

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1462

By: Echols

4
5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 2, 3, 7, 18, 19, as amended by Section 4,
9 H.J.R. No. 1096, p. 1745, O.S.L. 2014, 21, 22, 38,
10 45, as amended by Section 2, Chapter 390, O.S.L.
11 2015, 46, 56, 62, 68, 71, 78, 80, 108, 109, 110, as
12 amended by Section 4, Chapter 390, O.S.L. 2015, 111
13 and 118, as amended by Section 6, Chapter 390, O.S.L.
14 2015, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016,
15 Sections 2, 3, 7, 18, 19, 21, 22, 38, 45, 46, 56, 62,
16 68, 71, 78, 80, 201, 202, 203, 204 and 211), which
17 relate to the Administrative Workers' Compensation
18 Act and the Oklahoma Employee Injury Benefit Act;
19 modifying definitions; clarifying applicability of
20 act; modifying jurisdictional requirement for certain
21 claims; establishing liability for damages for
22 certain violations; specifying burden of proof for
23 certain violations; limiting certain exemplary or
24 punitive damage awards; expanding methods of
providing certain notice; modifying procedure for
replacement of disqualified Commissioners; modifying
certain powers of the Commission; modifying duties of
the Commission; providing procedure for Affidavit of
Exempt Status; requiring issuance of certain
certificate; modifying procedures for confirmation of
certain status; modifying procedures for certain
notification; modifying grounds for termination of
temporary total disability awards; modifying
compensation for temporary partial disability awards;
modifying requirements for award of permanent partial
disability; modifying calculation for specified
permanent partial disability; providing employer
options regarding treating physicians; clarifying
time limit on injections; modifying time limit for
certain notice; providing for appointment of
administrative law judge to en banc panel under

1 certain circumstances; providing for payment for
2 prescription drugs during appeal process; providing
3 for reimbursement under certain circumstances;
4 modifying procedure and requirements for case review
5 by the Workers' Compensation Commission; modifying
6 definitions; modifying procedures for application for
7 certain employer status; requiring certain notice;
8 specifying fee schedule for certain groups; modifying
9 requirements for certain benefit plans; clarifying
10 applicability of certain insurance coverage;
11 conforming language; modifying procedures for appeal
12 of denial of certain claims; requiring maintenance of
13 certain records; requiring certain notice;
14 establishing filing fee for certain appeals;
15 providing for codification; and providing an
16 effective date.

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

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

2. "Carrier" means any stock company, mutual company, or
reciprocal or interinsurance exchange authorized to write or carry
on the business of workers' compensation insurance in this state.

1 Whenever required by the context, the term "carrier" shall be deemed
2 to include duly qualified self-insureds or self-insured groups;

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

13 4. "Case manager" means a person who is a registered nurse with
14 a current, active unencumbered license from the Oklahoma Board of
15 Nursing, or possesses one or more of the following certifications
16 which indicate the individual has a minimum number of years of case
17 management experience, has passed a national competency test and
18 regularly obtains continuing education hours to maintain
19 certification:

- 20 a. Certified Disability Management Specialist (CDMS),
- 21 b. Certified Case Manager (CCM),
- 22 c. Certified Rehabilitation Registered Nurse (CRRN),
- 23 d. Case Manager - Certified (CMC),
- 24 e. Certified Occupational Health Nurse (COHN), or

1 f. Certified Occupational Health Nurse Specialist (COHN-
2 S);

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

13 6. "Child" means a natural or adopted son or daughter of the
14 employee under eighteen (18) years of age; or a natural or adopted
15 son or daughter of an employee eighteen (18) years of age or over
16 who is physically or mentally incapable of self-support; or any
17 natural or adopted son or daughter of an employee eighteen (18)
18 years of age or over who is actually dependent; or any natural or
19 adopted son or daughter of an employee between eighteen (18) and
20 twenty-three (23) years of age who is enrolled as a full-time
21 student in any accredited educational institution. The term "child"
22 includes a posthumous child, a child legally adopted or one for whom
23 adoption proceedings are pending at the time of death, an actually
24

1 dependent stepchild or an actually dependent acknowledged child born
2 out of wedlock;

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

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

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

15 (1) was unintended, unanticipated, unforeseen,
16 unplanned and unexpected,

17 (2) occurred at a specifically identifiable time and
18 place,

19 (3) occurred by chance or from unknown causes, and

20 (4) was independent of sickness, mental incapacity,
21 bodily infirmity or any other cause.

22 b. "Compensable injury" does not include:

23 (1) injury to any active participant in assaults or
24 combats which, although they may occur in the

1 workplace, are the result of non-employment-
2 related hostility or animus of one, both, or all
3 of the combatants and which assault or combat
4 amounts to a deviation from customary duties;
5 provided, however, injuries caused by horseplay
6 shall not be considered to be compensable
7 injuries, except for innocent victims,

8 (2) injury incurred while engaging in or performing
9 or as the result of engaging in or performing any
10 recreational or social activities for the
11 employee's personal pleasure,

12 (3) injury which was inflicted on the employee at a
13 time when employment services were not being
14 performed or before the employee was hired or
15 after the employment relationship was terminated,

16 (4) injury where the accident was caused by the use
17 of alcohol, illegal drugs, or prescription drugs
18 used in contravention of physician's orders. If,
19 within twenty-four (24) hours of being injured or
20 reporting an injury, an employee tests positive
21 for intoxication, an illegal controlled
22 substance, or a legal controlled substance used
23 in contravention to a treating physician's
24 orders, or refuses to undergo the drug and

1 alcohol testing, there shall be a rebuttable
2 presumption that the injury was caused by the use
3 of alcohol, illegal drugs, or prescription drugs
4 used in contravention of physician's orders.
5 This presumption may only be overcome if the
6 employee proves by objective, clear and
7 convincing evidence that his or her state of
8 intoxication had no causal relationship to the
9 injury,

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

20 (6) any preexisting condition except when the
21 treating physician clearly confirms an
22 identifiable and significant aggravation incurred
23 in the course and scope of employment.
24

- 1 c. The definition of "compensable injury" shall not be
2 construed to limit or abrogate the right to recover
3 for mental injuries as described in Section 13 of this
4 ~~act~~ title, heart or lung injury or illness as
5 described in Section 14 of this ~~act~~ title, or
6 occupational diseases as described in Section 65 of
7 this ~~act~~ title.
- 8 d. A compensable injury shall be established by medical
9 evidence supported by objective findings as defined in
10 paragraph ~~30~~ 31 of this section.
- 11 e. The injured employee shall prove by a preponderance of
12 the evidence that he or she has suffered a compensable
13 injury.
- 14 f. Benefits shall not be payable for a condition which
15 results from a non-work-related independent
16 intervening cause following a compensable injury which
17 causes or prolongs disability, aggravation, or
18 requires treatment. A non-work-related independent
19 intervening cause does not require negligence or
20 recklessness on the part of a claimant.
- 21 g. An employee who suffers a compensable injury shall be
22 entitled to receive compensation as prescribed in this
23 act. Notwithstanding other provisions of law, if it
24 is determined that a compensable injury did not occur,

1 the employee shall not be entitled to compensation
2 under this act;

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

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

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

19 13. "Course and scope of employment" means an activity of any
20 kind or character for which the employee was hired and that relates
21 to and derives from the work, business, trade or profession of an
22 employer, and is performed by an employee in the furtherance of the
23 affairs or business of an employer. The term includes activities
24 conducted on the premises of an employer or at other locations

1 designated by an employer and travel by an employee in furtherance
2 of the affairs of an employer that is specifically directed by the
3 employer. This term does not include:

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

18 14. "Cumulative trauma" means an injury to an employee that is
19 caused by the combined effect of repetitive physical activities
20 extending over a period of time in the course and scope of
21 employment. Cumulative trauma shall not mean fatigue, soreness or
22 general aches and pain that may have been caused, aggravated,
23 exacerbated or accelerated by the employee's course and scope of
24 employment. Cumulative trauma shall have resulted directly and

1 independently of all other causes and the employee shall have
2 completed at least one hundred eighty (180) days of continuous
3 active employment with the employer;

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

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

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

15 18. a. "Employee" means any person, including a minor, in the
16 service of an employer under any contract of hire or
17 apprenticeship, written or oral, expressed or implied,
18 but excluding one whose employment is casual and not
19 in the course of the trade, business, profession, or
20 occupation of his or her employer and excluding one
21 who is required to perform work for a municipality or
22 county or the state or federal government on having
23 been convicted of a criminal offense or while
24 incarcerated. "Employee" shall also include a member

1 of the Oklahoma National Guard while in the
2 performance of duties only while in response to state
3 orders and any authorized voluntary or uncompensated
4 worker, rendering services as a firefighter, peace
5 officer or emergency management worker. Travel by a
6 policeman, fireman, or a member of a first aid or
7 rescue squad, in responding to and returning from an
8 emergency, shall be deemed to be in the course of
9 employment.

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

- 11 (1) any person for whom an employer is liable under
12 any Act of Congress for providing compensation to
13 employees for injuries, disease or death arising
14 out of and in the course of employment including,
15 but not limited to, the Federal Employees'
16 Compensation Act, the Federal Employers'
17 Liability Act, the Longshore and Harbor Workers'
18 Compensation Act and the Jones Act, to the extent
19 his or her employees are subject to such acts,
- 20 (2) any person who is employed in agriculture or
21 horticulture by an employer who had a gross
22 annual payroll in the preceding calendar year of
23 less than One Hundred Thousand Dollars
24 (\$100,000.00) wages for agricultural or

- 1 horticultural workers, or any person who is
2 employed in agriculture or horticulture who is
3 not engaged in operation of motorized machines,
4 (3) any person who is a licensed real estate sales
5 associate or broker, paid on a commission basis,
6 (4) any person who is providing services in a medical
7 care or social services program, or who is a
8 participant in a work or training program,
9 administered by the Department of Human Services,
10 unless the Department is required by federal law
11 or regulations to provide workers' compensation
12 for such person. This division shall not be
13 construed to include nursing homes,
14 (5) any person employed by an employer with five or
15 fewer total employees, all of whom are related by
16 blood or marriage to the employer, if the
17 employer is a natural person or a general or
18 limited partnership, or an incorporator of a
19 corporation if the corporation is the employer,
20 (6) any person employed by an employer which is a
21 youth sports league which qualifies for exemption
22 from federal income taxation pursuant to federal
23 law,
24

- 1 (7) sole proprietors, members of a partnership,
2 individuals who are party to a franchise
3 agreement as set out by the Federal Trade
4 Commission franchise disclosure rule, 16 CFR
5 436.1 through 436.11, members of a limited
6 liability company who own at least ten percent
7 (10%) of the capital of the limited liability
8 company or any stockholder-employees of a
9 corporation who own ten percent (10%) or more
10 stock in the corporation, unless they elect to be
11 covered by a policy of insurance covering
12 benefits under the Administrative Workers'
13 Compensation Act,
- 14 (8) any person providing or performing voluntary
15 service who receives no wages for the services
16 other than meals, drug or alcohol rehabilitative
17 therapy, transportation, lodging or reimbursement
18 for incidental expenses except for volunteers
19 specifically provided for in subparagraph a of
20 this paragraph,
- 21 (9) a person, commonly referred to as an owner-
22 operator, who owns or leases a truck-tractor or
23 truck for hire, if the owner-operator actually
24 operates the truck-tractor or truck and if the

1 person contracting with the owner-operator is not
2 the lessor of the truck-tractor or truck.

3 Provided, however, an owner-operator shall not be
4 precluded from workers' compensation coverage
5 under the Administrative Workers' Compensation
6 Act if the owner-operator elects to participate
7 as a sole proprietor,

8 (10) a person referred to as a drive-away owner-
9 operator who privately owns and utilizes a tow
10 vehicle in drive-away operations and operates
11 independently for hire, if the drive-away owner-
12 operator actually utilizes the tow vehicle and if
13 the person contracting with the drive-away owner-
14 operator is not the lessor of the tow vehicle.

15 Provided, however, a drive-away owner-operator
16 shall not be precluded from workers' compensation
17 coverage under the Administrative Workers'
18 Compensation Act if the drive-away owner-operator
19 elects to participate as a sole proprietor, and

20 (11) any person who is employed as a domestic servant
21 or as a casual worker in and about a private home
22 or household, which private home or household had
23 a gross annual payroll in the preceding calendar
24

1 year of less than Fifty Thousand Dollars
2 (\$50,000.00) for such workers;

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

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

22 21. "Evidence-based" means expert-based, literature-supported
23 and outcomes validated by well-designed randomized trials when such
24

1 information is available and which uses the best available evidence
2 to support medical decision making;

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

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

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

17 25. "Insurance Commissioner" means the Insurance Commissioner
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the
22 resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of this act and shall not create a separate cause of action outside
3 this act;

4 28. "Maximum medical improvement" means that no further
5 material improvement would reasonably be expected from medical
6 treatment or the passage of time;

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

9 30. "Misconduct" shall include the following:

- 10 a. unexplained absenteeism or tardiness,
- 11 b. willful or wanton indifference to or neglect of the
12 duties required,
- 13 c. willful or wanton breach of any duty required by the
14 employer,
- 15 d. the mismanagement of a position of employment by
16 action or inaction,
- 17 e. actions or omissions that place in jeopardy the
18 health, life, or property of self or others,
- 19 f. dishonesty,
- 20 g. wrongdoing,
- 21 h. violation of a law, or
- 22 i. a violation of a policy or rule adopted to ensure
23 orderly work or the safety of self or others;

24

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

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

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

15 (3) (a) Objective evidence necessary to prove
16 permanent disability in occupational hearing
17 loss cases may be established by medically
18 recognized and accepted clinical diagnostic
19 methodologies, including, but not limited
20 to, audiological tests that measure air and
21 bone conduction thresholds and speech
22 discrimination ability.

23 (b) Any difference in the baseline hearing
24 levels shall be confirmed by subsequent

1 testing; provided, however, such test shall
2 be given within four (4) weeks of the
3 initial baseline hearing level test but not
4 before five (5) days after being adjusted
5 for presbycusis.

6 b. Medical opinions addressing compensability and
7 permanent disability shall be stated within a
8 reasonable degree of medical certainty;

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

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

18 34. "Permanent partial disability" means a permanent disability
19 ~~or loss of use~~ after maximum medical improvement has been reached
20 ~~which prevents the injured employee, who has been released to return~~
21 ~~to work by the treating physician, from returning to his or her pre-~~
22 ~~injury or equivalent job.~~ All evaluations of permanent partial
23 disability must be supported by objective findings;

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

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

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

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

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

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

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

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

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

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

22 45. "Surviving spouse" means the employee's spouse by reason of
23 a legal marriage recognized by the State of Oklahoma or under the
24

1 requirements of a common law marriage in this state, as determined
2 by the Workers' Compensation Commission;

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

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

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

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

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

21 Section 3. A. Every employer ~~and every employee, unless~~
22 ~~otherwise specifically provided in this act, shall be~~ subject and
23 bound to the provisions of the Administrative Workers' Compensation
24 Act shall pay or provide benefits according to the provisions of

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

17 B. The State of Oklahoma accepts the provisions of the Acts of
18 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
19 Section 290, and hereby extends the territorial jurisdiction of the
20 Administrative Workers' Compensation Act to all lands and premises
21 within the exterior boundaries of this state which the Government of
22 the United States of America owns or holds by deed or act of
23 cession, and to all purchases, projects, buildings, constructions,
24 improvements and property within the exterior boundaries of this

1 state belonging to the Government of the United States of America,
2 in the same way and to the same extent as if the premises were under
3 the exclusive jurisdiction of this state, subject only to the
4 limitations placed thereon by the Acts of Congress.

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

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

12 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
14 follows:

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

- 17 1. Filed a claim under this act;
- 18 2. Retained a lawyer for representation regarding a claim under
19 this act;
- 20 3. Instituted or caused to be instituted any proceeding under
21 the provisions of this act; or
- 22 4. Testified or is about to testify in any proceeding under the
23 provisions of this act.

24

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

3 C. ~~If the Commission determines that the defendant violated~~
4 ~~subsection A of this section, the Commission may award the employee~~
5 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
6 ~~(\$100,000.00) If a district court of this state determines that an~~
7 ~~employer violated a provision of this section, such employer shall~~
8 ~~be liable for reasonable compensatory damages suffered by an~~
9 ~~employee as a result of the violation. The employee shall have the~~
10 ~~burden of proof to show such violation by a preponderance of the~~
11 ~~evidence. Interim earnings or amounts earnable with reasonable~~
12 ~~diligence by the person discriminated against shall reduce the ~~back~~~~
13 ~~pay compensatory damages otherwise allowable. Exemplary or punitive~~
14 ~~damage awards made pursuant to this section shall not exceed One~~
15 ~~Hundred Thousand Dollars (\$100,000.00).~~

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

18 ~~E.~~ D. No employer may discharge an employee during a period of
19 temporary total disability for the sole reason of being absent from
20 work or for the purpose of avoiding payment of temporary total
21 disability benefits to the injured employee.

22 ~~F.~~ E. Notwithstanding any other provision of this section, an
23 employer shall not be required to rehire or retain an employee who,
24 after temporary total disability has been exhausted, is determined

1 by a physician to be physically unable to perform his or her
2 assigned duties, or whose position is no longer available.

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

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

8 SECTION 4. AMENDATORY Section 18, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as
10 follows:

11 Section 18. A. No hospital, physician, or other health care
12 provider shall bill or attempt to collect any fee or any portion of
13 a fee for services rendered to an employee due to a work-related
14 injury or report to any credit-reporting agency any failure of the
15 employee to make the payment, when a claim for compensation has been
16 filed under this act and the hospital, physician, or health care
17 provider has received actual notice given in writing by the employee
18 or the employee's representative. Actual notice shall be deemed
19 received by the hospital, physician, or health care provider five
20 (5) days after mailing by certified mail or sending by facsimile,
21 electronic mail or other electronic means with confirmation of
22 receipt by the employee or his or her representative to the
23 hospital, physician, or health care provider.

24 B. The notice shall include:

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

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

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

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

21 SECTION 5. AMENDATORY Section 19, Chapter 208, O.S.L.
22 2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014
23 (85A O.S. Supp. 2016, Section 19), is amended to read as follows:
24

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

5 B. The Commission shall consist of three (3) full-time
6 commissioners, each of whom must have been involved in the workers'
7 compensation field for at least three (3) years, appointed by the
8 Governor: one of whom is chosen from a slate of three selected by
9 the Speaker of the House of Representatives, with all three
10 confirmed by the Senate. The term of each appointee shall be six
11 (6) years to administer the provisions of this act. The Governor
12 may request a subsequent slate of nominees from the Speaker of the
13 House of Representatives if a suitable nominee is not found. Any or
14 all of the commissioners may be reappointed for additional six-year
15 terms upon reconfirmation by the Senate. However, the initial
16 commissioners shall serve staggered terms of two (2), four (4), and
17 six (6) years, respectively, as determined by the Governor. If the
18 Legislature is not in session at the time of appointment, the
19 appointment shall be subject to confirmation by the Senate upon
20 convening of the next regular session of the Legislature.
21 Membership on the Commission shall be a full-time position and no
22 commissioner shall have any other employment, unless authorized or
23 excused by law. Each commissioner shall receive a salary equal to
24 that paid to a district judge of this state; provided however, the

1 commissioners shall not receive any increase in salary as a result
2 of the provisions of Section 1 of ~~this resolution~~ House Joint
3 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
4 Legislature.

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

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

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

23 1. To organize, direct and develop the administrative work of
24 the administrative law judges, including but not limited to

1 docketing, clerical, technical and financial work and establishment
2 of hours of operation;

3 2. To employ administrative staff for the Commission, within
4 budgetary limitation; and

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

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

11 ~~G. When any commissioner of the Commission is disqualified for
12 any reason to hear and participate in the determination of any
13 matter pending before the Commission, the Governor shall appoint a
14 qualified person to hear and participate in the decision on the
15 particular matter. The special commissioner so appointed shall have
16 all authority and responsibility with respect to the particular
17 matter before the Commission as if the person were a regular
18 commissioner of the Commission but shall have no authority or
19 responsibility with respect to any other matter before the
20 Commission. A person appointed as a special commissioner of the
21 Commission under the provisions of this subsection shall be entitled
22 to receive a per diem equal to the annual salary of the
23 commissioners prorated for the number of days he or she serves in
24 the capacity of a special commissioner of the Commission.~~

1 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~
2 ~~to occur, the position shall be filled pursuant to the provisions of~~
3 ~~this section~~ The power of the Commission to decide issues of fact
4 does not include the power to determine the constitutionality of
5 provisions of this title or the constitutionality of application of
6 the provisions of this title.

7 SECTION 6. AMENDATORY Section 21, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
9 follows:

10 Section 21. A. Commissioners shall be considered officers and
11 shall take the oath prescribed by the Oklahoma Constitution and the
12 laws of this state.

13 B. 1. A majority of the Workers' Compensation Commission shall
14 constitute a quorum for the transaction of business, and vacancies
15 shall not impair the right of the remaining commissioners to
16 exercise all the powers of the full Commission, so long as a
17 majority remains.

18 2. Any investigation, inquiry, or hearing which the Commission
19 is authorized to hold or undertake may be held or undertaken by or
20 before any one commissioner of the Commission, or appointee acting
21 for him or her, under authorization of the Commission.

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

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

8 SECTION 7. AMENDATORY Section 22, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
10 follows:

11 Section 22. A. 1. For the purpose of administering the
12 provisions of this ~~act~~ title, the Workers' Compensation Commission
13 is authorized:

- 14 a. to make rules necessary for the administration and
15 operation of the Commission,
- 16 b. to appoint and fix the compensation of temporary
17 technical assistants, medical and legal advisers,
18 clerical assistants and other officers and employees,
19 and
- 20 c. to make such expenditures, including those for
21 personal service, rent, books, periodicals, office
22 equipment, and supplies, and for printing and binding
23 as may be necessary.

24

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

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

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

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

19 ~~3. The Commission shall afford all interested persons a~~
20 ~~reasonable opportunity to submit written data, views, or arguments,~~
21 ~~and, if the Commission in its discretion shall so direct, oral~~
22 ~~testimony or argument.~~

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

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

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

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

15 C. Additionally, the Commission shall have the following powers
16 and duties:

17 1. To hear and approve compromise settlements;

18 2. To review and approve own-risk applications and group self-
19 insurance association applications;

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

22 4. To contract with an appropriate state governmental entity,
23 insurance carrier or approved service organization to process,
24 investigate and pay valid claims against an impaired self-insurer

1 which fails, due to insolvency or otherwise, to pay its workers'
2 compensation obligations, charges for which shall be paid from the
3 proceeds of security posted with the Commission as provided in
4 Section 38 of this ~~act~~ title;

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

7 6. To hear and determine claims concerning disputed medical
8 bills;

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

13 8. To invest funds on behalf of the Multiple Injury Trust Fund;

14 9. To appoint a Commission Mediator to conduct informal
15 sessions to attempt to resolve assigned disputes; and

16 10. Such other duties and responsibilities authorized by law.

17 D. It shall be the duty of an administrative law judge, under
18 the rules adopted by the Commission, to hear and determine claims
19 for compensation and to conduct hearings and investigations and to
20 make such judgments, decisions, and determinations as may be
21 required by any rule or judgment of the Commission.

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

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

7 B. Execution of the affidavit shall establish a rebuttable
8 presumption that the executor is not an employee for purposes of the
9 Administrative Workers' Compensation Act and therefore shall not be
10 eligible to seek workers' compensation benefits against any
11 contractor.

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

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

17 E. 1. Knowingly providing false information on a notarized
18 Affidavit of Exempt Status under the Administrative Workers'
19 Compensation Act shall constitute a misdemeanor punishable by a fine
20 not to exceed One Thousand Dollars (\$1,000.00).

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

1 3. The Commission shall immediately notify the Workers'
2 Compensation Fraud Unit in the Office of the Attorney General of any
3 violations or suspected violations of this section. The Commission
4 shall cooperate with the Fraud Unit in any investigation involving
5 affidavits executed pursuant to this section.

6 F. The Commission may assess a fee not to exceed Fifty Dollars
7 (\$50.00) for an Affidavit of Exempt Status Application. Fees
8 collected pursuant to this section shall be deposited in the State
9 Treasury to the credit of the Workers' Compensation Commission
10 Revolving Fund.

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

16 SECTION 9. AMENDATORY Section 38, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 38), is amended to read as
18 follows:

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

21 1. By insuring and keeping insured the payment of compensation
22 with any stock corporation, mutual association, or other concerns
23 authorized to transact the business of workers' compensation
24 insurance in this state. When an insurer issues a policy to provide

1 workers' compensation benefits under the provisions of this ~~act~~
2 title, it shall file a notice with the Workers' Compensation
3 Commission containing the name, address, and principal occupation of
4 the employer, the number, effective date, and expiration date of the
5 policy, and such other information as may be required by the
6 Commission. The notice shall be filed by the insurer within thirty
7 (30) days after the effective date of the policy. Any insurer who
8 does not file the notice required by this paragraph shall be subject
9 to a fine by the Commission of not more than One Thousand Dollars
10 (\$1,000.00);

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

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

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

1 (1) deposit with the Commission securities, an
2 irrevocable letter of credit or a surety bond
3 payable to the state, in an amount determined by
4 the Commission which shall be at least an average
5 of the yearly claims for the last three (3)
6 years, or

7 (2) provide proof of excess coverage with such terms
8 and conditions as is commensurate with their
9 ability to pay the benefits required by the
10 provisions of this act, and

11 b. one hundred or more employees and One Million Dollars
12 (\$1,000,000.00) or more in net assets to:

13 (1) secure a surety bond payable to the state, or an
14 irrevocable letter of credit, in an amount
15 determined by the Commission which shall be at
16 least an average of the yearly claims for the
17 last three (3) years, or

18 (2) provide proof of excess coverage with terms and
19 conditions that are commensurate with their
20 ability to pay the benefits required by the
21 provisions of this act;

22 4. By forming a group self-insurance association consisting of
23 two or more employers which shall have a common interest and which
24 shall have entered into an agreement to pool their liabilities under

1 the Administrative Workers' Compensation Act. Such agreement shall
2 be subject to rules of the Commission. Any employer, upon
3 application to become a member of a group self-insurance
4 association, shall file with the Commission a notice, in such form
5 as prescribed by the Commission, acknowledging that the employer
6 accepts joint and several liability. Upon approval by the
7 Commission of such application for membership, said member shall be
8 a qualified self-insured employer; or

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

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

14 Irrevocable letters of credit required by this subsection shall
15 contain such terms as may be prescribed by the Commission and shall
16 be issued for the benefit of the state by a financial institution
17 whose deposits are insured by the Federal Deposit Insurance
18 Corporation.

19 C. An employer who does not fulfill the requirements of this
20 section is not relieved of the obligation to pay compensation under
21 this act. The security required under this section, including any
22 interest, shall be maintained by the Commission as provided in this
23 ~~act~~ title until each claim for benefits is paid, settled, or lapses

24

1 under this ~~act~~ title, and costs of administration of such claims are
2 paid.

3 D. Failure on the part of any employer to secure the payment of
4 compensation provided in this act shall have the effect of enabling
5 the Commission to assert the rights of an injured employee against
6 the employer.

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

11 SECTION 10. AMENDATORY Section 45, Chapter 208, O.S.L.
12 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
13 Supp. 2016, Section 45), is amended to read as follows:

14 Section 45. A. Temporary Total Disability.

15 1. If the injured employee is temporarily unable to perform his
16 or her job or any alternative work offered by the employer, he or
17 she shall be entitled to receive compensation equal to seventy
18 percent (70%) of the injured employee's average weekly wage, but not
19 to exceed seventy percent (70%) of the state average weekly wage,
20 for one hundred four (104) weeks. Provided, there shall be no
21 payment for the first three (3) days of the initial period of
22 temporary total disability. If an administrative law judge finds
23 that a consequential injury has occurred and that additional time is
24 needed to reach maximum medical improvement, temporary total

1 disability may continue for a period of not more than an additional
2 fifty-two (52) weeks. Such finding shall be based upon a showing of
3 medical necessity by clear and convincing evidence.

4 2. When the injured employee is released from active medical
5 treatment by the treating physician for all body parts found by the
6 Commission to be injured, or in the event that the employee, without
7 a valid excuse, misses ~~three~~ two consecutive medical treatment
8 appointments as prescribed under Section 57 of this title, fails to
9 comply with medical orders of the treating physician, or otherwise
10 abandons medical care, the employer shall be entitled to terminate
11 temporary total disability by notifying the employee, or if
12 represented, his or her counsel. If, however, an objection to the
13 termination is filed by the employee within ten (10) days of
14 termination, the Commission shall set the matter within twenty (20)
15 days for a determination if temporary total disability compensation
16 shall be reinstated. The temporary total disability shall remain
17 terminated unless the employee proves the existence of a valid
18 excuse for his or her failure to comply with medical orders of the
19 treating physician or his or her abandonment of medical care. The
20 administrative law judge may appoint an independent medical examiner
21 to determine if further medical treatment is reasonable and
22 necessary. The independent medical examiner shall not provide
23 treatment to the injured worker, unless agreed upon by the parties.

24 B. Temporary Partial Disability.

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

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

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

16 C. Permanent Partial Disability.

17 1. A permanent partial disability award or combination of
18 awards granted an injured worker may not exceed a permanent partial
19 disability rating of one hundred percent (100%) to any body part or
20 to the body as a whole. The determination of permanent partial
21 disability shall be the responsibility of the Commission through its
22 administrative law judges. Any claim by an employee for
23 compensation for permanent partial disability must be supported by
24 competent medical testimony of a medical doctor, osteopathic

1 physician, or chiropractor, and shall be supported by objective
2 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.
3 The opinion of the physician shall include employee's percentage of
4 permanent partial disability and whether or not the disability is
5 job-related and caused by the accidental injury or occupational
6 disease. A physician's opinion of the nature and extent of
7 permanent partial disability to parts of the body other than
8 scheduled members must be based solely on criteria established by
9 the current edition of the American Medical Association's "Guides to
10 the Evaluation of Permanent Impairment". A copy of any written
11 evaluation shall be sent to both parties within seven (7) days of
12 issuance. Medical opinions addressing compensability and permanent
13 disability must be stated within a reasonable degree of medical
14 certainty. Any party may submit the report of an evaluating
15 physician.

16 2. Permanent partial disability shall not be allowed to a part
17 of the body for which no medical treatment has been received. A
18 determination of permanent partial disability made by the Commission
19 or administrative law judge which is not supported by objective
20 ~~medical~~ findings provided by a treating physician who is a medical
21 doctor, doctor of osteopathy, chiropractor or a qualified
22 independent medical examiner shall be considered an abuse of
23 discretion.

24

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

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

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

17 a. ~~The amount of the permanent partial disability award~~
18 ~~shall be reduced by seventy percent (70%) of the~~
19 ~~employee's average weekly wage for each week he works~~
20 ~~in his pre-injury or equivalent job.~~

21 b. ~~If, for any reason other than misconduct as defined in~~
22 ~~Section 2 of this act, the employer terminates the~~
23 ~~employee or the position offered is not the pre-injury~~
24 ~~or equivalent job, the remaining permanent partial~~

1 ~~disability award shall be paid in a lump sum. If the~~
2 ~~employee is discharged for misconduct, the employer~~
3 ~~shall have the burden to prove that the employee~~
4 ~~engaged in misconduct.~~

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

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

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

19 ~~6.~~ Previous Disability: The fact that an employee has suffered
20 previous disability or received compensation therefor shall not
21 preclude the employee from compensation for a later accidental
22 personal injury or occupational disease. In the event there exists
23 a previous permanent partial disability, including a previous non-
24 work-related injury or condition which produced permanent partial

1 disability and the same is aggravated or accelerated by an
2 accidental personal injury or occupational disease, compensation for
3 permanent partial disability shall be only for such amount as was
4 caused by such accidental personal injury or occupational disease
5 and no additional compensation shall be allowed for the preexisting
6 disability ~~or impairment~~. Any such reduction shall not apply to
7 temporary total disability, nor shall it apply to compensation for
8 medical treatment.

9 a. If workers' compensation benefits have previously been
10 awarded through settlement or judicial or
11 administrative determination in Oklahoma, the
12 percentage basis of the prior settlement or award
13 shall conclusively establish the amount of permanent
14 partial disability determined to be preexisting. If
15 workers' compensation benefits have not previously
16 been awarded through settlement or judicial or
17 administrative determination in Oklahoma, the amount
18 of preexisting permanent partial disability shall be
19 established by competent evidence.

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

22 (1) if the preexisting ~~impairment~~ disability is the
23 result of injury sustained while working for the
24 employer against whom workers' compensation

1 benefits are currently being sought, any award of
2 compensation shall be reduced by the current
3 dollar value attributable under the
4 Administrative Workers' Compensation Act to the
5 percentage of permanent partial disability
6 determined to be preexisting. The current dollar
7 value shall be calculated by multiplying the
8 percentage of preexisting permanent partial
9 disability by the compensation rate in effect on
10 the date of the accident or injury against which
11 the reduction will be applied, and

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

16 ~~7.~~ 6. No payments on any permanent partial disability order
17 shall begin until payments on any preexisting permanent partial
18 disability orders have been completed.

19 ~~8.~~ 7. The whole body shall represent a maximum of three hundred
20 fifty (350) weeks.

21 ~~9.~~ ~~The permanent partial disability rate of compensation for~~
22 ~~amputation or permanent total loss of use of a scheduled member~~
23 ~~specified in Section 46 of this act shall be seventy percent (70%)~~
24 ~~of the employee's average weekly wage, not to exceed Three Hundred~~

1 ~~Twenty three Dollars (\$323.00), multiplied by the number of weeks~~
2 ~~set forth for the member in Section 46 of this act, regardless of~~
3 ~~whether the injured employee is able to return to his or her pre-~~
4 ~~injury or equivalent job.~~

5 ~~10.~~ 8. An injured employee who is eligible for permanent
6 partial disability under this subsection shall be entitled to
7 receive vocational rehabilitation services provided by a technology
8 center or public secondary school offering vocational-technical
9 education courses, or a member institution of The Oklahoma State
10 System of Higher Education, which shall include retraining and job
11 placement to restore the employee to gainful employment. Vocational
12 rehabilitation services or training shall not extend for a period of
13 more than fifty-two (52) weeks.

14 D. Permanent Total Disability.

15 1. In case of total disability adjudged to be permanent,
16 seventy percent (70%) of the employee's average weekly wages, but
17 not in excess of the state's average weekly wage, shall be paid to
18 the employee during the continuance of the disability until such
19 time as the employee reaches the age of maximum Social Security
20 retirement benefits or for a period of fifteen (15) years, whichever
21 is longer. In the event the claimant dies of causes unrelated to
22 the injury or illness, benefits shall cease on the date of death.
23 Provided, however, any person entitled to revive the action shall
24 receive a one-time lump-sum payment equal to twenty-six (26) weeks

1 of weekly benefits for permanent total disability awarded the
2 claimant. If more than one person is entitled to revive the claim,
3 the lump-sum payment shall be evenly divided between or among such
4 persons. In the event the Commission awards both permanent partial
5 disability and permanent total disability benefits, the permanent
6 total disability award shall not be due until the permanent partial
7 disability award is paid in full. If otherwise qualified according
8 to the provisions of this act, permanent total disability benefits
9 may be awarded to an employee who has exhausted the maximum period
10 of temporary total disability even though the employee has not
11 reached maximum medical improvement.

12 2. The Commission shall annually review the status of any
13 employee receiving benefits for permanent total disability against
14 the last employer. The Commission shall require the employee to
15 annually file an affidavit under penalty of perjury stating that he
16 or she is not and has not been gainfully employed and is not capable
17 of gainful employment. Failure to file such affidavit shall result
18 in suspension of benefits; provided, however, reinstatement of
19 benefits may occur after proper hearing before the Commission.

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

23 2. The Vocational Rehabilitation Director shall help injured
24 workers return to the work force. If the injured employee is unable

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

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

- 18 a. if the employee's occupation is truck driver or
19 laborer and the medical condition is traumatic brain
20 injury, stroke or uncontrolled vertigo,
21 b. if the employee's occupation is truck driver or
22 laborer performing high-risk tasks and the medical
23 condition is seizures,

24

- 1 c. if the employee's occupation is manual laborer and the
2 medical condition is bilateral wrist fusions,
- 3 d. if the employee's occupation is assembly-line worker
4 and the medical condition is radial head fracture with
5 surgical excision,
- 6 e. if the employee's occupation is heavy laborer and the
7 medical condition is myocardial infarction with
8 congestive heart failure,
- 9 f. if the employee's occupation is heavy manual laborer
10 and the medical condition is multilevel neck or back
11 fusions greater than two levels,
- 12 g. if the employee's occupation is laborer performing
13 overhead work and the medical condition is massive
14 rotator cuff tears, with or without surgery,
- 15 h. if the employee's occupation is heavy laborer and the
16 medical condition is recurrent inguinal hernia
17 following unsuccessful surgical repair,
- 18 i. if the employee's occupation is heavy manual laborer
19 and the medical condition is total knee replacement or
20 total hip replacement,
- 21 j. if the employee's occupation is roofer and the medical
22 condition is calcaneal fracture, medically or
23 surgically treated,
- 24

- 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

1 expert for evaluation of the practicability of, need for and kind of
2 rehabilitation services or training necessary and appropriate in
3 order to restore the employee to gainful employment. The cost of
4 the evaluation shall be paid by the employer. Following the
5 evaluation, if the employee refuses the services or training ordered
6 by the administrative law judge, or fails to complete in good faith
7 the vocational rehabilitation training ordered by the administrative
8 law judge, then the cost of the evaluation and services or training
9 rendered may, in the discretion of the administrative law judge, be
10 deducted from any award of benefits to the employee which remains
11 unpaid by the employer. Upon receipt of such report, and after
12 affording all parties an opportunity to be heard, the administrative
13 law judge shall order that any rehabilitation services or training,
14 recommended in the report, or such other rehabilitation services or
15 training as the administrative law judge may deem necessary,
16 provided the employee elects to receive such services, shall be
17 provided at the expense of the employer. Except as otherwise
18 provided in this subsection, refusal to accept rehabilitation
19 services by the employee shall in no way diminish any benefits
20 allowable to an employee.

21 5. The administrative law judge may order vocational
22 rehabilitation before the injured employee reaches maximum medical
23 improvement, if the treating physician believes that it is likely
24 that the employee's injury will prevent the employee from returning

1 to his or her former employment. In granting early benefits for
2 vocational rehabilitation, the Commission shall consider temporary
3 restrictions and the likelihood that such rehabilitation will return
4 the employee to gainful employment earlier than if such benefits are
5 granted after the permanent partial disability hearing in the claim.

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

13 7. If rehabilitation requires residence at or near the facility
14 or institution which is away from the employee's customary
15 residence, reasonable cost of the employee's board, lodging, travel,
16 tuition, books and necessary equipment in training shall be paid for
17 by the insurer in addition to weekly compensation benefits to which
18 the employee is otherwise entitled under the Administrative Workers'
19 Compensation Act.

20 8. During the period when an employee is actively and in good
21 faith being evaluated or participating in a retraining or job
22 placement program for purposes of evaluating permanent total
23 disability status, the employee shall be entitled to receive
24 benefits at the same rate as the employee's temporary total

1 disability benefits for an additional fifty-two (52) weeks. All
2 tuition related to vocational rehabilitation services shall be paid
3 by the employer or the employer's insurer on a periodic basis
4 directly to the facility providing the vocational rehabilitation
5 services or training to the employee. The employer or employer's
6 insurer may deduct the amount paid for tuition from compensation
7 awarded to the employee.

8 F. Disfigurement.

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

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

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

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

1 SECTION 11. AMENDATORY Section 46, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
3 follows:

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

- 14 1. Arm amputated at the elbow, or between the elbow and
15 shoulder, two hundred seventy-five (275) weeks;
- 16 2. Arm amputated between the elbow and wrist, two hundred
17 twenty (220) weeks;
- 18 3. Leg amputated at the knee, or between the knee and the hip,
19 two hundred seventy-five (275) weeks;
- 20 4. Leg amputated between the knee and the ankle, two hundred
21 twenty (220) weeks;
- 22 5. Hand amputated, two hundred twenty (220) weeks;
- 23 6. Thumb amputated, sixty-six (66) weeks;
- 24 7. First finger amputated, thirty-nine (39) weeks;

- 1 8. Second finger amputated, thirty-three (33) weeks;
 - 2 9. Third finger amputated, twenty-two (22) weeks;
 - 3 10. Fourth finger amputated, seventeen (17) weeks;
 - 4 11. Foot amputated, two hundred twenty (220) weeks;
 - 5 12. Great toe amputated, thirty-three (33) weeks;
 - 6 13. Toe other than great toe amputated, eleven (11) weeks;
 - 7 14. Eye enucleated, in which there was useful vision, two
 - 8 hundred seventy-five (275) weeks;
 - 9 15. Loss of hearing of one ear, one hundred ten (110) weeks;
 - 10 16. Loss of hearing of both ears, three hundred thirty (330)
 - 11 weeks; and
 - 12 17. Loss of one testicle, fifty-three (53) weeks; loss of both
 - 13 testicles, one hundred fifty-eight (158) weeks.
- 14 B. The permanent partial disability rate of compensation for
- 15 amputation or permanent total loss of use of a scheduled member
- 16 specified in this section shall be seventy percent (70%) of the
- 17 employee's average weekly wage, not to exceed Three Hundred Twenty-
- 18 three Dollars (\$323.00), multiplied by the number of weeks as set
- 19 forth in this section, regardless of whether or not the injured
- 20 employee is able to return to his or her pre-injury job.
- 21 C. Other cases: In cases in which the Commission finds an
- 22 injury ~~to a part of the body~~ not specifically covered by the
- 23 foregoing provisions of this section, the employee may be entitled
- 24 to compensation for permanent partial disability. The compensation

1 ordered paid shall be seventy percent (70%) of the employee's
2 average weekly wage, not to exceed Three Hundred Twenty-three
3 Dollars (\$323.00) for the number of weeks which the partial
4 disability of the employee bears to three hundred fifty (350) weeks.

5 D. 1. Compensation for amputation of the first phalange of a
6 digit shall be one-half (1/2) of the compensation for the amputation
7 of the entire digit.

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

10 E. 1. Compensation for the permanent loss of eighty percent
11 (80%) or more of the vision of an eye shall be the same as for the
12 loss of an eye.

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

16 F. Compensation for amputation or loss of use of two or more
17 digits or one or more phalanges of two or more digits of a hand or a
18 foot may be proportioned to the total loss of use of the hand or the
19 foot occasioned thereby but shall not exceed the compensation for
20 total loss of a hand or a foot.

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

23

24

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

4 SECTION 12. AMENDATORY Section 56, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as
6 follows:

7 Section 56. A. If the employer has previously contracted with
8 a certified workplace medical plan, the employer shall select for
9 the injured employee a treating physician from the physicians listed
10 within the network of the certified workplace medical plan. The
11 employee may apply for a change of physician by utilizing the
12 dispute resolution process set out in the certified workplace
13 medical plan on file with the State Department of Health.

14 B. If the employer is not covered by a certified workplace
15 medical plan, the employer shall select the treating physician. The
16 Commission on application of the employee shall order one change of
17 treating physician. Upon the Commission's granting of the
18 application, the employer shall provide a list of three physicians
19 from whom the employee may select the replacement. The employer may
20 identify physicians within the same practice, facility or hospital
21 as the treating physician. The only requirement for the list of
22 three physicians is that they be licensed and accredited to perform
23 the necessary treatment.

24

1 SECTION 13. AMENDATORY Section 62, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
3 follows:

4 Section 62. A. Notwithstanding the provisions of Section 45 of
5 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
6 injury, temporary total disability compensation shall not exceed
7 eight (8) weeks, regardless of the number of parts of the body to
8 which there is a nonsurgical soft tissue injury. An employee who is
9 treated with an injection ~~or injections~~ shall be entitled to an
10 extension of an additional eight (8) weeks total, regardless of the
11 number of injections. An employee who has been recommended by a
12 treating physician for surgery for a soft tissue injury may petition
13 the Workers' Compensation Commission for one extension of temporary
14 total disability compensation and the Commission may order an
15 extension, not to exceed sixteen (16) additional weeks. If the
16 surgery is not performed within thirty (30) days of the approval of
17 the surgery by the employer, its insurance carrier, or an order of
18 the Commission authorizing the surgery, and the delay is caused by
19 the employee acting in bad faith, the benefits for the extension
20 period shall be terminated and the employee shall reimburse the
21 employer any temporary total disability compensation he or she
22 received beyond eight (8) weeks. An epidural steroid injection, or
23 any procedure of the same or similar physical invasiveness, shall
24 not be considered surgery.

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

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

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

10 a. sensory or motor disturbances,

11 b. communication disturbances,

12 c. complex integrated disturbances of cerebral function,

13 d. episodic neurological disorders, or

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

17 3. Any joint replacement.

18 SECTION 14. AMENDATORY Section 68, Chapter 208, O.S.L.

19 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
20 follows:

21 Section 68. A. Unless an employee gives oral or written notice
22 to the employer within ~~thirty (30)~~ fifteen (15) days of the date an
23 injury occurs, the rebuttable presumption shall be that the injury
24 was not work-related. Such presumption ~~must~~ may be overcome by a

1 preponderance of the evidence. In no event shall compensation be
2 allowed if notice is not given within one hundred twenty (120) days
3 after the date of the injury.

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

10 SECTION 15. AMENDATORY Section 71, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
12 follows:

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

16 B. Investigation - Hearing.

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

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

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

1 4. If a hearing on the claim is ordered, the administrative law
2 judge shall give the claimant and other interested parties ten (10)
3 days' notice of the hearing served personally on the claimant and
4 other parties, or by registered mail, facsimile, electronic mail or
5 by other electronic means with confirmation of receipt. The hearing
6 shall be held in Tulsa or Oklahoma County, as determined by the
7 Commission.

8 5. The award, together with the statement of the findings of
9 fact and other matters pertinent to the issues, shall be filed with
10 the record of the proceedings, and a copy of the award shall
11 immediately be sent to the parties in or to counsels of record, if
12 any.

13 C. Evidence and Construction.

14 1. a. At the hearing the claimant and the employer may each
15 present evidence relating to the claim. Evidence may
16 be presented by any person authorized in writing for
17 such purpose. The evidence may include verified
18 medical reports which shall be accorded such weight as
19 may be warranted when considering all evidence in the
20 case.

21 b. Any determination of the existence or extent of
22 physical impairment shall be supported by objective
23 and measurable physical or mental findings.
24

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

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

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

11 D. Judgment. The judgment denying the claim or making the
12 award shall be filed in the office of the Commission, and a copy
13 shall be sent by registered mail, facsimile, electronic mail or by
14 other electronic means with confirmation of receipt to the claimant
15 and to the employer or to their attorneys.

16 E. No compensation for disability of an injured employee shall
17 be payable for any period beyond his or her death; provided,
18 however, an award of compensation for disability may be made after
19 the death of the injured employee for the period of disability
20 preceding death.

21 SECTION 16. AMENDATORY Section 78, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
23 follows:
24

1 Section 78. A. Any party feeling aggrieved by the judgment,
2 decision, or award made by the administrative law judge may, within
3 ten (10) days of issuance, appeal to the Workers' Compensation
4 Commission. After hearing arguments, the Commission may reverse or
5 modify the decision only if it determines that the decision was
6 against the clear weight of the evidence or contrary to law. All
7 such proceedings of the Commission shall be recorded by a court
8 reporter, if requested by any party. Any judgment of the Commission
9 which reverses a decision of the administrative law judge shall
10 contain specific findings relating to the reversal.

11 B. The chair of the Commission shall have the authority to
12 appoint an administrative law judge to the en banc panel when any
13 Commissioner of the Commission is disqualified for any reason, to
14 fill a vacancy, or in the absence of a Commissioner; provided, the
15 appointed administrative law judge shall not have presided over any
16 of the previous hearings on the claim.

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

21 ~~E.~~ D. The judgment, decision or award of the Commission shall
22 be final and conclusive on all questions within its jurisdiction
23 between the parties unless an action is commenced in the Supreme
24 Court of this state to review the judgment, decision or award within

1 twenty (20) days of being sent to the parties. Any judgment,
2 decision or award made by an administrative law judge shall be
3 stayed until all appeal rights have been waived or exhausted. The
4 Supreme Court may modify, reverse, remand for rehearing, or set
5 aside the judgment or award only if it was:

- 6 1. In violation of constitutional provisions;
- 7 2. In excess of the statutory authority or jurisdiction of the
8 Commission;
- 9 3. Made on unlawful procedure;
- 10 4. Affected by other error of law;
- 11 5. Clearly erroneous in view of the reliable, material,
12 probative and substantial competent evidence;
- 13 6. Arbitrary or capricious;
- 14 7. Procured by fraud; or
- 15 8. Missing findings of fact on issues essential to the
16 decision.

17 This action shall be commenced by filing with the Clerk of the
18 Supreme Court a certified copy of the judgment, decision or award of
19 the Commission attached to the petition by the complaint which shall
20 specify why the judgment, decision or award is erroneous or illegal.
21 The proceedings shall be heard in a summary manner and shall have
22 precedence over all other civil cases in the Supreme Court, except
23 preferred Corporation Commission appeals. The Supreme Court shall
24 require the appealing party to file within forty-five (45) days from

1 the date of the filing of an appeal or a judgment appealed from, a
2 transcript of the record of the proceedings before the Commission,
3 or such later time as may be granted by the Supreme Court on
4 application and for good cause shown. The action shall be subject
5 to the law and practice applicable to other civil actions cognizable
6 in the Supreme Court.

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

15 F. During the pendency of an appeal filed by an employer or the
16 employer's insurance carrier pursuant to this section, payment for
17 any prescription drugs prescribed by the treating physician shall be
18 continued. If payment for prescription drugs is an issue on appeal,
19 and the employer is held not to be liable for payment for the
20 prescription drugs, the employee shall reimburse the employer or the
21 employer's insurance carrier for the cost of prescriptions filled
22 during the time of the appeals process.

23
24

1 SECTION 17. AMENDATORY Section 80, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 80), is amended to read as
3 follows:

4 Section 80. A. Except ~~where~~ when a joint petition settlement
5 has been approved, the Commission may reopen for review any
6 compensation judgment, award, or decision. Such review based on a
7 change of physical condition may be done at any time within six (6)
8 ~~months of termination of the compensation period fixed in the~~
9 ~~original compensation judgment or award~~ from the date of the last
10 order in which monetary benefits or active medical treatment was
11 provided, on the Commission's own motion or on the application of
12 any party in interest, ~~on the ground of a change in physical~~
13 ~~condition or on proof of erroneous wage rate~~ and unless filed within
14 such period of time, shall be forever barred. On review, the
15 Commission may make a judgment or award terminating, continuing,
16 decreasing, or increasing for the future the compensation previously
17 awarded, subject to the maximum limits provided for in this ~~act~~
18 title. An order denying an application to reopen a claim shall not
19 extend the period of time set out in this title for reopening the
20 case. A failure to comply with a medical treatment plan ordered by
21 the Commission shall bar reopening of a claim.

22 B. The review and subsequent judgment or award shall be made in
23 accordance with the procedure prescribed in Sections 69 through 78
24

1 of this ~~act~~ title. No review shall affect any compensation paid
2 under a prior order, judgment or award.

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

6 D. Aging and the effects of aging on a compensable injury are
7 not to be considered in determining whether there has been a change
8 in physical condition. Aging or the effect of aging on a
9 compensable injury shall not be considered in determining permanent
10 disability under this section or any other section in this ~~act~~
11 title.

12 SECTION 18. AMENDATORY Section 108, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 201), is amended to read as
14 follows:

15 Section 201. A. As used in the Oklahoma Employee Injury
16 Benefit Act:

17 1. "Benefit plan" means a written plan established by a
18 qualified employer under the requirements of ~~Section 110 of this act~~
19 the Oklahoma Employee Injury Benefit Act;

20 2. "Commission" means the Workers' Compensation Commission
21 under the Administrative Workers' Compensation Act;

22 3. ~~"Commissioner" means the Insurance Commissioner of the State~~
23 ~~of Oklahoma~~ "Claimant" means a covered employee or his or her
24

1 representative or beneficiary who claims benefits under the Oklahoma
2 Employee Injury Benefit Act;

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

5 5. "Department" means the Insurance Department of the State of
6 Oklahoma;

7 6. "Employee" means any person defined as an employee pursuant
8 to Section 2 of this ~~act~~ title;

9 ~~6.~~ 7. "Employer", except when otherwise expressly stated, means
10 a person, partnership, association, limited liability company,
11 corporation, and the legal representatives of a deceased employer,
12 or the receiver or trustee of a person, partnership, association,
13 corporation, or limited liability company, department,
14 instrumentality or institution of this state and divisions thereof,
15 counties and divisions thereof and other political subdivisions of
16 this state and public trusts employing a person included within the
17 term employee as defined in this section;

18 ~~7.~~ 8. "Fully insured plan" means insurance coverage of one
19 hundred percent (100%) of an employer's statutory benefit liability;

20 9. "Occupational ~~injury disease~~" means ~~an injury, including~~
21 ~~death, or occupational illness, causing internal or external harm to~~
22 ~~the body, which arises out of and in the course of employment shall~~
23 have the same meaning provided pursuant to Section 65 of this title;
24

1 ~~8.~~ 10. "Qualified employer" means an employer ~~otherwise subject~~
2 ~~to the Administrative Workers' Compensation Act~~ that voluntarily
3 ~~elects~~ is approved to be exempt from ~~such act~~ the Administrative
4 Workers' Compensation Act by satisfying the requirements under ~~this~~
5 ~~act~~ the Oklahoma Employee Injury Benefit Act; and

6 ~~9.~~ 11. "Surviving spouse" means the covered employee's spouse
7 by reason of a legal marriage recognized by the State of Oklahoma or
8 under the requirements of a common law marriage in this state.

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

12 SECTION 19. AMENDATORY Section 109, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 202), is amended to read as
14 follows:

15 Section 202. A. Any employer may ~~voluntarily elect~~ apply to be
16 ~~exempt from the Administrative Workers' Compensation Act~~ and become
17 a qualified employer ~~if the employer~~ by submitting to the Insurance
18 Department:

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

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

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

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

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

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

21 C. ~~The Commissioner~~ Department shall collect and maintain the
22 information required under this section and shall monitor compliance
23 with the requirements of this section. ~~The Commissioner~~ Department
24 may ~~also~~ require ~~an~~ a qualified employer to provide information

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

17 D. ~~Except as otherwise expressly provided in this act, neither~~
18 ~~the Workers' Compensation Commission, the courts of this state, or~~
19 ~~any state administrative agencies shall promulgate rules or any~~
20 ~~procedures related to design, documentation, implementation,~~
21 ~~administration or funding of a qualified employer's benefit plan If~~
22 ~~the Department determines that a qualified employer is deficient in~~
23 ~~any requirements, it shall provide written notice of the deficiency~~
24 ~~to the employer. Within ten (10) days, the qualified employer shall~~

1 provide proof to the Department that it has cured the deficiency or
2 it shall automatically lose status as a qualified employer and
3 become subject to the provisions of the Administrative Workers'
4 Compensation Act. An employer that has lost status as a qualified
5 employer may reapply for such status.

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

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

13 1. Its name, address, contact person and phone number, federal
14 tax identification number, and number of persons employed in this
15 state as of a specified date;

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

18 3. A listing of all covered business locations in the state.

19 ~~The Commissioner~~ Department shall notify the ~~Commissioner~~ Workers'
20 Compensation Commission and the Department of Labor of all
21 qualified-employer notifications. ~~The Department of Labor shall~~
22 ~~provide such notifications to other governmental agencies as it~~
23 ~~deems necessary.~~

24

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

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

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

18 A qualified employer shall post the employee notification required
19 by this section at conspicuous locations at the qualified employer's
20 places of business as necessary to provide reasonable notice to all
21 covered employees. The ~~Commissioner~~ Department may adopt rules
22 relating to the form, content, and method of delivery of the
23 employee notification required by this section.

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

8 1. If the controlled group is fully insured, pay to the
9 Department an annual nonrefundable fee of Two Hundred Fifty Dollars
10 (\$250.00) on the date of filing written notice of election and every
11 year thereafter; or

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

16 SECTION 20. AMENDATORY Section 110, Chapter 208, O.S.L.
17 2013, as amended by Section 4, Chapter 390, O.S.L. 2015 (85A O.S.
18 Supp. 2016, Section 203), is amended to read as follows:

19 Section 203. A. An employer voluntarily electing to become a
20 qualified employer shall adopt a ~~written~~ benefit plan that complies
21 with the requirements of this section. ~~Qualified employer status is~~
22 ~~optional for eligible employers. The benefit plan shall not become~~
23 ~~effective until the date that the qualified employer first satisfies~~
24 ~~the notice requirements in Section 202 of this title.~~

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

22 C. ~~The benefit plan may provide for lump-sum payouts that are,~~
23 ~~as reasonably determined by the administrator of such plan appointed~~
24 ~~by the qualified employer, actuarially equivalent to expected future~~

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

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

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

23 3. Fraud, pursuant to Section 6 of this title;
24

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

3 5. Liability other than immediate employer, pursuant to Section
4 36 of this title; and

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

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

10 E. ~~The qualified employer shall provide to the Commissioner and~~
11 ~~covered employees notice of the name, title, address, and telephone~~
12 ~~number for the person to contact for injury benefit claims~~
13 ~~administration, whether in-house at the qualified employer or a~~
14 ~~third-party administrator.~~

15 F. Information submitted to the ~~Commissioner~~ Department as part
16 of the application for approval as a qualified employer, to confirm
17 eligibility for continuing status as a qualified employer, or as
18 otherwise required by the Oklahoma Employee Injury Benefit Act may
19 not be made public by the ~~Commissioner or by an agent or employee of~~
20 ~~the Commissioner~~ Department without the written consent of the
21 applicant or qualified employer, as applicable, except that:

22 1. The information may be discoverable by a party in a civil
23 action or contested case to which the employer that submitted the
24

1 information is a party, upon a showing by the party seeking to
2 discover the information that:

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

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

- 13 a. the public officer agrees in writing to maintain the
14 confidentiality of the information, and
- 15 b. the laws of the state in which the public officer
16 serves require the information to be kept
17 confidential; and

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

20 F. A qualified employer's insurance coverage pertains only to
21 covered employees in this state. An employer with employees in
22 other states shall obtain insurance coverage in compliance with the
23 laws of that state; provided:

24

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

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

7 3. If an employee is not principally employed in this state but
8 is injured in this state, the employee shall be subject to the
9 provisions of the specific act in this title under which the
10 employer provides coverage.

11 SECTION 21. AMENDATORY Section 111, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 204), is amended to read as
13 follows:

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

19 B. Insurance coverage or surety bond obtained by a qualified
20 employer shall be from an admitted ~~or surplus lines~~ insurer ~~with an~~
21 ~~AM Best Rating of B+ or better~~. The Insurance Department has no
22 duty to approve insurance rates charged for this coverage. A
23 qualified employer shall secure compensation to covered employees in
24 one of the following ways:

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

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

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

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

17 (2) provide proof of excess coverage with such terms
18 and conditions as is commensurate with their
19 ability to pay the benefits required by the
20 provisions of this act, or

21 (3) provide a combination of the requirements of
22 divisions (1) and (2) of this subparagraph, as
23 may be approved by the Department,
24

1 b. one hundred or more employees and One Million Dollars
2 (\$1,000,000.00) or more in net assets to:

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

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

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

15 3. Any other security as may be approved by the ~~Commissioner~~
16 Department.

17 C. The ~~Commissioner~~ Department may waive the requirements of
18 this section in an amount which is commensurate with the ability of
19 the employer to pay the benefits required by the provisions of this
20 act. Irrevocable letters of credit required by this section shall
21 contain such terms as may be prescribed by the ~~Commissioner~~
22 Department and shall be issued for the benefit of the state by a
23 financial institution whose deposits are insured by the Federal
24 Deposit Insurance Corporation.

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

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

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

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

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

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

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

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

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

17 G. ~~The Commissioner~~ Department shall promulgate rules to carry
18 out the provisions of this section including those establishing the
19 procedure by which ~~a covered employee may request and receive~~
20 ~~payment from the security held by the Commissioner~~ an employer may
21 be approved to self-insure all or part of the employer's liability
22 under the Oklahoma Employee Injury Benefit Act.

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

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

9 SECTION 22. AMENDATORY Section 118, Chapter 208, O.S.L.
10 2013, as amended by Section 6, Chapter 390, O.S.L. 2015 (85A O.S.
11 Supp. 2016, Section 211), is amended to read as follows:

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

1 procedures consistent with this section may be specified in the
2 benefit plan.

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

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

18 2. The appeals committee may request any additional information
19 it deems necessary to make a decision, including having the claimant
20 submit to a medical exam. The committee shall create a
21 comprehensive record of the hearing and maintain such record for no
22 less than two (2) years from the date the decision on appeal is
23 issued;
24

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

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

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

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

19 ~~6.~~ 5. The Commission administrative law judge shall ~~rely on the~~
20 ~~record established by the internal appeal process and use an~~
21 ~~objective standard of review that is not arbitrary or capricious~~ the
22 claim de novo. Any party aggrieved by the judgment, decision, or
23 award made by an administrative law judge may, within ten (10) days
24 of issuance, appeal to the Commission. After hearing, the

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

11 ~~7.~~ 6. If the claimant appeals to the Commission and any part of
12 the adverse benefit determination is upheld, he or she may appeal to
13 the Oklahoma Supreme Court. The judgment, decision or award of the
14 Commission shall be final and conclusive on all questions within its
15 jurisdiction between the parties unless an action is commenced in
16 the Supreme Court of this state to review the judgment, decision or
17 award within twenty (20) days of being sent to the parties. Any
18 judgment, decision or award made by an administrative law judge
19 shall be stayed until all appeal rights have been waived or
20 exhausted. The Supreme Court may modify, reverse, remand for
21 rehearing, or set aside the judgment, decision or award only if it
22 was:

23 a. in violation of constitutional provisions,
24

- b. in excess of the statutory authority or jurisdiction of the Commission,
- c. made on unlawful procedure,
- d. affected by other error of law,
- e. clearly erroneous in view of the reliable, material, probative and substantial competent evidence,
- f. arbitrary or capricious,
- g. procured by fraud, or
- h. missing findings of fact on issues essential to the decision.

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

The Supreme Court shall require the appealing party 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~~

1 ~~court of competent jurisdiction, then the following minimal appeal~~
2 ~~procedures will go into effect:~~

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

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

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

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

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

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

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

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

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

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

16
17 56-1-5342 SD 12/12/16
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