STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 767 By: Sykes of the Senate

and

Echols of the House

COMMITTEE SUBSTITUTE

[workers' compensation - administrative workers' compensation system and Oklahoma Employee Injury Benefit Act - immunity from certain liability - temporary total disability - reporting requirements - attorney fees - appellate and adjudicative authority - effective date]

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

SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as follows:

Section 6.

A. 1. a. Any person or entity who makes any material false statement or representation, who willfully and

knowingly omits or conceals any material information, or who employs any device, scheme, or artifice, or who aids and abets any person for the purpose of:

(1) obtaining any benefit or payment,

(2) increasing any claim for benefit or payment, or

(3) obtaining workers' compensation coverage under this act,

shall be guilty of a felony punishable pursuant to Section 1663 of Title 21 of the Oklahoma Statutes.

b. A material false statement or representation includes, but is not limited to, attempting to obtain treatment or compensation for body parts that were not injured in the course and scope of employment.

c. Fifty percent (50%) of any criminal fine imposed and collected under this section shall be paid and allocated in accordance with applicable law to the Workers' Compensation Fund administered by the Commission.

2. Any person or entity with whom any person identified in division (1) of subparagraph a of paragraph 1 of this subsection has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a felony.

B. A copy of division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be included on all forms

prescribed by the Commission for the use of injured employees claiming benefits and for the use of employers in responding to employees' claims under this act.

C. Where the Commission or the Attorney General finds that a violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section has been committed, or that any other criminal violations in furtherance of this act were committed, the chair of the Commission or the Attorney General shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction over the matter.

D. 1. a. There shall be established within the Office of the Attorney General a Workers' Compensation Fraud Investigation Unit, funded by the Commission. The Attorney General shall appoint a Director of the Workers' Compensation Fraud Investigation Unit, who may also serve as the director of any other designated insurance fraud investigation division within the Attorney General's office.

b. (1) The Unit shall investigate workers' compensation fraud, any additional criminal violations that may be related to workers' compensation fraud, and any other insurance fraud matters as may be assigned at the discretion of the Attorney General.

(2) The Attorney General shall designate the personnel assigned to the Unit, who, on meeting the qualifications established by the Oklahoma Council on Law Enforcement Education and Training, shall have the powers of specialized law enforcement officers of the State of Oklahoma for the purpose of conducting investigations under this subparagraph. Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the Oklahoma Council on Law Enforcement Education and Training.

2. The Attorney General and his or her deputies and assistants and the Director of the Workers' Compensation Fraud Investigation Unit and his or her deputies and assistants shall be vested with the power of enforcing the requirements of this section.

3. It shall be the duty of the Unit to assist the Attorney General in the performance of his or her duties. The Unit shall determine the identity of employees in this state who have violated division (1) of subparagraph a of paragraph 1 of subsection A of this section and report the violation to the Office of the Attorney General and the Commission. The Attorney General shall report the

violation to the prosecuting attorney having jurisdiction over the matter.

4. a. In the course of any investigation being conducted by the Unit, the Attorney General and his or her deputies and assistants and the Director and his or her deputies and assistants shall have the power of subpoena and may:

(1) subpoena witnesses,

(2) administer oaths or affirmations and examine any individual under oath, and

(3) require and compel the production of records, books, papers, contracts, and other documents.

b. The issuance of subpoenas for witnesses shall be served in the same manner as if issued by a district court.

c. (1) Upon application by the commissioner or the Director of the Unit, the district court located in the county where a subpoena was served may issue an order compelling an individual to comply with the subpoena to testify.

(2) Any failure to obey the order of the court may be punished as contempt.

d. If any person has refused in connection with an investigation by the Director to be examined under

oath concerning his or her affairs, then the Director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.

e. In addition to the punishments described in paragraph 1 of subsection A of this section, any person providing false testimony under oath or affirmation in this state as to any matter material to any investigation or hearing conducted under this subparagraph, or any workers' compensation hearing, shall upon conviction be guilty of perjury.

5. Fees and mileage of the officers serving the subpoenas and of the witnesses in answer to subpoenas shall be as provided by law.

6. a. Every carrier or employer who has reason to suspect that a violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section has occurred shall be required to report all pertinent matters to the unit.

b. No carrier or employer who makes a report for a suspected violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section by an

employee shall be liable to the employee unless the carrier or employer knowingly and intentionally included false information in the report.

c. (1) Any carrier or employer who willfully and knowingly fails to report a violation under division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00).

(2) Fifty percent (50%) of any criminal fine imposed and collected under this subparagraph shall be paid and allocated in accordance with applicable law to the fund administered by the Commission.

d. Any employee may report suspected violations of division (1) of subparagraph a of paragraph 1 of subsection A of this section. No employee who makes a report shall be liable to the employee whose suspected violations have been reported.

E. 1. For the purpose of imposing criminal sanctions or a fine for violation of the duties of this act, the prosecuting attorney shall have the right and discretion to proceed against any person or organization responsible for such violations, both corporate and individual liability being intended by this act.

2. The prosecuting attorney of the district to whom a suspected violation of subsection A of this section, or any other criminal violations that may be related thereto, have been referred shall, for the purpose of assisting him or her in such prosecutions, have the authority to appoint as special deputy prosecuting attorneys licensed attorneys-at-law in the employment of the Unit or any other designated insurance fraud investigation division within the Attorney General's office. Such special deputy prosecuting attorneys shall, for the purpose of the prosecutions to which they are assigned, be responsible to and report to the prosecuting attorney.

F. Notwithstanding any other provision of law, investigatory files as maintained by the Attorney General's office and by the Unit shall be deemed confidential and privileged. The files may be made open to the public once the investigation is closed by the Director of the Workers' Compensation Fraud Investigation Unit with the consent of the Attorney General.

G. The Attorney General, with the cooperation and assistance of the Commission, is authorized to establish rules as may be necessary to carry out the provisions of this section.

H. Nothing in this section shall be deemed to create a civil cause of action.

I. The Commission shall include a statement on all forms for notices and instructions to employees, employers, carriers and

third-party administrators that any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment, a fine or both.

J. If an injured employee is charged with workers' compensation fraud, any pending workers' compensation proceeding, including benefits, shall be stayed after the preliminary hearing is concluded and the claimant is bound over and shall remain stayed until the final disposition of the criminal case. All notice requirements shall continue during the stay.

K. If the Attorney General's office is in compliance with the discovery provisions of Section 258 of Title 22 of the Oklahoma Statutes, medical records created for the purpose of treatment and medical opinions obtained during the investigation shall be admissible at the preliminary hearing without the appearance of the medical professional creating such records or opinions. However, when material evidence dispositive to the issues of whether there was probable cause the crime was committed and whether the defendant committed the crime was not included in a report or opinion admitted at preliminary hearing, but might be presented at a pretrial hearing by a medical professional who created such report or opinion, the judge may, upon the motion of either party, order the appearance of the medical professional creating such report or opinion. Questions of fact regarding the conduct of the defendant that conflict with the findings of the medical professional evaluating the defendant

shall not constitute material evidence. In the event of such motion, notice shall be given to the Attorney General's Workers Compensation Fraud and Investigation and Prosecution Unit. A hearing shall be held and, if the motion is granted, the evidence shall not be presented fewer than five (5) days later.

L. Any person or entity who, in good faith and exercising due care, reports suspected workers' compensation fraud or insurance fraud, or who allows access to medical records or other information pertaining to suspected workers' compensation or insurance fraud by persons authorized to investigate a report concerning the workers' compensation and insurance fraud, shall have immunity from any civil or criminal liability for such report or access. Any such person or entity shall have the same immunity with respect to participation in any judicial proceeding resulting from such reports. For purposes of any civil or criminal proceeding there shall be a presumption of good faith of any person making a report, providing medical records or providing information pertaining to a workers' compensation or insurance fraud investigation by the Attorney General, and participating in a judicial proceeding resulting from a subpoena or a report.

SECTION 2. AMENDATORY Section 40, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 40), is amended to read as follows:

Section 40. A. 1. Any employer who fails to secure compensation required under this act, upon conviction, shall be guilty of a misdemeanor and subject to a fine of up to Ten Thousand Dollars ($10,000.00) to be deposited in the Workers' Compensation Fund.

2. This subsection shall not affect any other liability of the employer under this act.

B. 1. Whenever the Commission has reason to believe that any employer required to secure the payment of compensation under this act has failed to do so, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of this act and containing the amount, if any, of the civil penalty to be assessed against the employer under paragraph 5 of this subsection.

2. a. An employer may contest a proposed judgment of the Commission issued under paragraph 1 of this subsection by filing with the Commission, within twenty (20) days of receipt of the proposed judgment, a written request for a hearing.

b. The request for a hearing does not need to be in any particular form but shall specify the grounds on which the person contests the proposed judgment, the proposed assessment, or both.

c. If a written request for hearing is not filed with the Commission within the time specified in subparagraph a of this paragraph, the proposed judgment, the proposed penalty, or both, shall be a final judgment of the Commission and shall not be subject to further review by any court, except if the employer shows good cause why it did not timely contest the judgment or penalty.

d. A proposed judgment by the Commission under this section shall be prima facie correct, and the burden is on the employer to prove that the proposed judgment is incorrect.

3. a. If the employer alleges that a carrier has contracted to provide it workers' compensation insurance coverage for the period in question, the employer shall include the allegation in its request for hearing and shall name the carrier.

b. The Commission shall promptly notify the carrier of the employer's allegation and of the date of hearing.

c. The carrier shall promptly, and no later than five (5) days before the hearing, respond in writing to the employer's allegation by providing evidence of coverage for the period in question or by affirmatively denying the employer's allegation.

4. Hearings under this section shall be procedurally conducted as provided in Sections 69 through 78 of this ~~act~~ title. In lieu of a hearing, the Commission may utilize informal disposition in any individual proceeding under this section by consent agreement.

5. The Commission may assess a fine against an employer who fails to secure the payment of compensation in an amount up to One Thousand Dollars ($1,000.00) per day of violation payable to the Workers' Compensation Fund.

6. If an employer fails to secure the payment of compensation or pay any civil penalty assessed against the employer after a judgment issued under this section has become final by operation of law or on appeal, the Commission may petition the Oklahoma County District Court or the district court of the county where the employer's principal place of business is located for an order enjoining the employer from engaging in further employment until such time as the employer secures the payment of compensation or makes full payment of all civil penalties.

SECTION 3. AMENDATORY Section 45, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 45), is amended to read as follows:

Section 45. A. Temporary Total Disability.

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

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

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

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

B. Temporary Partial Disability.

1. If the injured employee is temporarily unable to perform his or her job, but may perform alternative work offered by the employer, he or she shall be entitled to receive compensation equal to ~~the greater of~~ seventy percent (70%) of the difference between the injured employee's average weekly wage before the injury and his or her weekly wage for performing alternative work after the injury, but only if his or her weekly wage for performing the alternative work is less than the temporary total disability rate. <u>The injured employee's actual earnings plus temporary total disability shall not exceed the temporary total disability rate.</u>

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

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

C. Permanent Partial Disability.

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

2. Permanent partial disability shall not be allowed to a part of the body for which no medical treatment has been received. A

determination of permanent partial disability made by the Commission or administrative law judge which is not supported by objective medical findings provided by a treating physician who is a medical doctor or doctor of osteopathy or a qualified independent medical examiner shall be considered an abuse of discretion.

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

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

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

a. The amount of the permanent partial disability award shall be reduced by seventy percent (70%) of the

employee's average weekly wage for each week he works in his pre-injury or equivalent job.

b. If, for any reason other than misconduct as defined in Section 2 of this ~~act~~ title, the employer terminates the employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.

c. If the employee refuses an offer to return to his pre-injury or equivalent job, the permanent partial disability award shall continue to be deferred and shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he refuses to return to his pre-injury or equivalent job.

d. Attorney fees for permanent partial disability awards, as approved by the Commission, shall be calculated based upon the total permanent partial disability award and paid in full at the time of the deferral.

e. Assessments pursuant to Sections 31, 98, 112 and 165 of this act shall be calculated based upon the amount of the permanent partial disability award and shall be paid at the time of the deferral.

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

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

of preexisting permanent partial disability shall be established by competent evidence.

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

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

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

7. No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.

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

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

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

D. Permanent Total Disability.

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

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

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

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

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

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

a. if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,

b. if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,

c. if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,

d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,

e. if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,

f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,

g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,

h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,

i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,

j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,

k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,

l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,

m. if the employee's occupation is laborer and the medical condition is tibial plateau fracture, pilon fracture,

n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,

o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or

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

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

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

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

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

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

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

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

F. Disfigurement.

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

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

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

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

SECTION 4. AMENDATORY Section 63, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 63), is amended to read as follows:

Section 63. A. Within ten (10) days after the date of receipt of notice or of knowledge of injury <u>that results in absence from work for more than three (3) days</u> or death, the employer shall send to the Commission a report setting forth:

1. The name, address, and business of the employer;

2. The name, address, and occupation of the employee;

3. The cause and nature of the injury or death;

4. The year, month, day, approximately when, and the particular locality where, the injury or death occurred; and

5. Such other information as the Commission may require.

B. Additional reports with respect to the injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe. However, an employer may refuse to provide any information that it deems privileged or confidential.

C. Any report provided for in subsection A or B of this section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death on account of which the report is made.

D. The mailing of any report in a stamped envelope, properly addressed, within the time prescribed in subsection A or B of this section, shall be in compliance with this section. In addition, the Commission shall establish a means of electronic delivery of any report or other information required by this section.

E. 1. Any employer who after notice refuses to send any report required by this section shall be subject to a civil penalty in an amount of Five Hundred Dollars ($500.00) for each refusal.

2. Whenever the employer has failed or refused to comply as provided in this section, the Commission may serve on the employer a proposed judgment declaring the employer to be in violation of this act and containing the amount, if any, of the civil penalty to be assessed against the employer under this section.

F. An employer may contest a proposed judgment of the Commission issued under subsection E of this section by filing with

the Commission, within twenty (20) days of receipt of the proposed judgment, a written request for a hearing. If a written request for hearing is not filed with the Commission within this time, the proposed judgment, proposed penalty, or both, shall be a final judgment of the Commission. The request for a hearing does not need to be in any particular form but shall specify the grounds on which the person contests the proposed judgment, the proposed assessment, or both. A proposed judgment by the Commission under this section shall be prima facie correct, and the burden is on the employer to prove that the proposed judgment is incorrect.

G. Hearings conducted under this section shall proceed as provided in Sections 69 through 78 of this ~~act~~ title.

H. If an employer fails to pay any civil penalty assessed against the employer after a judgment issued under this section has become final by operation of law, the Commission may petition the district court of the county where the employer's principal place of business is located for an order enjoining the employer from engaging in further employment or conduct of business until such time as the employer makes all required reports and pays all civil penalties.

SECTION 5. AMENDATORY Section 65, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 65), is amended to read as follows:

Section 65. A. If an employee suffers from an occupational disease as defined in this section and is disabled or dies as a result of the disease, the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disability or death were caused by injury arising out of work activities within the scope of employment, except as otherwise provided in this section.

B. No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself or herself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of the disease.

C. 1. If an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or if disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the major cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death.

2. The reduction in compensation is to be effected by reducing the number of weekly or monthly payments or the amounts of the

payments, as under the circumstances of the particular case may be for the best interest of the claimant.

D. 1. "Occupational disease", as used in this act, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this act. A causal connection between the occupation or employment and the occupational disease shall be established by a preponderance of the evidence.

2. No compensation shall be payable for any contagious or infectious disease unless contracted in the course and scope of employment ~~in or immediately connected with a hospital or sanatorium in which persons suffering from that disease are cared for or treated~~.

3. No compensation shall be payable for any ordinary disease of life to which the general public is exposed.

E. 1. When compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease and the carrier, if any, on the risk when the employee was last injuriously exposed under the employer shall be liable.

2. The amount of the compensation shall be based on the average weekly wage of the employee when last injuriously exposed under the

employer, and the notice of injury and claim for compensation shall be given and made to that employer.

F. 1. An employer shall not be liable for any compensation for an occupational disease unless:

a. the disease is due to the nature of an employment in which the hazards of the disease actually exist and ~~are characteristic thereof and peculiar to the trade, occupation, process, or employment and~~ is actually incurred in the course and scope of his or her employment. This includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course and scope of his or her employment,

b. disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment, or

c. in case of death, death follows continuous disability from the disease, commencing within the period, for which compensation has been paid or awarded or timely claim made as provided in subparagraph b of this

paragraph and results within seven (7) years after the last exposure.

2. However, in case of a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only, the limitations expressed do not apply.

SECTION 6. AMENDATORY Section 82, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 82), is amended to read as follows:

Section 82.

A. 1. a. Fees for legal services rendered in a claim shall not be valid unless approved by the Commission.

b. An attorney representing an injured employee may only recover attorney fees up to ten percent (10%) of any temporary total disability or temporary partial disability compensation and twenty percent (20%) of any permanent partial disability, permanent total disability, or death compensation awarded to an injured employee by the Commission from a controverted claim. If the employer makes a written offer to settle permanent partial disability, permanent total disability, or death compensation and that offer is rejected, the employee's attorney may not recover attorney fees in excess of thirty percent (30%) of the

difference between the amount of any award and the settlement offer.

(1) Attorney fees may not be collected for recovery on noncontroverted claims.

(2) Attorney fees shall not be awarded on medical benefits or services.

(3) The fee for legal services rendered by an attorney representing an employee in connection with a change of physician requested by the injured employee, controverted by the employer, and awarded by the Commission, shall be Two Hundred Dollars ($200.00).

(4) Attorney fees may include not more than ten percent (10%) of the value, or reasonable estimate thereof, of vocational rehabilitation services.

c. A "controverted claim" means that there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation. A request for a change in physician shall not trigger a controverted claim for purposes of

recovering any attorney fees except the fees under division 3 of subparagraph b of this paragraph. A controverted claim shall not exist if the employee or his or her representative has withheld pertinent information in his or her possession related to the claim from the employer or has violated the provisions of Section 6 of this ~~act~~ title.

2. Any person who or entity that brings a controverted claim against the State Treasurer, as a custodian of the Multiple Injury Trust Fund, shall provide notice of the claim to the Commission. Thereafter, the Commission shall direct fees for legal services be paid from the Fund, in addition to any compensation award. The fees shall be authorized only on the difference between the amount of compensation controverted and the amount awarded from the Fund.

3. In any case where attorney fees are allowed by the Commission, the limitations expressed in subparagraph b of paragraph 1 of this subsection shall apply.

4. Medical providers may voluntarily contract with the attorney for the employee to recover disputed charges, and the provider may charge a reasonable fee for the cost of collection.

B. An attorney representing an employee under this act may not recover fees for services except as expressly provided in this section.

SECTION 7. AMENDATORY Section 109, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 202), is amended to read as follows:

Section 202. A. Any employer may voluntarily elect to be exempt from the Administrative Workers' Compensation Act and become a qualified employer if the employer:

1. Is in compliance with the notice requirements in subsections B and H of this section; and

2. Has established a written benefit plan as described in Section ~~110~~ 203 of this ~~act~~ title.

B. An employer that has elected to become a qualified employer by satisfying the requirements of this section shall notify the Insurance Commissioner in writing of the election and the date that the election is to become effective, which may not be sooner than the date that the qualified employer satisfies the employee notice requirements in this section. Such qualified employer shall pay to the Commissioner an annual nonrefundable fee of ~~One Thousand Five Hundred Dollars ($1,500.00)~~ One Thousand Dollars ($1,000.00) on the date of filing written notice and every year thereafter.

C. The Commissioner shall collect and maintain the information required under this section and shall monitor compliance with the requirements of this section. The Commissioner may also require an employer to confirm its qualified-employer status. Subject to subsection D of this section, the Commissioner shall adopt rules

designating the methods and procedures for confirming whether an employer is a qualified employer, notifying an employer of any qualifying deficiencies, and the consequences thereof. The Commissioner shall record the date and time each notice of qualified-employer status is received and the effective date of qualified-employer election. The Commissioner shall maintain a list on its official website accessible by the public of all qualified employers and the date and time such exemption became effective.

D. Except as otherwise expressly provided in this act, neither the Workers' Compensation Commission, the courts of this state, or any state administrative agencies shall promulgate rules or any procedures related to design, documentation, implementation, administration or funding of a qualified employer's benefit plan.

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

F. The Commissioner may prescribe rules and forms to be used for the qualified-employer notification and shall require the qualified employer to provide its name, address, contact person and phone number, federal tax identification number, number of persons employed in this state as of a specified date, claim administration contact information, and a listing of all covered business locations in the state. The Commissioner shall notify the Commissioner of

Labor of all qualified-employer notifications. The Department of Labor shall provide such notifications to other governmental agencies as it deems necessary.

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

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

I. The qualified employer shall provide written notification to employees as required by this section at the time the employee is hired or at the time of designation as a qualified employer. The qualified employer shall post the employee notification required by this section at conspicuous locations at the qualified employer's places of business as necessary to provide reasonable notice to all employees. The Commissioner may adopt rules relating to the form, content, and method of delivery of the employee notification required by this section.

SECTION 8. AMENDATORY Section 118, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 211), is amended to read as follows:

Section 211. A. If an employer denies a claimant's claim for benefits under this act, the employer shall notify him or her in writing of the decision or the need for additional information within fifteen (15) days after receipt of the claim. Unless otherwise provided by law, the adverse benefit determination letter shall contain an explanation of why the claim was denied, including the plan provisions that were the basis for the denial, and a detailed description of how to appeal the determination. Additional claim procedures consistent with this section may be specified in the benefit plan.

B. The benefit plan shall provide the following minimum appeal rights:

1. The claimant may appeal in writing an initial adverse benefit determination to an appeals committee within one hundred eighty (180) days following his or her receipt of the adverse benefit determination. The appeal shall be heard by a committee consisting of at least three people that were not involved in the original adverse benefit determination. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;

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

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

4. Subject to the need for a reasonable extension of time due to matters beyond the control of the benefit plan, the committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received. No legal action may be brought by or with respect to a claimant to recover benefits under the benefit plan before the foregoing claim procedures have been exhausted;

5. If any part of an adverse benefit determination is upheld by the committee, the claimant may then file a petition for review with the Commission sitting en banc within one (1) year after the date the claimant receives notice that the adverse benefit determination, or part thereof, was upheld. The Commission en banc shall act as the court of competent jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by claimants to recover benefits due to the claimant under the terms of the claimant's plan, to enforce the claimant's rights under the terms of the plan, or to

clarify the claimant's rights to future benefits under the terms of the plan;

6. The Commission ~~shall rely on the record established by the internal appeal process and use an objective standard of review that is not arbitrary or capricious~~ sitting en banc may reverse or modify the decision only if it determines the decision was against the clear weight of the evidence or contrary to law. The Commission, as a body, shall act as the court of competent jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by a claimant to recover benefits due to the claimant under the terms of the claimant's plan, to enforce the claimant's rights under the terms of the plan, or to clarify the claimant's rights to future benefits under the terms of the plan. Any award by the administrative law judge or Commission en banc shall be limited to benefits payable under the terms of the benefit plan and, to the extent provided herein, attorney fees and costs; and

7. If the claimant appeals to the Commission and any part of the adverse benefit determination is upheld, he or she may appeal to the Oklahoma Supreme Court by filing with the Clerk of the Supreme Court a certified copy of the decision of the Commission attached to a petition which shall specify why the decision is contrary to law within twenty (20) days of the decision being issued. The Supreme

Court may modify, reverse, remand for rehearing, or set aside the decision only if the decision was contrary to law.

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

C. If any of the provisions in paragraphs 5 through 7 of subsection B of this section are determined to be unconstitutional or otherwise unenforceable by the final nonappealable ruling of a court of competent jurisdiction, then the following minimal appeal procedures will go into effect:

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

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

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

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

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

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

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

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

SECTION 9. This act shall become effective November 1, 2015.

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