other employees as it deems necessary to effectuate the
14 provisions of this ~~act~~ title.

15 2. Employees appointed under this subsection shall receive an
16 annual salary to be fixed by the Commission.

17 C. Additionally, the Commission shall have the following powers
18 and duties:

19 1. To hear and approve compromise settlements;

20 2. To review and approve own-risk applications and group self-
21 insurance association applications;

22 3. To monitor own-risk, self-insurer and group self-insurance
23 programs, in accordance with the rules of the Commission;

24

1 4. ~~To contract with an appropriate state governmental entity,~~
2 ~~insurance carrier or approved service organization to process,~~
3 ~~investigate and pay valid claims against an impaired self-insurer~~
4 ~~which fails, due to insolvency or otherwise, to pay its workers'~~
5 ~~compensation obligations, charges for which shall be paid from the~~
6 ~~proceeds of security posted with the Commission as provided in~~
7 ~~Section 38 of this act;~~

8 ~~5.~~ To establish a toll-free telephone number in order to
9 provide information and answer questions about the Commission;

10 ~~6.~~ 5. To hear and determine claims concerning disputed medical
11 bills;

12 ~~7.~~ 6. To promulgate necessary rules for administering this ~~act~~
13 title and develop uniform forms and procedures for use by
14 administrative law judges. Such rules shall be reviewable by the
15 Legislature;

16 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
17 Fund;

18 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
19 sessions to attempt to resolve assigned disputes; and

20 ~~10.~~ 9. Such other duties and responsibilities authorized by
21 law.

22 D. It shall be the duty of an administrative law judge, under
23 the rules adopted by the Commission, to hear and determine claims
24 for compensation and to conduct hearings and investigations and to

1 make such judgments, decisions, and determinations as may be
2 required by any rule or judgment of the Commission.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any person who is not required to be covered under a
7 workers' compensation insurance policy or other plan for the payment
8 of workers' compensation may execute an Affidavit of Exempt Status
9 under the Administrative Workers' Compensation Act. The affidavit
10 shall be a form prescribed by the Workers' Compensation Commission
11 and will be available on the Commission's website.

12 B. Execution of the affidavit shall establish a rebuttable
13 presumption that the executor is not an employee for purposes of the
14 Administrative Workers' Compensation Act and therefore shall not be
15 eligible to seek workers' compensation benefits against any
16 contractor.

17 C. The execution of an affidavit shall not affect the rights or
18 coverage of any employee of the individual executing the affidavit.

19 D. The lack of an executed affidavit under this section shall
20 not prejudice any defense by an employer to a claim for workers'
21 compensation benefits.

22 E. 1. Knowingly providing false information on a notarized
23 Affidavit of Exempt Status under the Administrative Workers'

24

1 Compensation Act shall constitute a misdemeanor punishable by a fine
2 not to exceed One Thousand Dollars (\$1,000.00).

3 2. Affidavits shall conspicuously state on the front thereof in
4 at least ten-point, bold-faced print that it is a crime to falsify
5 information on the form.

6 3. The Commission shall immediately notify the Workers'
7 Compensation Fraud Unit in the Office of the Attorney General of any
8 violations or suspected violations of this section. The Commission
9 shall cooperate with the Fraud Unit in any investigation involving
10 affidavits executed pursuant to this section.

11 F. The Commission may assess a fee not to exceed Fifty Dollars
12 (\$50.00) for an Affidavit of Exempt Status Application. Fees
13 collected pursuant to this section shall be deposited in the State
14 Treasury to the credit of the Workers' Compensation Commission
15 Revolving Fund.

16 G. If an employer relies in good faith on proof of a valid
17 workers' compensation insurance policy issued to a contractor of any
18 tier or on proof of an Affidavit of Exempt Status under this
19 section, the employer shall not be liable for injuries of any
20 employees of the contractor.

21 SECTION 9. AMENDATORY Section 38, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2015, Section 38), is amended to read as
23 follows:
24

1 Section 38. A. An employer shall secure compensation to
2 employees under this ~~act~~ title in one of the following ways:

3 1. By insuring and keeping insured the payment of compensation
4 with any stock corporation, mutual association, or other concerns
5 authorized to transact the business of workers' compensation
6 insurance in this state. When an insurer issues a policy to provide
7 workers' compensation benefits under the provisions of this ~~act~~
8 title, it shall file a notice with the Workers' Compensation
9 Commission containing the name, address, and principal occupation of
10 the employer, the number, effective date, and expiration date of the
11 policy, and such other information as may be required by the
12 Commission. The notice shall be filed by the insurer within thirty
13 (30) days after the effective date of the policy. Any insurer who
14 does not file the notice required by this paragraph shall be subject
15 to a fine by the Commission of not more than One Thousand Dollars
16 (\$1,000.00);

17 2. By obtaining and keeping in force guaranty insurance with
18 any company authorized to do guaranty business in this state. Each
19 company that issues workers' compensation guaranty insurance shall
20 file a copy of the contract with the Commission within thirty (30)
21 days after the effective date of the contract. Any company that
22 does not file a copy of the contract as required by this paragraph
23 shall be subject to a fine by the Commission of not more than One
24 Thousand Dollars (\$1,000.00);

1 3. By furnishing satisfactory proof to the Commission of the
2 employer's financial ability to pay the compensation. The
3 Commission, under rules adopted by the ~~Insurance Department~~
4 Commission, shall require any employer that has:

5 a. less than one hundred employees or less than One
6 Million Dollars (\$1,000,000.00) in net assets to:

7 (1) deposit with the Commission securities, an
8 irrevocable letter of credit or a surety bond
9 payable to the state, in an amount determined by
10 the Commission which shall be at least an average
11 of the yearly claims for the last three (3)
12 years, or

13 (2) provide proof of excess coverage with such terms
14 and conditions as is commensurate with their
15 ability to pay the benefits required by the
16 provisions of this act, and

17 b. one hundred or more employees and One Million Dollars
18 (\$1,000,000.00) or more in net assets to:

19 (1) secure a surety bond payable to the state, or an
20 irrevocable letter of credit, in an amount
21 determined by the Commission which shall be at
22 least an average of the yearly claims for the
23 last three (3) years, or
24

1 (2) provide proof of excess coverage with terms and
2 conditions that are commensurate with their
3 ability to pay the benefits required by the
4 provisions of this act;

5 4. By forming a group self-insurance association consisting of
6 two or more employers which shall have a common interest and which
7 shall have entered into an agreement to pool their liabilities under
8 the Administrative Workers' Compensation Act. Such agreement shall
9 be subject to rules of the Commission. Any employer, upon
10 application to become a member of a group self-insurance
11 association, shall file with the Commission a notice, in such form
12 as prescribed by the Commission, acknowledging that the employer
13 accepts joint and several liability. Upon approval by the
14 Commission of such application for membership, said member shall be
15 a qualified self-insured employer; or

16 5. By any other security as may be approved by the Commission
17 and the Insurance Department.

18 B. The Commission may waive the requirements of this section in
19 an amount which is commensurate with the ability of the employer to
20 pay the benefits required by the provisions of this act.

21 Irrevocable letters of credit required by this subsection shall
22 contain such terms as may be prescribed by the Commission and shall
23 be issued for the benefit of the state by a financial institution

1 whose deposits are insured by the Federal Deposit Insurance
2 Corporation.

3 C. An employer who does not fulfill the requirements of this
4 section is not relieved of the obligation to pay compensation under
5 this act. The security required under this section, including any
6 interest, shall be maintained by the ~~Commission~~ Self-insured
7 Guaranty Fund Board as provided in Section 99 of this act title
8 until each claim for benefits is paid, settled, or lapses under this
9 ~~act title~~, and costs of administration of such claims are paid.

10 D. Failure on the part of any employer to secure the payment of
11 compensation provided in this act shall have the effect of enabling
12 the Commission to assert the rights of an injured employee against
13 the employer.

14 E. Any employer that knowingly provides false information to
15 the Commission for purposes of securing or maintaining a self-
16 insurance permit shall be guilty of a felony and subject to a
17 maximum fine of Ten Thousand Dollars (\$10,000.00).

18 SECTION 10. AMENDATORY Section 45, Chapter 208, O.S.L.
19 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
20 Supp. 2015, Section 45), is amended to read as follows:

21 Section 45. A. Temporary Total Disability.

22 1. If the injured employee is temporarily unable to perform his
23 or her job or any alternative work offered by the employer, he or
24 she shall be entitled to receive compensation equal to seventy

1 percent (70%) of the injured employee's average weekly wage, but not
2 to exceed seventy percent (70%) of the state average weekly wage,
3 for one hundred four (104) weeks. Provided, there shall be no
4 payment for the first three (3) days of the initial period of
5 temporary total disability. If an administrative law judge finds
6 that a consequential injury has occurred and that additional time is
7 needed to reach maximum medical improvement, temporary total
8 disability may continue for a period of not more than an additional
9 fifty-two (52) weeks. Such finding shall be based upon a showing of
10 medical necessity by clear and convincing evidence.

11 2. When the injured employee is released from active medical
12 treatment by the treating physician for all body parts found by the
13 Commission to be injured, or in the event that the employee, without
14 a valid excuse, misses ~~three~~ two consecutive medical treatment
15 appointments as prescribed under Section 57 of this title, fails to
16 comply with medical orders of the treating physician, or otherwise
17 abandons medical care, the employer shall be entitled to terminate
18 temporary total disability by notifying the employee, or if
19 represented, his or her counsel. If, however, an objection to the
20 termination is filed by the employee within ten (10) days of
21 termination, the Commission shall set the matter within twenty (20)
22 days for a determination if temporary total disability compensation
23 shall be reinstated. The temporary total disability shall remain
24 terminated unless the employee proves the existence of a valid

1 excuse for his or her failure to comply with medical orders of the
2 treating physician or his or her abandonment of medical care. The
3 administrative law judge may appoint an independent medical examiner
4 to determine if further medical treatment is reasonable and
5 necessary. The independent medical examiner shall not provide
6 treatment to the injured worker, unless agreed upon by the parties.

7 B. Temporary Partial Disability.

8 1. If the injured employee is temporarily unable to perform his
9 or her job, but may perform alternative work offered by the
10 employer, he or she shall be entitled to receive compensation equal
11 to ~~the greater of~~ seventy percent (70%) of the difference between
12 the injured employee's average weekly wage before the injury and his
13 or her weekly wage for performing alternative work after the injury,
14 but only if his or her weekly wage for performing the alternative
15 work is less than the temporary total disability rate. However, the
16 injured employee's actual earnings plus temporary partial disability
17 shall not exceed the temporary total disability rate.

18 2. Compensation under this subsection may not exceed fifty-two
19 (52) weeks.

20 3. If the employee refuses to perform the alternative work
21 offered by the ~~employee~~ employer, he or she shall not be entitled to
22 benefits under ~~subsection A of this section or under~~ this section.

23 C. Permanent Partial Disability.
24

1 1. A permanent partial disability award or combination of
2 awards granted an injured worker may not exceed a permanent partial
3 disability rating of one hundred percent (100%) to any body part or
4 to the body as a whole. The determination of permanent partial
5 disability shall be the responsibility of the Commission through its
6 administrative law judges. Any claim by an employee for
7 compensation for permanent partial disability must be supported by
8 competent medical testimony of a medical doctor, osteopathic
9 physician, or chiropractor, and shall be supported by objective
10 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.
11 The opinion of the physician shall include employee's percentage of
12 permanent partial disability and whether or not the disability is
13 job-related and caused by the accidental injury or occupational
14 disease. A physician's opinion of the nature and extent of
15 permanent partial disability to parts of the body other than
16 scheduled members must be based solely on criteria established by
17 the current edition of the American Medical Association's "Guides to
18 the Evaluation of Permanent Impairment". A copy of any written
19 evaluation shall be sent to both parties within seven (7) days of
20 issuance. Medical opinions addressing compensability and permanent
21 disability must be stated within a reasonable degree of medical
22 certainty. Any party may submit the report of an evaluating
23 physician.

24

1 2. Permanent partial disability shall not be allowed to a part
2 of the body for which no medical treatment has been received. A
3 determination of permanent partial disability made by the Commission
4 or administrative law judge which is not supported by objective
5 ~~medical~~ findings provided by a treating physician who is a medical
6 doctor, doctor of osteopathy, chiropractor or a qualified
7 independent medical examiner shall be considered an abuse of
8 discretion.

9 3. The examining physician shall not deviate from the Guides
10 except as may be specifically provided for in the Guides.

11 4. In cases of permanent partial disability, the compensation
12 shall be seventy percent (70%) of the employee's average weekly
13 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per
14 week, for a term not to exceed a total of three hundred fifty (350)
15 weeks for the body as a whole.

16 5. ~~Except pursuant to settlement agreements entered into by the~~
17 ~~employer and employee, payment of a permanent partial disability~~
18 ~~award shall be deferred and held in reserve by the employer or~~
19 ~~insurance company if the employee has reached maximum medical~~
20 ~~improvement and has been released to return to work by his or her~~
21 ~~treating physician, and then returns to his pre-injury or equivalent~~
22 ~~job for a term of weeks determined by dividing the total dollar~~
23 ~~value of the award by seventy percent (70%) of the employee's~~
24 ~~average weekly wage.~~

- 1 a. ~~The amount of the permanent partial disability award~~
2 ~~shall be reduced by seventy percent (70%) of the~~
3 ~~employee's average weekly wage for each week he works~~
4 ~~in his pre-injury or equivalent job.~~
- 5 b. ~~If, for any reason other than misconduct as defined in~~
6 ~~Section 2 of this act, the employer terminates the~~
7 ~~employee or the position offered is not the pre-injury~~
8 ~~or equivalent job, the remaining permanent partial~~
9 ~~disability award shall be paid in a lump sum. If the~~
10 ~~employee is discharged for misconduct, the employer~~
11 ~~shall have the burden to prove that the employee~~
12 ~~engaged in misconduct.~~
- 13 c. ~~If the employee refuses an offer to return to his pre-~~
14 ~~injury or equivalent job, the permanent partial~~
15 ~~disability award shall continue to be deferred and~~
16 ~~shall be reduced by seventy percent (70%) of the~~
17 ~~employee's average weekly wage for each week he~~
18 ~~refuses to return to his pre-injury or equivalent job.~~
- 19 d. ~~Attorney fees for permanent partial disability awards,~~
20 ~~as approved by the Commission, shall be calculated~~
21 ~~based upon the total permanent partial disability~~
22 ~~award and paid in full at the time of the deferral.~~
- 23 e. ~~Assessments pursuant to Sections 31, 98, 112 and 165~~
24 ~~of this act shall be calculated based upon the amount~~

1 ~~of the permanent partial disability award and shall be~~
2 ~~paid at the time of the deferral.~~

3 6. Previous Disability: The fact that an employee has suffered
4 previous disability or received compensation therefor shall not
5 preclude the employee from compensation for a later accidental
6 personal injury or occupational disease. In the event there exists
7 a previous permanent partial disability, including a previous non-
8 work-related injury or condition which produced permanent partial
9 disability and the same is aggravated or accelerated by an
10 accidental personal injury or occupational disease, compensation for
11 permanent partial disability shall be only for such amount as was
12 caused by such accidental personal injury or occupational disease
13 and no additional compensation shall be allowed for the preexisting
14 disability ~~or impairment~~. Any such reduction shall not apply to
15 temporary total disability, nor shall it apply to compensation for
16 medical treatment.

17 a. If workers' compensation benefits have previously been
18 awarded through settlement or judicial or
19 administrative determination in Oklahoma, the
20 percentage basis of the prior settlement or award
21 shall conclusively establish the amount of permanent
22 partial disability determined to be preexisting. If
23 workers' compensation benefits have not previously
24 been awarded through settlement or judicial or

1 administrative determination in Oklahoma, the amount
2 of preexisting permanent partial disability shall be
3 established by competent evidence.

4 b. In all cases, the applicable reduction shall be
5 calculated as follows:

6 (1) if the preexisting ~~impairment~~ disability is the
7 result of injury sustained while working for the
8 employer against whom workers' compensation
9 benefits are currently being sought, any award of
10 compensation shall be reduced by the current
11 dollar value attributable under the
12 Administrative Workers' Compensation Act to the
13 percentage of permanent partial disability
14 determined to be preexisting. The current dollar
15 value shall be calculated by multiplying the
16 percentage of preexisting permanent partial
17 disability by the compensation rate in effect on
18 the date of the accident or injury against which
19 the reduction will be applied, and

20 (2) in all other cases, the employer against whom
21 benefits are currently being sought shall be
22 entitled to a credit for the percentage of
23 preexisting permanent partial disability.
24

1 ~~7.~~ 6. No payments on any permanent partial disability order
2 shall begin until payments on any preexisting permanent partial
3 disability orders have been completed.

4 ~~8.~~ 7. The whole body shall represent a maximum of three hundred
5 fifty (350) weeks.

6 ~~9.~~ ~~The permanent partial disability rate of compensation for~~
7 ~~amputation or permanent total loss of use of a scheduled member~~
8 ~~specified in Section 46 of this act shall be seventy percent (70%)~~
9 ~~of the employee's average weekly wage, not to exceed Three Hundred~~
10 ~~Twenty-three Dollars (\$323.00), multiplied by the number of weeks~~
11 ~~set forth for the member in Section 46 of this act, regardless of~~
12 ~~whether the injured employee is able to return to his or her pre-~~
13 ~~injury or equivalent job.~~

14 ~~10.~~ 8. An injured employee who is eligible for permanent
15 partial disability under this subsection shall be entitled to
16 receive vocational rehabilitation services provided by a technology
17 center or public secondary school offering vocational-technical
18 education courses, or a member institution of The Oklahoma State
19 System of Higher Education, which shall include retraining and job
20 placement to restore the employee to gainful employment. Vocational
21 rehabilitation services or training shall not extend for a period of
22 more than fifty-two (52) weeks.

23 D. Permanent Total Disability.
24

1 1. In case of total disability adjudged to be permanent,
2 seventy percent (70%) of the employee's average weekly wages, but
3 not in excess of the state's average weekly wage, shall be paid to
4 the employee during the continuance of the disability until such
5 time as the employee reaches the age of maximum Social Security
6 retirement benefits or for a period of fifteen (15) years, whichever
7 is longer. In the event the claimant dies of causes unrelated to
8 the injury or illness, benefits shall cease on the date of death.
9 Provided, however, any person entitled to revive the action shall
10 receive a one-time lump-sum payment equal to twenty-six (26) weeks
11 of weekly benefits for permanent total disability awarded the
12 claimant. If more than one person is entitled to revive the claim,
13 the lump-sum payment shall be evenly divided between or among such
14 persons. In the event the Commission awards both permanent partial
15 disability and permanent total disability benefits, the permanent
16 total disability award shall not be due until the permanent partial
17 disability award is paid in full. If otherwise qualified according
18 to the provisions of this act, permanent total disability benefits
19 may be awarded to an employee who has exhausted the maximum period
20 of temporary total disability even though the employee has not
21 reached maximum medical improvement.

22 2. The Commission shall annually review the status of any
23 employee receiving benefits for permanent total disability against
24 the last employer. The Commission shall require the employee to

1 annually file an affidavit under penalty of perjury stating that he
2 or she is not and has not been gainfully employed and is not capable
3 of gainful employment. Failure to file such affidavit shall result
4 in suspension of benefits; provided, however, reinstatement of
5 benefits may occur after proper hearing before the Commission.

6 E. 1. The Workers' Compensation Commission shall hire or
7 contract for a Vocational Rehabilitation Director to oversee the
8 vocational rehabilitation program of the Commission.

9 2. The Vocational Rehabilitation Director shall help injured
10 workers return to the work force. If the injured employee is unable
11 to return to his or her pre-injury or equivalent position due to
12 permanent restrictions as determined by the treating physician, upon
13 the request of either party, the Vocational Rehabilitation Director
14 shall determine if it is appropriate for a claimant to receive
15 vocational rehabilitation training or services, and will oversee
16 such training. If appropriate, the Vocational Rehabilitation
17 Director shall issue administrative orders, including, but not
18 limited to, an order for a vocational rehabilitation evaluation for
19 any injured employee unable to work for at least ninety (90) days.
20 In addition, the Vocational Rehabilitation Director may assign
21 injured workers to vocational rehabilitation counselors for
22 coordination of recommended services. The cost of the services
23 shall be paid by the employer. All administrative orders are
24 subject to appeal to the full Commission.

1 3. There shall be a presumption in favor of ordering vocational
2 rehabilitation services or training for an eligible injured employee
3 under the following circumstances:

- 4 a. if the employee's occupation is truck driver or
5 laborer and the medical condition is traumatic brain
6 injury, stroke or uncontrolled vertigo,
- 7 b. if the employee's occupation is truck driver or
8 laborer performing high-risk tasks and the medical
9 condition is seizures,
- 10 c. if the employee's occupation is manual laborer and the
11 medical condition is bilateral wrist fusions,
- 12 d. if the employee's occupation is assembly-line worker
13 and the medical condition is radial head fracture with
14 surgical excision,
- 15 e. if the employee's occupation is heavy laborer and the
16 medical condition is myocardial infarction with
17 congestive heart failure,
- 18 f. if the employee's occupation is heavy manual laborer
19 and the medical condition is multilevel neck or back
20 fusions greater than two levels,
- 21 g. if the employee's occupation is laborer performing
22 overhead work and the medical condition is massive
23 rotator cuff tears, with or without surgery,

- 1 h. if the employee's occupation is heavy laborer and the
2 medical condition is recurrent inguinal hernia
3 following unsuccessful surgical repair,
- 4 i. if the employee's occupation is heavy manual laborer
5 and the medical condition is total knee replacement or
6 total hip replacement,
- 7 j. if the employee's occupation is roofer and the medical
8 condition is calcaneal fracture, medically or
9 surgically treated,
- 10 k. if the employee's occupation is laborer of any kind
11 and the medical condition is total shoulder
12 replacement,
- 13 l. if the employee's occupation is laborer and the
14 medical condition is amputation of a hand, arm, leg,
15 or foot,
- 16 m. if the employee's occupation is laborer and the
17 medical condition is tibial plateau fracture, pilon
18 fracture,
- 19 n. if the employee's occupation is laborer and the
20 medical condition is ankle fusion or knee fusion,
- 21 o. if the employee's occupation is driver or heavy
22 equipment operator and the medical condition is
23 unilateral industrial blindness, or
24

1 p. if the employee's occupation is laborer and the
2 medical condition is 3-, 4-, or 5-level positive
3 discogram of the cervical spine or lumbar spine,
4 medically treated.

5 4. Upon the request of either party, or by order of an
6 administrative law judge, the Vocational Rehabilitation Director
7 shall assist the Workers' Compensation Commission in determining if
8 it is appropriate for a claimant to receive vocational
9 rehabilitation training or services. If appropriate, the
10 administrative law judge shall refer the employee to a qualified
11 expert for evaluation of the practicability of, need for and kind of
12 rehabilitation services or training necessary and appropriate in
13 order to restore the employee to gainful employment. The cost of
14 the evaluation shall be paid by the employer. Following the
15 evaluation, if the employee refuses the services or training ordered
16 by the administrative law judge, or fails to complete in good faith
17 the vocational rehabilitation training ordered by the administrative
18 law judge, then the cost of the evaluation and services or training
19 rendered may, in the discretion of the administrative law judge, be
20 deducted from any award of benefits to the employee which remains
21 unpaid by the employer. Upon receipt of such report, and after
22 affording all parties an opportunity to be heard, the administrative
23 law judge shall order that any rehabilitation services or training,
24 recommended in the report, or such other rehabilitation services or

1 training as the administrative law judge may deem necessary,
2 provided the employee elects to receive such services, shall be
3 provided at the expense of the employer. Except as otherwise
4 provided in this subsection, refusal to accept rehabilitation
5 services by the employee shall in no way diminish any benefits
6 allowable to an employee.

7 5. The administrative law judge may order vocational
8 rehabilitation before the injured employee reaches maximum medical
9 improvement, if the treating physician believes that it is likely
10 that the employee's injury will prevent the employee from returning
11 to his or her former employment. In granting early benefits for
12 vocational rehabilitation, the Commission shall consider temporary
13 restrictions and the likelihood that such rehabilitation will return
14 the employee to gainful employment earlier than if such benefits are
15 granted after the permanent partial disability hearing in the claim.

16 6. Vocational rehabilitation services or training shall not
17 extend for a period of more than fifty-two (52) weeks. A request
18 for vocational rehabilitation services or training shall be filed
19 with the Commission by an interested party not later than sixty (60)
20 days from the date of receiving permanent restrictions that prevent
21 the injured employee from returning to his or her pre-injury or
22 equivalent position.

23 7. If rehabilitation requires residence at or near the facility
24 or institution which is away from the employee's customary

1 residence, reasonable cost of the employee's board, lodging, travel,
2 tuition, books and necessary equipment in training shall be paid for
3 by the insurer in addition to weekly compensation benefits to which
4 the employee is otherwise entitled under the Administrative Workers'
5 Compensation Act.

6 8. During the period when an employee is actively and in good
7 faith being evaluated or participating in a retraining or job
8 placement program for purposes of evaluating permanent total
9 disability status, the employee shall be entitled to receive
10 benefits at the same rate as the employee's temporary total
11 disability benefits for an additional fifty-two (52) weeks. All
12 tuition related to vocational rehabilitation services shall be paid
13 by the employer or the employer's insurer on a periodic basis
14 directly to the facility providing the vocational rehabilitation
15 services or training to the employee. The employer or employer's
16 insurer may deduct the amount paid for tuition from compensation
17 awarded to the employee.

18 F. Disfigurement.

19 1. If an injured employee incurs serious and permanent
20 disfigurement to any part of the body, the Commission may award
21 compensation to the injured employee in an amount not to exceed
22 Fifty Thousand Dollars (\$50,000.00).

23 2. No award for disfigurement shall be entered until twelve
24 (12) months after the injury.

1 3. An injured employee shall not be entitled to compensation
2 under this subsection if he or she receives an award for permanent
3 partial disability to the same part of the body.

4 G. Benefits for a single-event injury shall be determined by
5 the law in effect at the time of injury. Benefits for a cumulative
6 trauma injury or occupational disease or illness shall be determined
7 by the law in effect at the time the employee knew or reasonably
8 should have known that the injury, occupational disease or illness
9 was related to work activity. Benefits for death shall be
10 determined by the law in effect at the time of death.

11 SECTION 11. AMENDATORY Section 46, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2015, Section 46), is amended to read as
13 follows:

14 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
15 paragraph 4 of subsection C of Section 45 of this title, an injured
16 employee who is entitled to receive permanent partial disability
17 compensation under Section 45 of this act suffers amputation or
18 permanent total loss of use of a scheduled member shall receive
19 compensation for each part of the body in accordance with equal to
20 seventy percent (70%) of the employee's average weekly wage, not to
21 exceed Three Hundred Twenty-three Dollars (\$323.00) multiplied by
22 the number of weeks for the scheduled ~~loss~~ member set forth below.
23 as follows:

- 1 1. Arm amputated at the elbow, or between the elbow and
2 shoulder, two hundred seventy-five (275) weeks;
- 3 2. Arm amputated between the elbow and wrist, two hundred
4 twenty (220) weeks;
- 5 3. Leg amputated at the knee, or between the knee and the hip,
6 two hundred seventy-five (275) weeks;
- 7 4. Leg amputated between the knee and the ankle, two hundred
8 twenty (220) weeks;
- 9 5. Hand amputated, two hundred twenty (220) weeks;
- 10 6. Thumb amputated, sixty-six (66) weeks;
- 11 7. First finger amputated, thirty-nine (39) weeks;
- 12 8. Second finger amputated, thirty-three (33) weeks;
- 13 9. Third finger amputated, twenty-two (22) weeks;
- 14 10. Fourth finger amputated, seventeen (17) weeks;
- 15 11. Foot amputated, two hundred twenty (220) weeks;
- 16 12. Great toe amputated, thirty-three (33) weeks;
- 17 13. Toe other than great toe amputated, eleven (11) weeks;
- 18 14. Eye enucleated, in which there was useful vision, two
19 hundred seventy-five (275) weeks;
- 20 15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 21 16. Loss of hearing of both ears, three hundred thirty (330)
22 weeks; and
- 23 17. Loss of one testicle, fifty-three (53) weeks; loss of both
24 testicles, one hundred fifty-eight (158) weeks.

1 B. The permanent partial disability rate of compensation for
2 amputation or permanent total loss of use of a scheduled member
3 specified in this section shall be seventy percent (70%) of the
4 employee's average weekly wage, not to exceed Three Hundred Twenty-
5 three Dollars (\$323.00), multiplied by the number of weeks as set
6 forth in this section, regardless of whether or not the injured
7 employee is able to return to his or her pre-injury job.

8 C. Other cases: In cases in which the Commission finds an
9 injury ~~to a part of the body~~ not specifically covered by the
10 foregoing provisions of this section, the employee may be entitled
11 to compensation for permanent partial disability. The compensation
12 ordered paid shall be seventy percent (70%) of the employee's
13 average weekly wage, not to exceed Three Hundred Twenty-three
14 Dollars (\$323.00) for the number of weeks which the partial
15 disability of the employee bears to three hundred fifty (350) weeks.

16 D. 1. Compensation for amputation of the first phalange of a
17 digit shall be one-half (1/2) of the compensation for the amputation
18 of the entire digit.

19 2. Compensation for amputation of more than one phalange of a
20 digit shall be the same as for amputation of the entire digit.

21 E. 1. Compensation for the permanent loss of eighty percent
22 (80%) or more of the vision of an eye shall be the same as for the
23 loss of an eye.

24

1 2. In all cases of permanent loss of vision, the use of
2 corrective lenses may be taken into consideration in evaluating the
3 extent of loss of vision.

4 F. Compensation for amputation or loss of use of two or more
5 digits or one or more phalanges of two or more digits of a hand or a
6 foot may be proportioned to the total loss of use of the hand or the
7 foot occasioned thereby but shall not exceed the compensation for
8 total loss of a hand or a foot.

9 G. Compensation for permanent total loss of use of a member
10 shall be the same as for amputation of the member.

11 H. The sum of all permanent partial disability awards,
12 excluding awards against the Multiple Injury Trust Fund, shall not
13 exceed three hundred fifty (350) weeks.

14 SECTION 12. AMENDATORY Section 56, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2015, Section 56), is amended to read as
16 follows:

17 Section 56. A. If the employer has previously contracted with
18 a certified workplace medical plan, the employer shall select for
19 the injured employee a treating physician from the physicians listed
20 within the network of the certified workplace medical plan. The
21 employee may apply for a change of physician by utilizing the
22 dispute resolution process set out in the certified workplace
23 medical plan on file with the State Department of Health.

24

1 B. If the employer is not covered by a certified workplace
2 medical plan, the employer shall select the treating physician. The
3 Commission on application of the employee shall order one change of
4 treating physician. Upon the Commission's granting of the
5 application, the employer shall provide a list of three physicians
6 from whom the employee may select the replacement. The employer may
7 identify physicians within the same practice, facility or hospital
8 as the treating physician. The only requirement for the list of
9 three physicians is that they be licensed and accredited to perform
10 the necessary treatment.

11 SECTION 13. AMENDATORY Section 62, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2015, Section 62), is amended to read as
13 follows:

14 Section 62. A. Notwithstanding the provisions of Section 45 of
15 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
16 injury, temporary total disability compensation shall not exceed
17 eight (8) weeks, regardless of the number of parts of the body to
18 which there is a nonsurgical soft tissue injury. An employee who is
19 treated with an injection ~~or injections~~ shall be entitled to an
20 extension of an additional eight (8) weeks total, regardless of the
21 number of injections. An employee who has been recommended by a
22 treating physician for surgery for a soft tissue injury may petition
23 the Workers' Compensation Commission for one extension of temporary
24 total disability compensation and the Commission may order an

1 extension, not to exceed sixteen (16) additional weeks. If the
2 surgery is not performed within thirty (30) days of the approval of
3 the surgery by the employer, its insurance carrier, or an order of
4 the Commission authorizing the surgery, and the delay is caused by
5 the employee acting in bad faith, the benefits for the extension
6 period shall be terminated and the employee shall reimburse the
7 employer any temporary total disability compensation he or she
8 received beyond eight (8) weeks. An epidural steroid injection, or
9 any procedure of the same or similar physical invasiveness, shall
10 not be considered surgery.

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

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

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

20 a. sensory or motor disturbances,

21 b. communication disturbances,

22 c. complex integrated disturbances of cerebral function,

23 d. episodic neurological disorders, or
24

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

4 3. Any joint replacement.

5 SECTION 14. AMENDATORY Section 68, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2015, Section 68), is amended to read as
7 follows:

8 Section 68. A. Unless an employee gives oral or written notice
9 to the employer within ~~thirty (30)~~ fifteen (15) days of the date an
10 injury occurs, the rebuttable presumption shall be that the injury
11 was not work-related. Such presumption ~~must~~ may be overcome by a
12 preponderance of the evidence. In no event shall compensation be
13 allowed if notice is not given within one hundred twenty (120) days
14 after the date of the injury.

15 B. Unless an employee gives oral or written notice to the
16 employer within thirty (30) days of the employee's separation from
17 employment, there shall be a rebuttable presumption that an
18 occupational disease or cumulative trauma injury did not arise out
19 of and in the course of employment. Such presumption ~~must~~ may be
20 overcome by a preponderance of the evidence.

21 SECTION 15. AMENDATORY Section 71, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2015, Section 71), is amended to read as
23 follows:

1 Section 71. A. Notice. Within ten (10) days after a claim for
2 compensation has been filed, the Commission shall notify the
3 employer and any other interested person of the filing of the claim.

4 B. Investigation - Hearing.

5 1. The Commission shall assign the claim to an administrative
6 law judge who shall hold a hearing on application of any interested
7 party, or on its own motion.

8 2. An application for a hearing shall clearly set forth the
9 specific issues of fact or law in controversy and the contentions of
10 the party applying for the hearing.

11 3. If any party is not represented by a lawyer, the
12 administrative law judge shall define the issues to be heard.

13 4. If a hearing on the claim is ordered, the administrative law
14 judge shall give the claimant and other interested parties ten (10)
15 days' notice of the hearing served personally on the claimant and
16 other parties, or by registered mail, facsimile, electronic mail or
17 by other electronic means with confirmation of receipt. The hearing
18 shall be held in Tulsa or Oklahoma County, as determined by the
19 Commission.

20 5. The award, together with the statement of the findings of
21 fact and other matters pertinent to the issues, shall be filed with
22 the record of the proceedings, and a copy of the award shall
23 immediately be sent to the parties in or to counsels of record, if
24 any.

1 C. Evidence and Construction.

2 1. a. At the hearing the claimant and the employer may each
3 present evidence relating to the claim. Evidence may
4 be presented by any person authorized in writing for
5 such purpose. The evidence may include verified
6 medical reports which shall be accorded such weight as
7 may be warranted when considering all evidence in the
8 case.

9 b. Any determination of the existence or extent of
10 physical impairment shall be supported by objective
11 and measurable physical or mental findings.

12 2. When deciding any issue, administrative law judges and the
13 Commission shall determine, on the basis of the record as a whole,
14 whether the party having the burden of proof on the issue has
15 established it by a preponderance of the evidence.

16 3. Administrative law judges, the Commission, and any reviewing
17 courts shall strictly construe the provisions of this act.

18 4. In determining whether a party has met the burden of proof
19 on an issue, administrative law judges and the Commission shall
20 weigh the evidence impartially and without giving the benefit of the
21 doubt to any party.

22 D. Judgment. The judgment denying the claim or making the
23 award shall be filed in the office of the Commission, and a copy
24 shall be sent by registered mail, facsimile, electronic mail or by

1 other electronic means with confirmation of receipt to the claimant
2 and to the employer or to their attorneys.

3 E. No compensation for disability of an injured employee shall
4 be payable for any period beyond his or her death; provided,
5 however, an award of compensation for disability may be made after
6 the death of the injured employee for the period of disability
7 preceding death.

8 SECTION 16. AMENDATORY Section 78, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2015, Section 78), is amended to read as
10 follows:

11 Section 78. A. Any party feeling aggrieved by the judgment,
12 decision, or award made by the administrative law judge may, within
13 ten (10) days of issuance, appeal to the Workers' Compensation
14 Commission. After hearing arguments, the Commission may reverse or
15 modify the decision only if it determines that the decision was
16 against the clear weight of the evidence or contrary to law. All
17 such proceedings of the Commission shall be recorded by a court
18 reporter, if requested by any party. Any judgment of the Commission
19 which reverses a decision of the administrative law judge shall
20 contain specific findings relating to the reversal.

21 B. The chair of the Commission shall have the authority to
22 appoint an administrative law judge to the en banc panel when any
23 Commissioner of the Commission is disqualified for any reason, to
24 fill a vacancy, or in the absence of a Commissioner; provided, the

1 appointed administrative law judge shall not have presided over any
2 of the previous hearings on the claim.

3 C. The appellant shall pay a filing fee of One Hundred Seventy-
4 five Dollars (\$175.00) to the Commission at the time of filing his
5 or her appeal. The fee shall be deposited in the Workers'
6 Compensation Fund.

7 ~~C.~~ D. The judgment, decision or award of the Commission shall
8 be final and conclusive on all questions within its jurisdiction
9 between the parties unless an action is commenced in the Supreme
10 Court of this state to review the judgment, decision or award within
11 twenty (20) days of being sent to the parties. Any judgment,
12 decision or award made by an administrative law judge shall be
13 stayed until all appeal rights have been waived or exhausted. The
14 Supreme Court may modify, reverse, remand for rehearing, or set
15 aside the judgment or award only if it was:

- 16 1. In violation of constitutional provisions;
- 17 2. In excess of the statutory authority or jurisdiction of the
18 Commission;
- 19 3. Made on unlawful procedure;
- 20 4. Affected by other error of law;
- 21 5. Clearly erroneous in view of the reliable, material,
22 probative and substantial competent evidence;
- 23 6. Arbitrary or capricious;
- 24 7. Procured by fraud; or

1 8. Missing findings of fact on issues essential to the
2 decision.

3 This action shall be commenced by filing with the Clerk of the
4 Supreme Court a certified copy of the judgment, decision or award of
5 the Commission attached to the petition by the complaint which shall
6 specify why the judgment, decision or award is erroneous or illegal.
7 The proceedings shall be heard in a summary manner and shall have
8 precedence over all other civil cases in the Supreme Court, except
9 preferred Corporation Commission appeals. The Supreme Court shall
10 require the appealing party to file within forty-five (45) days from
11 the date of the filing of an appeal or a judgment appealed from, a
12 transcript of the record of the proceedings before the Commission,
13 or such later time as may be granted by the Supreme Court on
14 application and for good cause shown. The action shall be subject
15 to the law and practice applicable to other civil actions cognizable
16 in the Supreme Court.

17 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the
18 Supreme Court shall be paid to the Commission and deposited in the
19 Workers' Compensation Fund as costs for preparing, assembling,
20 indexing and transmitting the record for appellate review. This fee
21 shall be paid by the party taking the appeal. If more than one
22 party to the action files an appeal from the same judgment, decision
23 or award, the fee shall be paid by the party whose petition in error
24 commences the principal appeal.

1 F. During the pendency of an appeal filed by an employer or the
2 employer's insurance carrier pursuant to this section, payment for
3 any prescription drugs prescribed by the treating physician shall be
4 continued. If payment for prescription drugs is an issue on appeal,
5 and the employer is held not to be liable for payment for the
6 prescription drugs, the employee shall reimburse the employer or the
7 employer's insurance carrier for the cost of prescriptions filled
8 during the time of the appeals process.

9 SECTION 17. AMENDATORY Section 80, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2015, Section 80), is amended to read as
11 follows:

12 Section 80. A. Except ~~where~~ when a joint petition settlement
13 has been approved, the Commission may reopen for review any
14 compensation judgment, award, or decision. Such review based on a
15 change of physical condition may be done at any time within six (6)
16 ~~months of termination of the compensation period fixed in the~~
17 ~~original compensation judgment or award~~ from the date of the last
18 order in which monetary benefits or active medical treatment was
19 provided, on the Commission's own motion or on the application of
20 any party in interest, ~~on the ground of a change in physical~~
21 ~~condition or on proof of erroneous wage rate~~ and unless filed within
22 such period of time, shall be forever barred. On review, the
23 Commission may make a judgment or award terminating, continuing,
24 decreasing, or increasing for the future the compensation previously

1 awarded, subject to the maximum limits provided for in this ~~act~~
2 title. An order denying an application to reopen a claim shall not
3 extend the period of time set out in this title for reopening the
4 case. A failure to comply with a medical treatment plan ordered by
5 the Commission shall bar reopening of a claim.

6 B. The review and subsequent judgment or award shall be made in
7 accordance with the procedure prescribed in Sections 69 through 78
8 of this ~~act~~ title. No review shall affect any compensation paid
9 under a prior order, judgment or award.

10 C. The Commission may correct any clerical error in any
11 compensation judgment or award within one (1) year from the date of
12 its issuance.

13 D. Aging and the effects of aging on a compensable injury are
14 not to be considered in determining whether there has been a change
15 in physical condition. Aging or the effect of aging on a
16 compensable injury shall not be considered in determining permanent
17 disability under this section or any other section in this ~~act~~
18 title.

19 SECTION 18. AMENDATORY Section 108, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2015, Section 201), is amended to read as
21 follows:

22 Section 201. A. As used in the Oklahoma Employee Injury
23 Benefit Act:

24

- 1 1. "Benefit plan" means a written plan established by a
2 qualified employer under the requirements of ~~Section 110 of this act~~
3 the Oklahoma Employee Injury Benefit Act;
- 4 2. "Commission" means the Workers' Compensation Commission
5 under the Administrative Workers' Compensation Act;
- 6 3. ~~"Commissioner" means the Insurance Commissioner of the State~~
7 ~~of Oklahoma~~ "Claimant" means a covered employee or his or her
8 representative or beneficiary who claims benefits under the Oklahoma
9 Employee Injury Benefit Act;
- 10 4. "Covered employee" means an employee whose employment with a
11 qualified employer is principally located within the state;
- 12 5. "Department" means the Insurance Department of the State of
13 Oklahoma;
- 14 6. "Employee" means any person defined as an employee pursuant
15 to Section 2 of this ~~act~~ title;
- 16 ~~6.~~ 7. "Employer", except when otherwise expressly stated, means
17 a person, partnership, association, limited liability company,
18 corporation, and the legal representatives of a deceased employer,
19 or the receiver or trustee of a person, partnership, association,
20 corporation, or limited liability company, department,
21 instrumentality or institution of this state and divisions thereof,
22 counties and divisions thereof and other political subdivisions of
23 this state and public trusts employing a person included within the
24 term employee as defined in this section;

1 ~~7.~~ 8. "Fully insured plan" means insurance coverage of one
2 hundred percent (100%) of an employer's statutory benefit liability;

3 9. "Occupational injury disease" means an injury, including
4 death, or occupational illness, causing internal or external harm to
5 the body, which arises out of and in the course of employment shall
6 have the same meaning provided pursuant to Section 65 of this title;

7 ~~8.~~ 10. "Qualified employer" means an employer otherwise subject
8 to the Administrative Workers' Compensation Act that voluntarily
9 elects is approved to be exempt from such act the Administrative
10 Workers' Compensation Act by satisfying the requirements under this
11 act the Oklahoma Employee Injury Benefit Act; and

12 ~~9.~~ 11. "Surviving spouse" means the covered employee's spouse
13 by reason of a legal marriage recognized by the State of Oklahoma or
14 under the requirements of a common law marriage in this state.

15 B. Unless otherwise defined in this section, defined terms in
16 the Administrative Workers' Compensation Act shall have the same
17 meaning in ~~this act~~ the Oklahoma Employee Injury Benefit Act.

18 SECTION 19. AMENDATORY Section 109, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2015, Section 202), is amended to read as
20 follows:

21 Section 202. A. Any employer may ~~voluntarily elect~~ apply to be
22 exempt from the Administrative Workers' Compensation Act and become
23 a qualified employer if the employer by submitting to the Insurance
24 Department:

1 ~~1. Is in compliance with the notice requirements in subsections~~
2 ~~B and H of this section~~ A qualified employer election form published
3 by the Department; and

4 ~~2. Has established a written~~ A benefit plan as described in
5 ~~Section 110 of this act~~ and its proposed effective date, subject to
6 the Department's approval;

7 3. An annual nonrefundable fee of One Thousand Five Hundred
8 Dollars (\$1,500.00);

9 4. The notice to employees required by subsection G of this
10 section; and

11 5. Any additional information required pursuant to rules
12 promulgated by the Department.

13 ~~B. An employer that has elected~~ The Department shall notify an
14 employer whether it has met the requirements to become a qualified
15 employer by satisfying the. ~~If such~~ requirements of this section
16 ~~shall notify the Insurance Commissioner in writing of the election~~
17 ~~and the date that the election is to become effective, which may not~~
18 ~~be sooner than the date that the qualified employer satisfies the~~
19 ~~employee notice requirements in this section. Such qualified~~
20 ~~employer shall pay to the Commissioner an annual nonrefundable fee~~
21 ~~of One Thousand Five Hundred Dollars (\$1,500.00) on the date of~~
22 ~~filing written notice and every year thereafter~~ have been met, the
23 Department shall issue a certificate of qualified employer to the
24 employer. If such requirements have not been met, the notice shall

1 contain a description of the deficiencies and how such deficiencies
2 may be resolved.

3 C. The ~~Commissioner~~ Department shall collect and maintain the
4 information required under this section and shall monitor compliance
5 with the requirements of this section. The ~~Commissioner~~ Department
6 may also require ~~an~~ a qualified employer to provide information
7 periodically to confirm its qualified employer status. ~~Subject to~~
8 ~~subsection D of this section, the Commissioner that it is still in~~
9 compliance with the requirements of a qualified employer. The
10 Department shall adopt rules designating the methods and procedures
11 for confirming whether an employer ~~is~~ has met and continues to meet
12 the requirements to become a qualified employer, notifying an
13 employer of any ~~qualifying~~ deficiencies, and the consequences
14 ~~thereof~~ of noncompliance with the requirements of the Oklahoma
15 Employee Injury Benefit Act. The ~~Commissioner~~ Department shall
16 record the date ~~and time each notice of qualified employer that an~~
17 employer is approved as a qualified employer and the date that such
18 status is received and the becomes effective date of qualified-
19 employer election. The ~~Commissioner~~ Department shall maintain a
20 list on its official website accessible by the public of all
21 qualified employers and the date ~~and time that~~ such exemption status
22 became effective.

23 D. ~~Except as otherwise expressly provided in this act, neither~~
24 ~~the Workers' Compensation Commission, the courts of this state, or~~

1 ~~any state administrative agencies shall promulgate rules or any~~
2 ~~procedures related to design, documentation, implementation,~~
3 ~~administration or funding of a qualified employer's benefit plan~~ If
4 the Department determines that a qualified employer is deficient in
5 any requirements, it shall provide written notice of the deficiency
6 to the employer. Within ten (10) days, the qualified employer shall
7 provide proof to the Department that it has cured the deficiency or
8 it shall automatically lose status as a qualified employer and
9 become subject to the provisions of the Administrative Workers'
10 Compensation Act. An employer that has lost status as a qualified
11 employer may reapply for such status.

12 E. ~~The Commissioner~~ Department may designate an information
13 collection agent, implement an electronic reporting and public
14 information access program, and adopt rules as necessary to
15 implement the information collection requirements of this section.

16 F. ~~The Commissioner may prescribe rules and forms to be used~~
17 ~~for the qualified employer notification and shall require the A~~
18 ~~qualified employer to~~ shall provide its the Department with:

19 1. Its name, address, contact person and phone number, federal
20 tax identification number, and number of persons employed in this
21 state as of a specified date~~;~~;

22 2. The name, title, address and telephone number of the person
23 to contact for claim administration ~~contact information;~~; and a
24

1 3. A listing of all covered business locations in the state.
2 The ~~Commissioner~~ Department shall notify the ~~Commissioner~~ Workers'
3 Compensation Commission and the Department of Labor of all
4 qualified-employer notifications. ~~The Department of Labor shall~~
5 ~~provide such notifications to other governmental agencies as it~~
6 ~~deems necessary.~~

7 G. ~~The Commissioner may contract with the Oklahoma Employment~~
8 ~~Security Commission, the State Treasurer or the Department of Labor~~
9 ~~for assistance in collecting the notification required under this~~
10 ~~section or otherwise fulfilling the Commissioner's responsibilities~~
11 ~~under this act. Such agencies shall cooperate with the Commissioner~~
12 ~~in enforcing the provisions of this section.~~

13 H. ~~A qualified employer shall notify each of its employees in~~
14 ~~the manner provided in this section that it is a qualified employer,~~
15 ~~that it does not carry workers' compensation insurance coverage and~~
16 ~~that such coverage has terminated or been cancelled.~~

17 I. ~~The~~ A qualified employer shall provide written notification
18 to covered employees ~~as required by this section~~ that it does not
19 carry workers' compensation coverage at the time the covered
20 employee is hired or at least five (5) days before the effective
21 time of ~~designation as a qualified employer~~ the benefit plan, as
22 applicable. The notice shall contain the name, title, address and
23 telephone number of the person to contact for claim administration.
24 A qualified employer shall post the employee notification required

1 by this section at conspicuous locations at the qualified employer's
2 places of business as necessary to provide reasonable notice to all
3 covered employees. The ~~Commissioner~~ Department may adopt rules
4 relating to the form, content, and method of delivery of the
5 employee notification required by this section.

6 H. Two or more employers who are members of a controlled group
7 may apply to the Department for approval as a single qualified
8 employer and be listed on a single qualified-employer certificate.
9 The first member of the controlled group shall pay to the Department
10 an annual nonrefundable fee as required by paragraph 3 of subsection
11 A of this section. Each additional participating member of the
12 controlled group shall:

13 1. If the controlled group is fully insured, pay to the
14 Department an annual nonrefundable fee of Two Hundred Fifty Dollars
15 (\$250.00) on the date of filing written notice of election and every
16 year thereafter; or

17 2. If the controlled group is self-insured, pay to the
18 Department an annual nonrefundable fee of Seven Hundred Fifty
19 Dollars (\$750.00) on the date of filing written notice of election
20 and every year thereafter.

21 SECTION 20. AMENDATORY Section 110, Chapter 208, O.S.L.
22 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S.
23 Supp. 2015, Section 203), is amended to read as follows:
24

1 Section 203. A. An employer ~~voluntarily~~ electing to become a
2 qualified employer shall adopt a ~~written~~ benefit plan that complies
3 with the requirements of this section. ~~Qualified employer status is~~
4 ~~optional for eligible employers. The benefit plan shall not become~~
5 ~~effective until the date that the qualified employer first satisfies~~
6 ~~the notice requirements in Section 202 of this title.~~

7 B. The benefit plan shall provide for payment of the same forms
8 of benefits included in the Administrative Workers' Compensation Act
9 for ~~temporary total disability, temporary partial disability,~~
10 ~~permanent partial disability, vocational rehabilitation, permanent~~
11 ~~total disability, disfigurement, amputation or permanent total loss~~
12 ~~of use of a scheduled member, death and medical benefits as a result~~
13 ~~of an occupational compensable injury, on a no-fault basis, with the~~
14 ~~same statute of limitations, notice of injury reporting, and with~~
15 dollar, percentage, and duration limits that are at least equal to
16 ~~or greater than~~ the dollar, percentage, and duration limits
17 contained in ~~Sections 45, 46 and 47 of this title. For this~~
18 ~~purpose, the standards for determination of average weekly wage,~~
19 ~~death beneficiaries, and disability under the Administrative~~
20 ~~Workers' Compensation Act shall apply under the Oklahoma Employee~~
21 ~~Injury Benefit Act; but no the Administrative Workers' Compensation~~
22 ~~Act. Benefit plans shall not be subject to other provision~~
23 ~~requirements of the Administrative Workers' Compensation Act~~
24 ~~defining covered injuries, medical management, dispute resolution or~~

1 ~~other process, funding, notices or penalties shall apply or~~
2 ~~otherwise be controlling under the Oklahoma Employee Injury Benefit~~
3 ~~Act,~~ unless expressly incorporated.

4 C. ~~The benefit plan may provide for lump-sum payouts that are,~~
5 ~~as reasonably determined by the administrator of such plan appointed~~
6 ~~by the qualified employer, actuarially equivalent to expected future~~
7 ~~payments. The benefit plan may also provide for settlement~~
8 ~~agreements; provided, however, any settlement agreement by a covered~~
9 ~~employee shall be voluntary, entered into not earlier than the tenth~~
10 ~~business day after the date of the initial report of injury, and~~
11 ~~signed after the covered employee has received a medical evaluation~~
12 ~~from a nonemergency care doctor, with any waiver of rights being~~
13 ~~conspicuous and on the face of the agreement. The benefit plan~~
14 ~~shall pay benefits without regard to whether the covered employee,~~
15 ~~the qualified employer, or a third party caused the occupational~~
16 ~~injury; and provided further, that the benefit plan shall provide~~
17 ~~eligibility to participate in and provide the same forms and levels~~
18 ~~of benefits to all Oklahoma employees of the qualified employer.~~
19 ~~The Administrative Workers' Compensation Act shall not define,~~
20 ~~restrict, expand or otherwise apply to a benefit plan~~ Regardless of
21 whether such provisions are incorporated into a benefit plan,
22 qualified employers and their covered employees shall be subject to
23 the provisions of the Administrative Workers' Compensation Act
24 related to:

1 1. Compensable injury, as defined pursuant to paragraph 9 of
2 Section 2 of this title;

3 2. Course and scope of employment, as defined pursuant to
4 paragraph 13 of Section 2 of this title;

5 3. Fraud, pursuant to Section 6 of this title;

6 4. Discrimination or retaliation, pursuant to Section 7 of this
7 title;

8 5. Liability other than immediate employer, pursuant to Section
9 36 of this title; and

10 6. Failure to appear for scheduled appointments, pursuant to
11 Section 57 of this title.

12 D. ~~No~~ A qualified employer shall not charge any fee or cost to
13 an employee shall apply related to a qualified employer's benefit
14 plan.

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

20 F. Information submitted to the ~~Commissioner~~ Department as part
21 of the application for approval as a qualified employer, to confirm
22 eligibility for continuing status as a qualified employer, or as
23 otherwise required by the Oklahoma Employee Injury Benefit Act may
24 not be made public by the ~~Commissioner or by an agent or employee of~~

1 ~~the Commissioner~~ Department without the written consent of the
2 applicant or qualified employer, as applicable, except that:

3 1. The information may be discoverable by a party in a civil
4 action or contested case to which the employer that submitted the
5 information is a party, upon a showing by the party seeking to
6 discover the information that:

- 7 a. the information sought is relevant to and necessary
8 for the furtherance of the action or case,
- 9 b. the information sought is unavailable ~~for~~ from other
10 ~~non-confidential~~ nonconfidential sources, and
- 11 c. a subpoena issued by a judicial or administrative
12 officer of competent jurisdiction has been submitted
13 to the ~~Commissioner~~ Department; and

14 2. The ~~Commissioner~~ Department may disclose the information to
15 a public officer having jurisdiction over the regulation of
16 insurance in another state if:

- 17 a. the public officer agrees in writing to maintain the
18 confidentiality of the information, and
- 19 b. the laws of the state in which the public officer
20 serves require the information to be kept
21 confidential; and

22 3. A qualified employer's benefit plan and employee notice
23 shall be open to the public.

24

1 F. A qualified employer's insurance coverage pertains only to
2 covered employees in this state. An employer with employees in
3 other states shall obtain insurance coverage in compliance with the
4 laws of that state; provided:

5 1. A qualified employer's benefit plan and insurance coverage
6 may apply to an employee who is employed outside of this state on
7 temporary assignment;

8 2. A qualified employer's insurance policy may include an
9 endorsement that provides coverage for employees working in other
10 states in compliance with the laws of such states; and

11 3. If an employee is not principally employed in this state but
12 is injured in this state, the employee shall be subject to the
13 provisions of the specific act in this title under which the
14 employer provides coverage.

15 SECTION 21. AMENDATORY Section 111, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2015, Section 204), is amended to read as
17 follows:

18 Section 204. A. A qualified employer may self-fund or insure
19 benefits payable under the benefit plan, employers' liability under
20 this act, and any other insurable risk related to its status as a
21 qualified employer with any insurance carrier authorized to do
22 business in this state.

23 B. Insurance coverage or surety bond obtained by a qualified
24 employer shall be from an admitted ~~or surplus lines~~ insurer ~~with an~~

1 ~~AM Best Rating of B+ or better.~~ The Insurance Department has no
2 duty to approve insurance rates charged for this coverage. A
3 qualified employer shall secure compensation to covered employees in
4 one of the following ways:

5 1. Obtaining ~~accidental~~ insurance coverage in an amount equal
6 to the compensation obligation;

7 2. Furnishing satisfactory proof to the ~~Commissioner~~ Department
8 of the employer's financial ability to pay the compensation (self-
9 insure). ~~The Commissioner, under~~ Under rules adopted by the
10 ~~Insurance Department or the Commissioner for an individual self-~~
11 ~~insured employer,~~ the Department shall require an a self-insured
12 employer that has:

13 a. less than one hundred employees or less than One
14 Million Dollars (\$1,000,000.00) in net assets to:

15 (1) deposit with the ~~Commissioner~~ Department
16 securities, an irrevocable letter of credit or a
17 surety bond payable to the state, in an amount
18 determined by the ~~Commissioner~~ Department which
19 shall be at least an average of the yearly claims
20 for the last three (3) years, ~~or~~

21 (2) provide proof of excess coverage with such terms
22 and conditions as is commensurate with their
23 ability to pay the benefits required by the
24 provisions of this act, or

1 (3) provide a combination of the requirements of
2 divisions (1) and (2) of this subparagraph, as
3 may be approved by the Department,

4 b. one hundred or more employees and One Million Dollars
5 (\$1,000,000.00) or more in net assets to:

6 (1) secure a surety bond payable to the state, or an
7 irrevocable letter of credit, in an amount
8 determined by the ~~Commissioner~~ Department which
9 shall be at least an average of the yearly claims
10 for the last three (3) years, ~~or~~

11 (2) provide proof of excess coverage with such terms
12 and conditions as is commensurate with their
13 ability to pay the benefits required by the
14 provisions of this act, or

15 (3) provide a combination of the requirements of
16 divisions (1) and (2) of this subparagraph, as
17 may be approved by the Department; or

18 3. Any other security as may be approved by the ~~Commissioner~~
19 Department.

20 C. The ~~Commissioner~~ Department may waive the requirements of
21 this section in an amount which is commensurate with the ability of
22 the employer to pay the benefits required by the provisions of this
23 act. Irrevocable letters of credit required by this section shall
24 contain such terms as may be prescribed by the ~~Commissioner~~

1 Department and shall be issued for the benefit of the state by a
2 financial institution whose deposits are insured by the Federal
3 Deposit Insurance Corporation.

4 D. An employer who does not fulfill the requirements of this
5 section is not relieved of the obligation for compensation to a
6 covered employee. The security required under this section,
7 including any interest thereon, shall be maintained by the
8 ~~Commissioner~~ Department as provided in this act until each:

9 1. Each claim for benefits is paid, settled, or lapses under
10 this act, and costs of administration of such claims are paid; or

11 2. The Department has determined that the self-insured
12 qualified employer is impaired and has advised the Oklahoma Option
13 Self-insured Guaranty Fund of the impairment and released the
14 balance of any security required by this section to the Oklahoma
15 Option Self-insured Guaranty Fund. Claims administration, including
16 processing, investigating, and paying valid claims against an
17 impaired qualified employer's benefit plan under this act may
18 include claim upon the surety that issued any bond, a draw upon the
19 bank that issued any letter of credit, or liquidation of other
20 security.

21 E. Any ~~bond~~ security shall be ~~filed~~ deposited with and held by
22 the ~~Commissioner~~ Department and shall be for the exclusive benefit
23 of any covered employee of a qualified employer.

24

1 F. Any security ~~held~~ released by the ~~Commissioner~~ Department to
2 the Oklahoma Option Self-insured Guaranty Fund may be used to make a
3 payment to or on behalf of a covered employee provided the following
4 requirements are met:

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

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

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

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

21 G. The ~~Commissioner~~ Department shall promulgate rules to carry
22 out the provisions of this section including those establishing the
23 procedure by which ~~a covered employee may request and receive~~
24 ~~payment from the security held by the Commissioner~~ an employer may

1 be approved to self-insure all or part of the employer's liability
2 under the Oklahoma Employee Injury Benefit Act.

3 H. The benefit plan may provide some level of benefits for
4 sickness, injury or death not due to ~~an occupational~~ a compensable
5 injury.

6 I. A qualified employer shall hold harmless any insurance agent
7 or broker who sold the employer a benefits program compliant with
8 the Oklahoma Employee Injury Benefit Act if the qualified employer
9 is sued in district court for an injury arising in the course and
10 scope of employment.

11 SECTION 22. AMENDATORY Section 118, Chapter 208, O.S.L.
12 2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S.
13 Supp. 2015, Section 211), is amended to read as follows:

14 Section 211. A. If ~~an~~ a qualified employer denies a claimant's
15 claim for benefits under ~~this act~~ the Oklahoma Employee Injury
16 Benefit Act, the qualified employer shall notify him or her in
17 writing of the decision ~~or the need for additional information~~
18 within fifteen (15) days after receipt of the claim, subject to a
19 reasonable extension if the qualified employer requests additional
20 information. Unless otherwise provided by law, the adverse benefit
21 determination letter shall contain an explanation of why the claim
22 was denied, including the benefit plan provision or provisions that
23 were the basis for the denial, and a detailed description of how to
24 appeal the determination. The letter shall also inform the claimant

1 of the right to testify at the hearing, produce witnesses in person
2 or by written statement and submit expert reports. Additional claim
3 procedures consistent with this section may be specified in the
4 benefit plan.

5 B. ~~The benefit plan~~ Qualified employers and claimants shall
6 ~~provide~~ be subject to the following ~~minimum~~ appeal rights:

7 1. The claimant may appeal in writing an initial adverse
8 benefit determination to an appeals committee within one hundred
9 eighty (180) days following his or her receipt of the adverse
10 benefit determination. ~~The appeal~~ appeals committee shall ~~be heard~~
11 ~~by a committee consisting~~ consist of at least three people ~~that,~~
12 none of whom are employees of the qualified employer, were ~~not~~
13 involved in the original adverse benefit determination or have any
14 pecuniary interest in the outcome of the appeal. The appeals
15 committee shall conduct a full and fair hearing including, but not
16 limited to, the opportunity to present live testimony, witness
17 statements, briefs, expert reports and oral argument on the merits.
18 The appeals committee shall not give any deference to the claimant's
19 initial adverse benefit determination in its review;

20 2. The appeals committee may request any additional information
21 it deems necessary to make a decision, including having the claimant
22 submit to a medical exam. The committee shall create a
23 comprehensive record of the hearing and maintain such record for no
24

1 less than two (2) years from the date the decision on appeal is
2 issued;

3 ~~3. The committee shall notify the claimant in writing of its~~
4 ~~decision, including an explanation of the decision and his or her~~
5 ~~right to judicial review;~~

6 ~~4.~~ Subject to the need for a reasonable extension of time due
7 to matters beyond the control of the benefit plan, the appeals
8 committee shall review the determination and issue a decision no
9 later than forty-five (45) days from the date the notice of contest
10 is received. The committee shall provide written notice of its
11 decision to the claimant and the qualified employer. Such notice
12 shall include a detailed explanation of the decision, analysis of
13 evidence presented and instruction for seeking judicial review of
14 the decision. No legal action may be brought by or with respect to
15 a claimant to recover benefits under the benefit plan before the
16 foregoing claim procedures have been exhausted;

17 ~~5. If any part of an adverse benefit determination is upheld by~~
18 ~~the committee, the~~ 4. The qualified employer or claimant may then
19 file appeal the decision of the appeals committee by filing a
20 petition for review with the Commission within one (1) year after
21 the date the ~~claimant receives notice that~~ of the adverse benefit
22 ~~determination, or part thereof, was upheld~~ is received. The appeals
23 committee shall provide the record of the hearing to the Commission
24 within seven (7) days of notice from the Commission. If the

1 Commission determines in its sole discretion that the record is
2 deficient, it shall provide written notice to the appeals committee
3 of the defect or defects, after which the committee shall have three
4 (3) days to submit a cured record. If the record is not cured, the
5 administrative law judge shall presume that the defect or defects
6 are unfavorable to the qualified employer. The Commission shall
7 appoint an administrative law judge to hear ~~any~~ the appeal ~~of an~~
8 ~~adverse benefit determination~~ as a trial de novo. The Commission
9 shall prescribe additional rules governing the authority and
10 responsibility of the parties, the administrative law judge and the
11 Commission during the appeal processes. The administrative law
12 judge and Commission shall act as the court of competent
13 jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess
14 adjudicative authority to render decisions in individual proceedings
15 by claimants ~~to recover benefits due to the claimant or employers~~
16 under the terms of the ~~claimant's~~ applicable plan, including the
17 authority to award or deny benefits and otherwise enforce the
18 ~~claimant's~~ rights under the terms of the benefit plan, ~~or to clarify~~
19 ~~the claimant's rights to future benefits under the terms of the~~
20 ~~plan;~~

21 ~~6.~~ 5. The ~~Commission~~ administrative law judge shall ~~rely on the~~
22 ~~record established by the internal appeal process and use an~~
23 ~~objective standard of review that is not arbitrary or capricious~~ the
24 claim de novo. Any party aggrieved by the judgment, decision, or

1 award made by an administrative law judge may, within ten (10) days
2 of issuance, appeal to the Commission. After hearing, the
3 Commission may reverse or modify the decision of the administrative
4 law judge only if it determines that the decision was against the
5 clear weight of evidence or contrary to law. All such proceedings
6 of the Commission shall be recorded by a court reporter. Any
7 judgment of the Commission which reverses a decision of the
8 administrative law judge shall contain specific findings relating to
9 the reversal. Any award by the administrative law judge or
10 Commission shall be limited to benefits payable under the terms of
11 the benefit plan and, to the extent provided herein, attorney fees
12 and costs; and

13 ~~7.~~ 6. If the claimant appeals to the Commission and any part of
14 the adverse benefit determination is upheld, he or she may appeal to
15 the Oklahoma Supreme Court. The judgment, decision or award of the
16 Commission shall be final and conclusive on all questions within its
17 jurisdiction between the parties unless an action is commenced in
18 the Supreme Court of this state to review the judgment, decision or
19 award within twenty (20) days of being sent to the parties. Any
20 judgment, decision or award made by an administrative law judge
21 shall be stayed until all appeal rights have been waived or
22 exhausted. The Supreme Court may modify, reverse, remand for
23 rehearing, or set aside the judgment, decision or award only if it
24 was:

- 1 a. in violation of constitutional provisions,
- 2 b. in excess of the statutory authority or jurisdiction
- 3 of the Commission,
- 4 c. made on unlawful procedure,
- 5 d. affected by other error of law,
- 6 e. clearly erroneous in view of the reliable, material,
- 7 probative and substantial competent evidence,
- 8 f. arbitrary or capricious,
- 9 g. procured by fraud, or
- 10 h. missing findings of fact on issues essential to the
- 11 decision.

12 Such action shall be commenced by filing with the Clerk of the
13 Supreme Court a certified copy of the judgment, decision or award of
14 the Commission attached to a petition which shall specify why the
15 judgment, decision or award is erroneous or illegal.

16 The Supreme Court shall require the appealing party to file
17 within forty-five (45) days from the date of the filing of an appeal
18 a transcript of the record of the proceedings before the Commission,
19 or such later time as may be granted by the Supreme Court on
20 application and for good cause shown. The action shall be subject
21 to the law and practice applicable to comparable civil actions
22 cognizable in the Supreme Court.

23 ~~C. If any of the provisions in paragraphs 5 through 7 of~~
24 ~~subsection B of this section are determined to be unconstitutional~~

1 ~~or otherwise unenforceable by the final nonappealable ruling of a~~
2 ~~court of competent jurisdiction, then the following minimal appeal~~
3 ~~procedures will go into effect:~~

4 ~~1. The appeal shall be heard by a committee consisting of at~~
5 ~~least three people that were not involved in the original adverse~~
6 ~~benefit determination. The appeals committee shall not give any~~
7 ~~deference to the claimant's initial adverse benefit determination in~~
8 ~~its review;~~

9 ~~2. The committee may request any additional information it~~
10 ~~deems necessary to make a decision, including having the claimant~~
11 ~~submit to a medical exam;~~

12 ~~3. The committee shall notify the claimant in writing of its~~
13 ~~decision, including an explanation of the decision and his or her~~
14 ~~right to judicial review;~~

15 ~~4. The committee shall review the determination and issue a~~
16 ~~decision no later than forty-five (45) days from the date the notice~~
17 ~~of contest is received;~~

18 ~~5. If any part of an adverse benefit determination is upheld by~~
19 ~~the committee, the claimant may then file a petition for review in a~~
20 ~~proper state district court; and~~

21 ~~6. The district court shall rely on the record established by~~
22 ~~the internal appeal process and use a deferential standard of~~
23 ~~review.~~

1 ~~D. The provisions of this section shall apply to the extent not~~
2 ~~inconsistent with or preempted by any other applicable law or rule.~~

3 ~~E. All intentional tort or other employers' liability claims~~
4 ~~may proceed through the appropriate state courts of Oklahoma,~~
5 ~~mediation, arbitration, or any other form of alternative dispute~~
6 ~~resolution or settlement process available by law.~~

7 A fee of One Hundred Dollars (\$100.00) per appeal to the Supreme
8 Court shall be paid by the party filing the appeal to the Commission
9 and deposited to the credit of the Workers' Compensation Fund as
10 costs for preparing, assembling, indexing and transmitting the
11 record for appellate review. If more than one party to the action
12 files an appeal from the same judgment, decision or award, the fee
13 shall be paid by the party whose petition in error commences the
14 principal appeal.

15 SECTION 23. This act shall become effective in accordance with
16 the provisions of Section 58 of Article V of the Oklahoma
17 Constitution.

18
19 55-2-10130 SD 05/25/16
20
21
22
23
24