

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2259

By: Hilliard and Sherrer of the
House

and

Burrage of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending 85
12 O.S. 2011, Section 311, which relates to employees
13 exempted from application of Workers' Compensation
14 Code; modifying exemption; defining term; amending 85
15 O.S. 2011, Section 341, which relates to discharge or
16 termination of group insurance; limiting certain
17 liability; and providing an effective date.

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

19 SECTION 1. AMENDATORY 85 O.S. 2011, Section 311, is
20 amended to read as follows:

21 Section 311. The Workers' Compensation Code shall not apply to
22 the following employees:

1 1. Any person for whom an employer is liable under any Act of
2 Congress for providing compensation to employees for injuries,
3 disease or death arising out of and in the course of employment
4 including, but not limited to, the Federal Employees' Compensation
5 Act, the Federal Employers' Liability Act, the Longshoremen's and
6 Harbor Workers' Act and the Jones Act, to the extent his or her
7 employees are subject to such acts;

8 2. Any person who is employed in agriculture or horticulture by
9 an employer who had a gross annual payroll in the preceding calendar
10 year of less than One Hundred Thousand Dollars (\$100,000.00) wages
11 for agricultural or horticultural workers, or any person who is
12 employed in agriculture or horticulture who is not engaged in
13 operation of motorized machines;

14 3. Any person who is a licensed real estate sales associate or
15 broker, paid on a commission basis;

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

22 5. Any person employed by an employer with five or less total
23 employees, all of whom are related by blood or marriage to the
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1 employer, if the employer is a natural person or a general or
2 limited partnership, or an incorporator of a corporation if the
3 corporation is the employer;

4 6. Any person employed by an employer which is a youth sports
5 league which qualifies for exemption from federal income taxation
6 pursuant to federal law;

7 7. Sole proprietors, members of a partnership, individuals who
8 are party to a franchise agreement as set out by the Federal Trade
9 Commission franchise disclosure rule, 16 CFR 436.1 through 436.11,
10 members of a limited liability company who own at least ten percent
11 (10%) of the capital of the limited liability company or any
12 stockholder-employees of a corporation who own ten percent (10%) or
13 more stock in the corporation, unless they elect to be covered by a
14 policy of insurance covering benefits under the Workers'
15 Compensation Code;

16 8. Any person providing or performing voluntary service who
17 receives no wages for the services other than meals, drug or alcohol
18 rehabilitative therapy, transportation, lodging or reimbursement for
19 incidental expenses;

20 9. A person, commonly referred to as an owner-operator, who
21 owns or leases a truck-tractor or truck for hire, if the owner-
22 operator actually operates the truck-tractor or truck and if the
23 person contracting with the owner-operator is not the lessor of the
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1 truck-tractor or truck. Provided, however, an owner-operator shall
2 not be precluded from workers' compensation coverage under the
3 Workers' Compensation Code if the owner-operator elects to
4 participate as a sole proprietor;

5 10. A person referred to as a drive-away owner-operator who
6 privately owns and utilizes a tow vehicle in drive-away operations
7 and operates independently for hire, if the drive-away owner-
8 operator actually utilizes the tow vehicle and if the person
9 contracting with the drive-away owner-operator is not the lessor of
10 the tow vehicle. Provided, however, a drive-away owner-operator
11 shall not be precluded from workers' compensation coverage under the
12 Workers' Compensation Code if the drive-away owner-operator elects
13 to participate as a sole proprietor; and

14 11. Any person who is employed as a domestic servant or as a
15 casual worker in and about a private home or household, which
16 private home or household had a gross annual payroll in the
17 preceding calendar year of less than ~~Ten Thousand Dollars~~
18 ~~(\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00) for such workers.

19 SECTION 2. AMENDATORY 85 O.S. 2011, Section 341, is
20 amended to read as follows:

21 Section 341. A. No employer may discharge or, except for
22 nonpayment of premium, terminate any group health insurance of any
23 employee because the employee has in good faith:

1 1. Filed a claim;

2 2. Retained a lawyer for representation regarding a claim;

3 3. Instituted or caused to be instituted any proceeding under
4 the provisions of ~~this act~~ the Workers' Compensation Code;

5 4. Testified or is about to testify in any proceeding under the
6 provisions of ~~this act~~ the Workers' Compensation Code; or

7 5. Elected to participate or not to participate in a certified
8 workplace medical plan as provided in ~~this act~~ the Workers'
9 Compensation Code.

10 B. No employer may discharge any employee during a period of
11 temporary total disability solely on the basis of absence from work.

12 C. After an employee's period of temporary total disability has
13 ended, no employer shall be required to rehire or retain any
14 employee who is determined to be physically unable to perform
15 assigned duties. The failure of an employer to rehire or retain any
16 such employee shall not be deemed a violation of this section.

17 D. No employer may discharge an employee for the purpose of
18 avoiding payment of temporary total disability benefits to the
19 injured employee.

20 E. An employer which violates any provision of this section
21 shall be liable in a district court action for reasonable damages,
22 actual and punitive if applicable, suffered by an employee as a
23 result of the violation. An employee discharged in violation of the
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1 Workers' Compensation Code shall be entitled to be reinstated to his
2 or her former position. Exemplary or punitive damage awards made
3 pursuant to this section shall not exceed One Hundred Thousand
4 Dollars (\$100,000.00). The employee shall have the burden of proof
5 by a preponderance of the evidence. The liability of the state or
6 any political subdivision, as defined in paragraph 11 of Section 152
7 of Title 51 of the Oklahoma Statutes, found in violation of this
8 section shall be limited to the amounts set forth under The
9 Governmental Tort Claims Act.

10 SECTION 3. This act shall become effective November 1, 2012.

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12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2012 - DO
13 PASS, As Amended and Coauthored.
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