

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3610

By: O'Donnell

7 AS INTRODUCED

8 An Act relating to workers' compensation; amending
9 Section 2, Chapter 208, O.S.L. 2013, as last amended
10 by Section 1, Chapter 476, O.S.L. 2019 (85A O.S.
11 Supp. 2019, Section 2), which relates to the
12 Administrative Workers' Compensation Act; modifying
13 definition; and providing an effective date.

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

15 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
16 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A
17 O.S. Supp. 2019, Section 2), is amended to read as follows:

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

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

23 2. "Carrier" means any stock company, mutual company, or
24 reciprocal or interinsurance exchange authorized to write or carry

1 on the business of workers' compensation insurance in this state.

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

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

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

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

1 e. Certified Occupational Health Nurse (COHN), or

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

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

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

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 damage or harm to
9 prosthetic appliances, including eyeglasses, contact
10 lenses, or hearing aids, of which the major cause is
11 either an accident, cumulative trauma or occupational
12 disease arising out of the course and scope of
13 employment. An "accident" means an event involving
14 factors external 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, or

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

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

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

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

(4) injury if the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If a biological specimen is collected within twenty-four (24) hours of the employee being injured or reporting an injury, or if at any time after the injury a biological specimen is collected by the Oklahoma Office of the Chief Medical Examiner if the injured employee does not survive for at

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

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

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

5 c. A compensable injury shall be established by medical
6 evidence supported by objective findings as defined in
7 paragraph 31 of this section.

8 d. The injured employee shall prove by a preponderance of
9 the evidence that he or she has suffered a compensable
10 injury.

11 e. Benefits shall not be payable for a condition which
12 results from a non-work-related independent
13 intervening cause following a compensable injury which
14 causes or prolongs disability, aggravation, or
15 requires treatment. A non-work-related independent
16 intervening cause does not require negligence or
17 recklessness on the part of a claimant.

18 f. An employee who suffers a compensable injury shall be
19 entitled to receive compensation as prescribed in this
20 act. Notwithstanding other provisions of law, if it
21 is determined that a compensable injury did not occur,
22 the employee shall not be entitled to compensation
23 under this act;
24

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

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

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

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

1 of the affairs of an employer that is specifically directed by the
2 employer. This term does not include:

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

21 14. "Cumulative trauma" means an injury to an employee that is
22 caused by the combined effect of repetitive physical activities
23 extending over a period of time in the course and scope of
24 employment. Cumulative trauma shall not mean fatigue, soreness or

1 general aches and pain that may have been caused, aggravated,
2 exacerbated or accelerated by the employee's course and scope of
3 employment. Cumulative trauma shall have resulted directly and
4 independently of all other causes;

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

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

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

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

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

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

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

1 (\$100,000.00) wages for agricultural, ranching or
2 horticultural workers, or any person who is
3 employed in agriculture, ranching or horticulture
4 who is not engaged in operation of motorized
5 machines. This exemption applies to any period
6 of time for which such employment exists,
7 irrespective of whether or not the person is
8 employed in other activities for which the
9 exemption does not apply. If the person is
10 employed for part of a year in exempt activities
11 and for part of a year in nonexempt activities,
12 the employer shall be responsible for providing
13 workers' compensation only for the period of time
14 for which the person is employed in nonexempt
15 activities,

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

18 ~~(4) any person who is providing services in a medical~~
19 ~~care or social services program, or who is a~~
20 ~~participant in a work or training program,~~
21 ~~administered by the Department of Human Services,~~
22 ~~unless the Department is required by federal law~~
23 ~~or regulations to provide workers' compensation~~

~~for such person. This division shall not be
construed to include nursing homes,~~

~~(5)~~ any person employed by an employer with five or
fewer total employees, all of whom are related
within the second degree by blood or marriage to
the employer, all of whom are dependents living
in the household of the employer, or all of whom
are a combination of such relatives and
dependents. If the employer is not a natural
person such relative shall be related within the
second degree by blood or marriage to a person
who owns fifty percent (50%) or more of the
employer, or such dependent shall be in the
household of a person who owns fifty percent
(50%) or more of the employer,

~~(6)~~ (5) any person employed by an employer which is a
youth sports league which qualifies for exemption
from federal income taxation pursuant to federal
law,

~~(7)~~ (6) sole proprietors, members of a partnership,
individuals who are party to a franchise
agreement as set out by the Federal Trade
Commission franchise disclosure rule, 16 CFR
436.1 through 436.11, members of a limited

1 liability company who own at least ten percent
2 (10%) of the capital of the limited liability
3 company or any stockholder-employees of a
4 corporation who own ten percent (10%) or more
5 stock in the corporation, unless they elect to be
6 covered by a policy of insurance covering
7 benefits under the Administrative Workers'
8 Compensation Act,

9 ~~(8)~~ (7) any person providing or performing voluntary
10 service who receives no wages for the services
11 other than meals, drug or alcohol rehabilitative
12 therapy, transportation, lodging or reimbursement
13 for incidental expenses except for volunteers
14 specifically provided for in subparagraph a of
15 this paragraph,

16 ~~(9)~~ (8) a person, commonly referred to as an owner-
17 operator, who owns or leases a truck-tractor or
18 truck for hire, if the owner-operator actually
19 operates the truck-tractor or truck and if the
20 person contracting with the owner-operator is not
21 the lessor of the truck-tractor or truck.

22 Provided, however, an owner-operator shall not be
23 precluded from workers' compensation coverage
24 under the Administrative Workers' Compensation

1 Act if the owner-operator elects to participate
2 as a sole proprietor,

3 ~~(10)~~ (9) a person referred to as a drive-away owner-
4 operator who privately owns and utilizes a tow
5 vehicle in drive-away operations and operates
6 independently for hire, if the drive-away owner-
7 operator actually utilizes the tow vehicle and if
8 the person contracting with the drive-away owner-
9 operator is not the lessor of the tow vehicle.

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

15 ~~(11)~~ (10) any person who is employed as a domestic servant
16 or as a casual worker in and about a private home
17 or household, which private home or household had
18 a gross annual payroll in the preceding calendar
19 year of less than Fifty Thousand Dollars
20 (\$50,000.00) for such workers;

21 19. "Employer" means a natural person, partnership,
22 association, limited liability company, corporation, and the legal
23 representatives of a deceased employer, or the receiver or trustee
24 of a person, partnership, association, corporation, or limited

1 liability company, departments, instrumentalities and institutions
2 of this state and divisions thereof, counties and divisions thereof,
3 public trusts, boards of education and incorporated cities or towns
4 and divisions thereof, employing a person included within the term
5 "employee" as defined in this section. Employer may also mean the
6 employer's workers' compensation insurance carrier, if applicable.
7 Except as provided otherwise, this act applies to all public and
8 private entities and institutions;

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

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

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

20 23. "Impaired self-insurer" means a private self-insurer or
21 group self-insurance association that fails to pay its workers'
22 compensation obligations, or is financially unable to do so and is
23 the subject of any proceeding under the Federal Bankruptcy Reform
24 Act of 1978, and any subsequent amendments or is the subject of any

1 proceeding in which a receiver, custodian, liquidator,
2 rehabilitator, trustee or similar officer has been appointed by a
3 court of competent jurisdiction to act in lieu of or on behalf of
4 the self-insurer;

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

7 25. "Insurance Commissioner" means the Insurance Commissioner
8 of the State of Oklahoma;

9 26. "Insurance Department" means the Insurance Department of
10 the State of Oklahoma;

11 27. "Major cause" means more than fifty percent (50%) of the
12 resulting injury, disease or illness. A finding of major cause
13 shall be established by a preponderance of the evidence. A finding
14 that the workplace was not a major cause of the injury, disease or
15 illness shall not adversely affect the exclusive remedy provisions
16 of this act and shall not create a separate cause of action outside
17 this act;

18 28. "Maximum medical improvement" means that no further
19 material improvement would reasonably be expected from medical
20 treatment or the passage of time;

21 29. "Medical services" means those services specified in
22 Section 50 of this title;

23 30. "Misconduct" shall include the following:

24 a. unexplained absenteeism or tardiness,

- b. willful or wanton indifference to or neglect of the duties required,
- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,
- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the Sixth

1 Edition of the American Medical Association
2 "Guides to the Evaluation of Permanent
3 Impairment".

4 (3) (a) Objective evidence necessary to prove
5 permanent disability in occupational hearing
6 loss cases may be established by medically
7 recognized and accepted clinical diagnostic
8 methodologies, including, but not limited
9 to, audiological tests that measure air and
10 bone conduction thresholds and speech
11 discrimination ability.

12 (b) Any difference in the baseline hearing
13 levels shall be confirmed by subsequent
14 testing; provided, however, such test shall
15 be given within four (4) weeks of the
16 initial baseline hearing level test but not
17 before five (5) days after being adjusted
18 for presbycusis.

19 b. Medical opinions addressing compensability and
20 permanent disability shall be stated within a
21 reasonable degree of medical certainty;

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

1 33. "Permanent disability" means the extent, expressed as a
2 percentage, of the loss of a portion of the total physiological
3 capabilities of the human body as established by competent medical
4 evidence and based on the Sixth Edition of the American Medical
5 Association guides to the evaluation of impairment, if the
6 impairment is contained therein;

7 34. "Permanent partial disability" means a permanent disability
8 or loss of use after maximum medical improvement has been reached
9 which prevents the injured employee, who has been released to return
10 to work by the treating physician, from returning to his or her pre-
11 injury or equivalent job. All evaluations of permanent partial
12 disability must be supported by objective findings;

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

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

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

6 38. "Private self-insurer" means a private employer that has
7 been authorized to self-insure its workers' compensation obligations
8 pursuant to this act, but does not include group self-insurance
9 associations authorized by this act, or any public employer that
10 self-insures pursuant to this act;

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

14 40. "Scheduled member" or "member" means hands, fingers, arms,
15 legs, feet, toes, and eyes. In addition, for purposes of the
16 Multiple Injury Trust Fund only, "scheduled member" means hearing
17 impairment;

18 41. "Scientifically based" involves the application of
19 rigorous, systematic, and objective procedures to obtain reliable
20 and valid knowledge relevant to medical testing, diagnoses and
21 treatment; is adequate to justify the general conclusions drawn; and
22 has been accepted by a peer-review journal or approved by a panel of
23 independent experts through a comparably rigorous, objective, and
24 scientific review;

1 42. "State average weekly wage" means the state average weekly
2 wage determined by the Oklahoma Employment Security Commission in
3 the preceding calendar year. If such determination is not
4 available, the Commission shall determine the wage annually after
5 reasonable investigation;

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

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

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

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

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

21 48. "Wages" means money compensation received for employment at
22 the time of the accident, including the reasonable value of board,
23 rent, housing, lodging, or similar advantage received from the
24 employer and includes the amount of tips required to be reported by

1 the employer under Section 6053 of the Internal Revenue Code and the
2 regulations promulgated pursuant thereto or the amount of actual
3 tips reported, whichever amount is greater.

4 SECTION 2. This act shall become effective November 1, 2020.

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/13/2020 - DO
7 PASS.

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