

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL 642

By: Paxton of the Senate

and

Hilbert and Duel of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Section 5, which relates to exclusive liability; expanding rights and remedies granted to certain persons; stating effect of provisions to certain contracts; making language gender neutral; updating statutory references; defining terms; authorizing agreement between contractors to provide certain insurance coverage; providing for deduction of premiums under certain agreements; clarifying application of certain rights and remedies; prohibiting coverage for certain contractors without agreement; amending 85A O.S. 2021, Section 45, which relates to disability classification and compensation; modifying compensation standard for permanent partial disability; updating statutory language; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 85A O.S. 2021, Section 5, is amended to read as follows:

Section 5. A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers'

1 Compensation Act shall be exclusive of all other rights and remedies
2 of the employee, his or her legal representative, dependents, next
3 of kin, or anyone else claiming rights to recovery on behalf of the
4 employee against the employer, including a general contractor that
5 provides workers' compensation insurance coverage to a subcontractor
6 pursuant to Section 2 of this act, or any principal, officer,
7 director, employee, stockholder, partner, or prime contractor of the
8 employer on account of injury, illness, or death. Negligent acts of
9 a co-employee may not be imputed to the employer. No role,
10 capacity, or persona of any employer, principal, officer, director,
11 employee, or stockholder other than that existing in the role of
12 employer of the employee shall be relevant for consideration for
13 purposes of ~~this act~~ the Administrative Workers' Compensation Act,
14 and the remedies and rights provided by ~~this act~~ the Administrative
15 Workers' Compensation Act to an employee or other person claiming
16 rights to recovery on behalf of the employee shall be exclusive
17 regardless of the multiple roles, capacities, or personas the
18 employer may be deemed to have.

19 B. Notwithstanding the date of the injury, illness, or death of
20 an employee, the provisions of subsection A of this section shall
21 not affect any provision in an executed contract that requires the
22 employer, or any principal, officer, director, stockholder, partner,
23 or prime contractor of the employer, to indemnify, defend, or hold
24 harmless another person or entity against liability for the injury,

1 illness, or death of an employee, including, but not limited to, the
2 ability or requirement to insure for such claims.

3 C. Exclusive remedy shall not apply if:

4 1. An employer fails to secure the payment of compensation due
5 to the employee as required by ~~this act~~ the Administrative Workers'
6 Compensation Act. An injured employee, or his or her legal
7 representative in case death results from the injury, may, at his or
8 her option, elect to claim compensation under ~~this act~~ the
9 Administrative Workers' Compensation Act or to maintain a legal
10 action in court for damages on account of the injury or death; or

11 2. The injury was caused by an intentional tort committed by
12 the employer. An intentional tort shall exist only when the
13 employee is injured as a result of willful, deliberate, specific
14 intent of the employer to cause such injury. Allegations or proof
15 that the employer had knowledge that the injury was substantially
16 certain to result from the employer's conduct shall not constitute
17 an intentional tort. The employee shall plead facts that show it is
18 at least as likely as it is not that the employer acted with the
19 purpose of injuring the employee. The issue of whether an act is an
20 intentional tort shall be a question of law.

21 ~~C.~~ D. The immunity from civil liability described in subsection
22 A of this section shall apply regardless of whether the injured
23 employee is denied compensation or deemed ineligible to receive
24

1 compensation under ~~this act~~ the Administrative Workers' Compensation
2 Act.

3 ~~D.~~ E. If an employer has failed to secure the payment of
4 compensation for his or her injured employee as provided for in ~~this~~
5 ~~act~~ the Administrative Workers' Compensation Act, an injured
6 employee, or his or her legal representative if death results from
7 the injury, may maintain an action in the district court for damages
8 on account of such injury.

9 ~~E.—The~~ F. Except as provided in Section 2 of this act, the
10 immunity created by the provisions of this section shall not extend
11 to action against another employer, or its employees, on the same
12 job as the injured or deceased worker where such other employer does
13 not stand in the position of an intermediate or principal employer
14 to the immediate employer of the injured or deceased worker.

15 ~~F.—The~~ G. Except as provided in Section 2 of this act, the
16 immunity created by the provisions of this section shall not extend
17 to action against another employer, or its employees, on the same
18 job as the injured or deceased worker even though such other
19 employer may be considered as standing in the position of a special
20 master of a loaned servant where such special master neither is the
21 immediate employer of the injured or deceased worker nor stands in
22 the position of an intermediate or principal employer to the
23 immediate employer of the injured or deceased worker.

1 ~~G.~~ H. This section shall not be construed to abrogate the
2 loaned servant doctrine in any respect other than that described in
3 subsection ~~F~~ G of this section. Nothing in ~~this act~~ the
4 Administrative Workers' Compensation Act shall be construed to
5 relieve the employer from any other penalty provided for in ~~this act~~
6 the Administrative Workers' Compensation Act for failure to secure
7 the payment of compensation under ~~this act~~ the Administrative
8 Workers' Compensation Act.

9 ~~H.~~ I. For the purpose of extending the immunity of this
10 section, any architect, professional engineer, or land surveyor
11 shall be deemed an intermediate or principal employer for services
12 performed at or on the site of a construction project, but this
13 immunity shall not extend to the negligent preparation of design
14 plans and specifications.

15 ~~I.~~ J. If the employer has failed to secure the payment of
16 compensation as provided in ~~this act~~ the Administrative Workers'
17 Compensation Act or in the case of an intentional tort, the injured
18 employee or his or her legal representative may maintain an action
19 either before the Oklahoma Workers' Compensation Commission or in
20 the district court, but not both.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 126 of Title 85A, unless there
23 is created a duplication in numbering, reads as follows:

24 A. For the purposes of this section:

1 1. "General contractor" means a person or entity who undertakes
2 to procure the performance of work or a service, either separately
3 or through the use of subcontractors. General contractor shall
4 include, but is not limited to, a principal contractor, an original
5 contractor, a prime contractor or other analogous term, and one who
6 owns, occupies, possesses, or otherwise controls a premises who
7 enters into contracts with subcontractors for all or part of the
8 work being performed on the premises;

9 2. "Provides workers' compensation insurance coverage" means to
10 make available workers' compensation insurance coverage. Workers'
11 compensation insurance coverage may be provided, even if it does not
12 ultimately cover an incident, so long as it was made available to
13 the subcontractor. The following does not constitute acceptable or
14 relevant evidence to suggest that workers' compensation insurance
15 made available to a subcontractor was not provided to the
16 subcontractor:

- 17 a. timing discrepancies between the issuance of workers'
18 compensation insurance policies and contracts between
19 and among general contractors and subcontractors,
 - 20 b. factual discrepancies in secondary documentation such
21 as certificates of insurance or enrollment forms,
 - 22 c. a general contractor's lack of notice of election of
23 coverage, or
- 24

1 d. payment of premiums, or lack thereof, by the general
2 contractor; and

3 3. "Subcontractor" means a person or entity with whom the
4 general contractor has entered into a contract to perform all or
5 part of the work or services that the general contractor has
6 undertaken to perform, and includes a person or entity with whom a
7 subcontractor contracts to perform the work.

8 B. A general contractor and a subcontractor may enter into a
9 written agreement under which the general contractor provides
10 workers' compensation insurance coverage to the subcontractor and
11 employees of the subcontractor.

12 C. If a general contractor has workers' compensation insurance
13 to protect the general contractor's employees and if, in the course
14 and scope of the general contractor's business, the general
15 contractor enters into a contract with a subcontractor who does not
16 have employees, the general contractor shall be treated as the
17 employer of the subcontractor for the purposes of the Administrative
18 Workers' Compensation Act and may enter into an agreement for the
19 deduction of premiums paid in accordance with subsection D of this
20 section. A premise owner who acts as a general contractor shall be
21 treated as the employer of all subcontractors for the purposes of
22 the Administrative Workers' Compensation Act and may enter into an
23 agreement for the deduction of premiums paid in accordance with
24 subsection D of this section.

1 D. If a general contractor elects to provide coverage, then the
2 actual premiums based on payroll that are paid or incurred by the
3 general contractor for the coverage may be deducted from the
4 contract price or other amount owed to the subcontractor by the
5 general contractor.

6 E. An agreement under this section makes the general contractor
7 the employer of the subcontractor and the subcontractor's employees
8 only for the purposes of this title. A subcontractor or
9 subcontractor's employee's rights and remedies against the general
10 contractor or any principal, officer, director, employee,
11 stockholder, partner, or prime contractor of the general contractor
12 shall be subject to the limitations pursuant to Section 5 of Title
13 85A of the Oklahoma Statutes. The limitations in this subsection
14 shall only apply to claims against the general contractor. To the
15 extent not otherwise precluded by Section 5 of Title 85A of the
16 Oklahoma Statutes, a subcontractor or subcontractor's employee
17 retains the right to recover from another subcontractor or
18 subcontractor's employee.

19 F. Notwithstanding subsection C of this section, a person who
20 performs work or provides a service for an oil or gas well operator
21 and who is an independent contractor that has no employees shall be
22 treated in the same manner as an independent contractor with
23 employees and is not entitled to coverage under the general
24 contractor's workers' compensation insurance policy unless the

1 independent subcontractor and the general contractor enter into an
2 agreement under this section.

3 SECTION 3. AMENDATORY 85A O.S. 2021, Section 45, is
4 amended to read as follows:

5 Section 45. A. Temporary Total Disability.

6 1. If the injured employee is temporarily unable to perform his
7 or her job or any alternative work offered by the employer, he or
8 she shall be entitled to receive compensation equal to seventy
9 percent (70%) of the injured employee's average weekly wage, but not
10 to exceed the state average weekly wage, for one hundred fifty-six
11 (156) weeks. Provided, there shall be no payment for the first
12 three (3) days of the initial period of temporary total disability.
13 If an administrative law judge finds that a consequential injury has
14 occurred and that additional time is needed to reach maximum medical
15 improvement, temporary total disability may continue for a period of
16 not more than an additional fifty-two (52) weeks. Such finding
17 shall be based upon a showing of medical necessity by clear and
18 convincing evidence. An employer shall have the right to recover
19 any overpayment of temporary total disability payments from a
20 subsequent permanent partial disability award if the offset is
21 deemed justified by the Oklahoma Workers' Compensation Commission.

22 2. When the injured employee is released from active medical
23 treatment by the treating physician for all body parts found by the
24 Commission to be injured, or in the event that the employee, without

1 a valid excuse, misses three consecutive medical treatment
2 appointments, fails to comply with medical orders of the treating
3 physician, or otherwise abandons medical care, the employer shall be
4 entitled to terminate temporary total disability by notifying the
5 employee, or if represented, his or her counsel. If, however, an
6 objection to the termination is filed by the employee within ten
7 (10) days of termination, the Commission shall set the matter within
8 twenty (20) days for a determination if temporary total disability
9 compensation shall be reinstated. The temporary total disability
10 shall remain terminated until such time as the employee complies
11 with medical orders of the treating physician. Notwithstanding the
12 provisions of this paragraph, benefits under this subsection shall
13 be permanently terminated by order of the Commission if the employee
14 is noncompliant or abandons treatment for sixty (60) days, or if
15 benefits under this subsection have been suspended under this
16 paragraph at least two times. The administrative law judge may
17 appoint an independent medical examiner to determine if further
18 medical treatment is reasonable and necessary. The independent
19 medical examiner shall not provide treatment to the injured worker,
20 unless agreed upon by the parties.

21 B. Temporary Partial Disability.

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

1 to seventy percent (70%) of the difference between the injured
2 employee's average weekly wage before the injury and his or her
3 weekly wage for performing alternative work after the injury, but
4 only if his or her weekly wage for performing the alternative work
5 is less than the temporary total disability rate. The injured
6 employee's actual earnings plus temporary partial disability
7 compensation shall not exceed the temporary total disability rate.

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

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

13 C. Permanent Partial Disability.

14 1. A permanent partial disability award or combination of
15 awards granted to an injured worker may not exceed a permanent
16 partial disability rating of one hundred percent (100%) to any body
17 part or to the body as a whole. The determination of permanent
18 partial disability shall be the responsibility of the Commission
19 through its administrative law judges. Any claim by an employee for
20 compensation for permanent partial disability must be supported by
21 competent medical testimony of a medical doctor, osteopathic
22 physician, or chiropractor, and shall be supported by objective
23 medical findings, as defined in ~~this act~~ the Administrative Workers'
24 Compensation Act. The opinion of the physician shall include

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

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

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

23 4. In cases of permanent partial disability, the compensation
24 shall be seventy percent (70%) of the employee's average weekly

1 wage, not to exceed ~~Three Hundred Fifty Dollars (\$350.00)~~ Three
2 Hundred Sixty Dollars (\$360.00) per week which shall increase to
3 ~~Three Hundred Sixty Dollars (\$360.00) per week on July 1, 2021, for~~
4 ~~a term not to exceed a total of three hundred sixty (360) weeks for~~
5 ~~the body as a whole~~ Three Hundred Seventy-five Dollars (\$375.00) per
6 week on July 1, 2025.

7 5. Assessments pursuant to Sections 31, 98 and 122 of this
8 title shall be calculated based upon the amount of the permanent
9 partial disability award.

10 6. Previous Disability: The fact that an employee has suffered
11 previous disability or received compensation therefor shall not
12 preclude the employee from compensation for a later accidental
13 personal injury or occupational disease. In the event there exists
14 a previous permanent partial disability, including a previous non-
15 work-related injury or condition which produced permanent partial
16 disability and the same is aggravated or accelerated by an
17 accidental personal injury or occupational disease, compensation for
18 permanent partial disability shall be only for such amount as was
19 caused by such accidental personal injury or occupational disease
20 and no additional compensation shall be allowed for the preexisting
21 disability or impairment. Any such reduction shall not apply to
22 temporary total disability, nor shall it apply to compensation for
23 medical treatment. If workers' compensation benefits have
24 previously been awarded through settlement or judicial or

1 administrative determination in Oklahoma, the percentage basis of
2 the prior settlement or award shall conclusively establish the
3 amount of permanent partial disability determined to be preexisting.
4 If workers' compensation benefits have not previously been awarded
5 through settlement or judicial or administrative determination in
6 Oklahoma, the amount of preexisting permanent partial disability
7 shall be established by competent evidence and determined by the
8 Commission.

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

12 8. The whole body shall represent a maximum of three hundred
13 sixty (360) weeks.

14 9. The permanent partial disability rate of compensation for
15 amputation or permanent total loss of use of a scheduled member
16 specified in Section 46 of this title shall be seventy percent (70%)
17 of the employee's average weekly wage, not to exceed ~~Three Hundred~~
18 ~~Fifty Dollars (\$350.00)~~ Three Hundred Sixty Dollars (\$360.00), with
19 an increase to ~~Three Hundred Sixty Dollars (\$360.00)~~ on July 1, 2021
20 Three Hundred Seventy-five Dollars (\$375.00) on July 1, 2025,
21 multiplied by the number of weeks set forth for the member in
22 Section 46 of this title, regardless of whether the injured employee
23 is able to return to his or her pre-injury or equivalent job.
24

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

10 D. Permanent Total Disability.

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

1 disability and permanent total disability benefits, the permanent
2 total disability award shall not be due until the permanent partial
3 disability award is paid in full. If otherwise qualified according
4 to the provisions of ~~this act~~ the Administrative Workers'
5 Compensation Act, permanent total disability benefits may be awarded
6 to an employee who has exhausted the maximum period of temporary
7 total disability even though the employee has not reached maximum
8 medical improvement.

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

18 E. 1. The Oklahoma Workers' Compensation Commission may hire
19 or contract for a Vocational Rehabilitation Director to oversee the
20 vocational rehabilitation program of the Commission.

21 2. Upon the request of either party, an administrative law
22 judge shall determine if it is appropriate for a claimant to receive
23 vocational rehabilitation training or services. If appropriate, the
24 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.

5 3. Upon receipt of such report, and after affording all parties
6 an opportunity to be heard, the administrative law judge shall order
7 that any rehabilitation services or training, recommended in the
8 report, or such other rehabilitation services or training as the
9 administrative law judge may deem necessary, provided the employee
10 elects to receive such services, shall be provided at the expense of
11 the employer. Except as otherwise provided in this subsection,
12 refusal to accept rehabilitation services by the employee shall in
13 no way diminish any benefits allowable to an employee.

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

23 5. Vocational rehabilitation services or training shall not
24 extend for a period ~~of~~ more than fifty-two (52) weeks. A request

1 for vocational rehabilitation services or training shall be filed
2 with the Commission by an interested party not later than sixty (60)
3 days from the date of receiving permanent disability that prevents
4 the injured employee from returning to his or her pre-injury or
5 equivalent position.

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

13 7. During the period when an employee is actively and in good
14 faith being evaluated or participating in a retraining or job
15 placement program for purposes of evaluating permanent total
16 disability status, the employee shall be entitled to receive
17 benefits at the same rate as the employee's temporary total
18 disability benefits for an additional fifty-two (52) weeks. All
19 tuition related to vocational rehabilitation services shall be paid
20 by the employer or the employer's insurer on a periodic basis
21 directly to the facility providing the vocational rehabilitation
22 services or training to the employee.

23 F. Disfigurement.
24

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

5 2. No award for disfigurement shall be entered until twelve
6 (12) months after the injury unless the treating physician deems the
7 wound or incision to be fully healed.

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

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

18 SECTION 4. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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