

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1257

By: Dunlap

4
5 AS INTRODUCED

6 An Act relating to marriage and families; amending 43
7 O.S. 2011, Section 4, which relates to marriage
8 license requirements; specifying evidence proving
9 validity of existing common law marriage; prohibiting
10 common law marriages; providing that existing common
11 law marriages shall remain valid; providing
12 requirements for certain common law marriages to
13 remain valid; authorizing the execution of certain
14 affidavit to serve as proof of marriage; specifying
15 requirements; specifying date of affidavit shall be
16 deemed the date of marriage; amending 43 O.S. 2011,
17 Section 134, as last amended by Section 2, Chapter
18 334, O.S.L. 2012 (43 O.S. Supp. 2016, Section 134),
19 which relates to the modification of certain alimony
20 payments; modifying common law requirement; amending
21 Sections 2, Chapter 208, O.S.L. 2013 and Section 47,
22 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016,
23 Sections 2 and 47), which relate to the
24 Administrative Workers' Compensation Act; modifying
definition; requiring certain statutory requirements
be satisfied; amending Section 108, Chapter 208,
O.S.L. 2013 (85A O.S. Supp. 2016, Section 201), which
relates to Oklahoma Employee Injury Benefit Act;
modifying definition; and providing an effective
date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 4, is
amended to read as follows:

1 Section 4. A. No person shall enter into or contract the
2 marriage relation, nor shall any person perform or solemnize the
3 ceremony of any marriage in this state without a license being first
4 issued by the judge or clerk of the district court, of some county
5 in this state, authorizing the marriage between the persons named in
6 such license.

7 B. Except as provided in subsection C of this section, proof of
8 cohabitation and intent of the marriage of a man and woman shall be
9 competent evidence to prove their marriage and, in the discretion of
10 the court, that proof may be sufficient to establish their marriage
11 for a particular purpose.

12 C. 1. Beginning January 1, 2018, except as provided in
13 paragraphs 2, 3 and 4 of this subsection, common law marriages shall
14 be prohibited in this state, and the marriage of a man and woman may
15 occur in this state only if the marriage is solemnized as required
16 pursuant to Section 7 of this title.

17 2. Common law marriages that occurred in this state prior to
18 January 1, 2018, and that have not been terminated by death,
19 divorce, dissolution of marriage or annulment shall remain valid.

20 3. Common law marriages that satisfy all of the following
21 requirements shall remain valid after January 1, 2018:

22 a. the marriage came into existence prior to January 1,
23 2018, or shall come into existence on or after that
24 date, in another state or nation that recognizes the

1 validity of common law marriages in accordance with
2 all relevant aspects of the law of that state or
3 nation,

4 b. the marriage has not been terminated by death,
5 divorce, dissolution of marriage, annulment or other
6 judicial determination in this state or another state
7 or in another nation, and

8 c. the marriage has not been deemed invalid pursuant to
9 Section 2 or 3 of this title.

10 4. Common law marriages evidenced by the execution, in this
11 state, of a notarized affidavit signed by the man and woman entering
12 into the marriage, stating that the man and woman are married,
13 intend to be recognized as husband and wife, and cohabitate, or
14 intend to cohabitate in this state. The marriage shall be deemed to
15 begin on the date of the execution of the affidavit.

16 5. Beginning January 1, 2018, all references in the statutes to
17 common law marriages or common law marital relationships shall be
18 construed to mean only common law marriages as described in
19 paragraphs 2, 3 and 4 of this subsection.

20 SECTION 2. AMENDATORY 43 O.S. 2011, Section 134, as last
21 amended by Section 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
22 Section 134), is amended to read as follows:

23 Section 134. A. In any dissolution of marriage decree which
24 provides for periodic alimony payments, the court shall plainly

1 state, at the time of entering the original decree, the dollar
2 amount of all or a portion of each payment which is designated as
3 support and the dollar amount of all or a portion of the payment
4 which is a payment pertaining to a division of property. The court
5 shall specify in the decree that the payments pertaining to a
6 division of property shall continue until completed. Payments
7 pertaining to a division of property are irrevocable and not subject
8 to subsequent modification by the court making the award. An order
9 for the payment of money pursuant to a dissolution of marriage
10 decree, whether designated as support or designated as pertaining to
11 a division of property shall not be a lien against the real property
12 of the person ordered to make such payments unless the court order
13 specifically provides for a lien on real property. An arrearage in
14 payments of support reduced to a judgment may be a lien against the
15 real property of the person ordered to make such payments.

16 B. The court shall also provide in the dissolution of marriage
17 decree that upon the death or remarriage of the recipient, the
18 payments for support, if not already accrued, shall terminate. The
19 court shall order the judgment for the payment of support to be
20 terminated, and the lien released upon the presentation of proper
21 proof of death of the recipient unless a proper claim is made for
22 any amount of past-due support payments by an executor,
23 administrator, or heir within ninety (90) days from the date of
24 death of the recipient. Upon proper application the court shall

1 order payment of support terminated and the lien discharged after
2 remarriage of the recipient, unless the recipient can make a proper
3 showing that some amount of support is still needed and that
4 circumstances have not rendered payment of the same inequitable,
5 provided the recipient commences an action for such determination,
6 within ninety (90) days of the date of such remarriage. Any
7 modification of alimony payments shall be effective upon the date of
8 the filing of the requested modification.

9 C. The voluntary cohabitation of a former spouse with a member
10 of the opposite sex shall be a ground to modify provisions of a
11 final judgment or order for alimony as support. If voluntary
12 cohabitation is alleged in a motion to modify the payment of
13 support, the court shall have jurisdiction to reduce or terminate
14 future support payments upon proof of substantial change of
15 circumstances of either party to the dissolution of marriage
16 relating to need for support or ability to support. As used in this
17 subsection, the term cohabitation means the dwelling together
18 continuously and habitually of a man and a woman who are in a
19 private conjugal relationship not solemnized as a marriage according
20 to law, or not necessarily meeting all the standards of a common-law
21 marriage pursuant to Section 4 of this title. The petitioner shall
22 make application for modification and shall follow notification
23 procedures used in other dissolution of marriage decree modification
24

1 actions. The court that entered the dissolution of marriage decree
2 shall have jurisdiction over the modification application.

3 D. Except as otherwise provided in subsection C of this
4 section, the provisions of any dissolution of marriage decree
5 pertaining to the payment of alimony as support may be modified upon
6 proof of changed circumstances relating to the need for support or
7 ability to support which are substantial and continuing so as to
8 make the terms of the decree unreasonable to either party.

9 Modification by the court of any dissolution of marriage decree
10 pertaining to the payment of alimony as support, pursuant to the
11 provisions of this subsection, may extend to the terms of the
12 payments and to the total amount awarded; provided however, such
13 modification shall only have prospective application.

14 E. In no event shall an award of alimony, whether designated
15 for support or for property division, be based on the
16 servicemember's portion of any Special Monthly Compensation (SMC)
17 award from the United States Department of Veterans Affairs.

18 F. Pursuant to the federal Uniformed Services Former Spouses'
19 Protection Act, 10 U.S.C., Section 1408, a court may treat
20 disposable retired or retainer pay payable to a military member
21 either as property solely of the member or as property of the member
22 and the spouse of the member. If a state court determines that the
23 disposable retired or retainer pay of a military member is the sole
24 and separate property of the military member, the court shall submit

1 clear and concise written findings of such determination to be
2 included in the decree or final order. If a state court determines
3 that the disposable retired or retainer pay of a military member is
4 marital property, the court shall submit clear and concise written
5 findings of such determination to be included in the decree or final
6 order and shall award an amount consistent with the rank, pay grade,
7 and time of service of the member at the date of the filing of the
8 petition, unless the court finds a more equitable date due to the
9 economic separation of the parties.

10 G. Unless otherwise agreed to by the parties, any division of
11 an active duty military member's retirement or retainer pay shall
12 use the following language:

13 "The former spouse is awarded a percentage of the member's
14 disposable military retired pay, to be computed by multiplying fifty
15 percent (50%) times a fraction, the numerator of which is ____x____
16 months of marriage during the member's creditable military service,
17 divided by the member's total number of months of creditable
18 military service."

19 H. In the case of a member's retiring from reserve duty, unless
20 otherwise agreed by the parties, any division of a reservist's
21 retirement or retainer pay shall use the following language:

22 "The former spouse is awarded a percentage of the member's
23 disposable military retired pay, to be computed by multiplying fifty
24 percent (50%) times a fraction, the numerator of which is __X__

1 reserve retirement points earned during the period of the marriage,
2 divided by the member's total number of reserve retirement points
3 earned."

4 I. The provisions of subsection D of this section shall have
5 retrospective and prospective application with regards to
6 modifications for the purpose of obtaining support or payments
7 pertaining to a division of property on dissolution of marriage
8 decrees which become final after June 26, 1981. There shall be a
9 two-year statute of limitations, beginning on the date of the final
10 dissolution of marriage decree, for a party to apply for division of
11 disposable retired or retainer pay.

12 J. The provisions of subsections C and D of this section shall
13 have retrospective and prospective application with regards to
14 modifications of the provisions of a final judgment or order for
15 alimony as support, or of a dissolution of marriage decree
16 pertaining to the payment of alimony as support, regardless of the
17 date that the order, judgment, or decree was entered.

18 SECTION 3. AMENDATORY Section 2, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as
20 follows:

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

23
24

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 clear and convincing evidence
13 that his or her state of intoxication had no
14 causal relationship to the injury,

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

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

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

11 d. A compensable injury shall be established by medical
12 evidence supported by objective findings as defined in
13 paragraph 30 of this section.

14 e. The injured employee shall prove by a preponderance of
15 the evidence that he or she has suffered a compensable
16 injury.

17 f. Benefits shall not be payable for a condition which
18 results from a non-work-related independent
19 intervening cause following a compensable injury which
20 causes or prolongs disability, aggravation, or
21 requires treatment. A non-work-related independent
22 intervening cause does not require negligence or
23 recklessness on the part of a claimant.
24

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

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

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

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

23 13. "Course and scope of employment" means an activity of any
24 kind or character for which the employee was hired and that relates

1 to and derives from the work, business, trade or profession of an
2 employer, and is performed by an employee in the furtherance of the
3 affairs or business of an employer. The term includes activities
4 conducted on the premises of an employer or at other locations
5 designated by an employer and travel by an employee in furtherance
6 of the affairs of an employer that is specifically directed by the
7 employer. This term does not include:

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

22 14. "Cumulative trauma" means an injury to an employee that is
23 caused by the combined effect of repetitive physical activities
24 extending over a period of time in the course and scope of

1 employment. Cumulative trauma shall not mean fatigue, soreness or
2 general aches and pain that may have been caused, aggravated,
3 exacerbated or accelerated by the employee's course and scope of
4 employment. Cumulative trauma shall have resulted directly and
5 independently of all other causes and the employee shall have
6 completed at least one hundred eighty (180) days of continuous
7 active employment with the employer;

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

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

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

19 18. a. "Employee" means any person, including a minor, in the
20 service of an employer under any contract of hire or
21 apprenticeship, written or oral, expressed or implied,
22 but excluding one whose employment is casual and not
23 in the course of the trade, business, profession, or
24 occupation of his or her employer and excluding one

1 who is required to perform work for a municipality or
2 county or the state or federal government on having
3 been convicted of a criminal offense or while
4 incarcerated. "Employee" shall also include a member
5 of the Oklahoma National Guard while in the
6 performance of duties only while in response to state
7 orders and any authorized voluntary or uncompensated
8 worker, rendering services as a firefighter, peace
9 officer or emergency management worker. Travel by a
10 policeman, fireman, or a member of a first aid or
11 rescue squad, in responding to and returning from an
12 emergency, shall be deemed to be in the course of
13 employment.

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

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

- 1 (2) any person who is employed in agriculture or
2 horticulture by an employer who had a gross
3 annual payroll in the preceding calendar year of
4 less than One Hundred Thousand Dollars
5 (\$100,000.00) wages for agricultural or
6 horticultural workers, or any person who is
7 employed in agriculture or horticulture who is
8 not engaged in operation of motorized machines,
- 9 (3) any person who is a licensed real estate sales
10 associate or broker, paid on a commission basis,
- 11 (4) any person who is providing services in a medical
12 care or social services program, or who is a
13 participant in a work or training program,
14 administered by the Department of Human Services,
15 unless the Department is required by federal law
16 or regulations to provide workers' compensation
17 for such person. This division shall not be
18 construed to include nursing homes,
- 19 (5) any person employed by an employer with five or
20 fewer total employees, all of whom are related by
21 blood or marriage to the employer, if the
22 employer is a natural person or a general or
23 limited partnership, or an incorporator of a
24 corporation if the corporation is the employer,

1 (6) any person employed by an employer which is a
2 youth sports league which qualifies for exemption
3 from federal income taxation pursuant to federal
4 law,

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

18 (8) any person providing or performing voluntary
19 service who receives no wages for the services
20 other than meals, drug or alcohol rehabilitative
21 therapy, transportation, lodging or reimbursement
22 for incidental expenses except for volunteers
23 specifically provided for in subparagraph a of
24 this paragraph,

1 (9) a person, commonly referred to as an owner-
2 operator, who owns or leases a truck-tractor or
3 truck for hire, if the owner-operator actually
4 operates the truck-tractor or truck and if the
5 person contracting with the owner-operator is not
6 the lessor of the truck-tractor or truck.
7 Provided, however, an owner-operator shall not be
8 precluded from workers' compensation coverage
9 under the Administrative Workers' Compensation
10 Act if the owner-operator elects to participate
11 as a sole proprietor,

12 (10) a person referred to as a drive-away owner-
13 operator who privately owns and utilizes a tow
14 vehicle in drive-away operations and operates
15 independently for hire, if the drive-away owner-
16 operator actually utilizes the tow vehicle and if
17 the person contracting with the drive-away owner-
18 operator is not the lessor of the tow vehicle.
19 Provided, however, a drive-away owner-operator
20 shall not be precluded from workers' compensation
21 coverage under the Administrative Workers'
22 Compensation Act if the drive-away owner-operator
23 elects to participate as a sole proprietor, and
24

1 (11) any person who is employed as a domestic servant
2 or as a casual worker in and about a private home
3 or household, which private home or household had
4 a gross annual payroll in the preceding calendar
5 year of less than Fifty Thousand Dollars
6 (\$50,000.00) for such workers;

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

22 20. "Employment" includes work or labor in a trade, business,
23 occupation or activity carried on by an employer or any authorized
24

1 voluntary or uncompensated worker rendering services as a
2 firefighter, peace officer or emergency management worker;

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

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

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

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

21 25. "Insurance Commissioner" means the Insurance Commissioner
22 of the State of Oklahoma;

23 26. "Insurance Department" means the Insurance Department of
24 the State of Oklahoma;

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

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

11 29. "Medical services" means those services specified in
12 Section 50 of this act;

13 30. "Misconduct" shall include the following:

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

- 1 h. violation of a law, or
2 i. a violation of a policy or rule adopted to ensure
3 orderly work or the safety of self or others;

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

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

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

18 (3) (a) Objective evidence necessary to prove
19 permanent disability in occupational hearing
20 loss cases may be established by medically
21 recognized and accepted clinical diagnostic
22 methodologies, including, but not limited
23 to, audiological tests that measure air and
24

1 bone conduction thresholds and speech
2 discrimination ability.

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

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

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

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

22 34. "Permanent partial disability" means a permanent disability
23 or loss of use after maximum medical improvement has been reached
24 which prevents the injured employee, who has been released to return

1 to work by the treating physician, from returning to his or her pre-
2 injury or equivalent job. All evaluations of permanent partial
3 disability must be supported by objective findings;

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

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

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

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

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

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

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

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

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

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

1 45. "Surviving spouse" means the employee's spouse by reason of
2 a legal marriage recognized by the State of Oklahoma or under the
3 requirements of a common law marriage in this state as provided in
4 Section 4 of Title 43 of the Oklahoma Statutes, as determined by the
5 Workers' Compensation Commission;

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

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

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

19 SECTION 4. AMENDATORY Section 47, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 47), is amended to read as
21 follows:

22 Section 47. A. Time of death. If death does not result within
23 one (1) year from the date of the accident or within the first three
24 (3) years of the period for compensation payments fixed by the

1 compensation judgment, a rebuttable presumption shall arise that the
2 death did not result from the injury.

3 B. Common law spouse. A common law spouse shall not be
4 entitled to benefits under this section unless he or she obtains an
5 order from a court with competent jurisdiction ruling that a common
6 law marriage existed between the decedent and the surviving spouse
7 and the requirements in Section 4 of Title 43 of the Oklahoma
8 Statutes have been satisfied.

9 C. Beneficiaries - Amounts. If an injury or occupational
10 illness causes death, weekly income benefits shall be payable as
11 follows:

12 1. If there is a surviving spouse, a lump-sum payment of One
13 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
14 the lesser of the deceased employee's average weekly wage and the
15 state average weekly wage. In addition to the benefits theretofore
16 paid or due, two (2) years' indemnity benefit in one lump sum shall
17 be payable to a surviving spouse upon remarriage;

18 2. If there is a surviving spouse and a child or children, a
19 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
20 fifteen percent (15%) of the lesser of the deceased employee's
21 average weekly wage and the state average weekly wage to each child.
22 If there are more than two children, each child shall receive a pro
23 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
24 (30%) of the deceased employee's average weekly wage;

1 3. If there is a child or children and no surviving spouse, a
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
3 fifty percent (50%) of the lesser of the deceased employee's average
4 weekly wage and the state average weekly wage to each child. If
5 there are more than two children, each child shall receive a pro
6 rata share of one hundred percent (100%) of the lesser of the
7 deceased employee's average weekly wage and the state average weekly
8 wage. With respect to the lump-sum payment, if there are more than
9 six children, each child shall receive a pro rata share of One
10 Hundred Fifty Thousand Dollars (\$150,000.00);

11 4. If there is no surviving spouse or children, each legal
12 guardian, if financially dependent on the employee at the time of
13 death, shall receive twenty-five percent (25%) of the lesser of the
14 deceased employee's average weekly wage and the state average weekly
15 wage until the earlier of death, becoming eligible for social
16 security, obtaining full-time employment, or five (5) years from the
17 date benefits under this section begin; and

18 5. The employer shall pay the actual funeral expenses, not
19 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

20 D. The weekly income benefits payable to the surviving spouse
21 under this section shall continue while the surviving spouse remains
22 unmarried. In no event shall this spousal weekly income benefit be
23 diminished by the award to other beneficiaries. The weekly income
24 benefits payable to any child under this section shall terminate on

1 the earlier of death, marriage, or reaching the age of eighteen
2 (18). However, if the child turns eighteen (18) and is:

3 1. Enrolled as a full-time student in high school or is being
4 schooled by other means pursuant to the Oklahoma Constitution;

5 2. Enrolled as a full-time student in any accredited
6 institution of higher education or vocational or technology
7 education; or

8 3. Physically or mentally incapable of self-support,
9 then he or she may continue to receive weekly income benefits under
10 this section until the earlier of reaching the age of twenty-three
11 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
12 longer being enrolled as a student, and with respect to paragraph 3
13 of this subsection, becoming capable of self-support.

14 E. If any member of the class of beneficiaries who receive a
15 pro rata share of weekly income benefits becomes ineligible to
16 continue to receive benefits, the remaining members of the class
17 shall receive adjusted weekly income benefits equal to the new class
18 size.

19 F. To receive benefits under this section, a beneficiary or his
20 or her guardian, if applicable, shall file a proof of loss form with
21 the Commission. All questions of dependency shall be determined as
22 of the time of the injury. The employer shall initiate payment of
23 benefits within fifteen (15) days of the Commission's determination
24 of the proper beneficiaries. The Commission shall appoint a

1 guardian ad litem to represent known and unknown minor children and
2 the guardian ad litem shall be paid a reasonable fee for his or her
3 services.

4 SECTION 5. AMENDATORY Section 108, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 201), is amended to read as
6 follows:

7 Section 201. A. As used in the Oklahoma Employee Injury
8 Benefit Act:

9 1. "Benefit plan" means a plan established by a qualified
10 employer under the requirements of Section 110 of this act;

11 2. "Commission" means the Workers' Compensation Commission
12 under the Administrative Workers' Compensation Act;

13 3. "Commissioner" means the Insurance Commissioner of the State
14 of Oklahoma;

15 4. "Covered employee" means an employee whose employment with a
16 qualified employer is principally located within the state;

17 5. "Employee" means any person defined as an employee pursuant
18 to Section 2 of this act;

19 6. "Employer", except when otherwise expressly stated, means a
20 person, partnership, association, limited liability company,
21 corporation, and the legal representatives of a deceased employer,
22 or the receiver or trustee of a person, partnership, association,
23 corporation, or limited liability company, department,
24 instrumentality or institution of this state and divisions thereof,

1 counties and divisions thereof and other political subdivisions of
2 this state and public trusts employing a person included within the
3 term employee as defined in this section;

4 7. "Occupational injury" means an injury, including death, or
5 occupational illness, causing internal or external harm to the body,
6 which arises out of and in the course of employment;

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

11 9. "Surviving spouse" means the employee's spouse by reason of
12 a legal marriage recognized by the State of Oklahoma or under the
13 requirements of a common law marriage in this state as provided in
14 Section 4 of Title 43 of the Oklahoma Statutes.

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.

18 SECTION 6. This act shall become effective November 1, 2017.

19
20 56-1-5965 AMM 01/17/17
21
22
23
24