

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 642

By: Paxton

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; 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' Compensation Act shall be exclusive of all other rights and remedies of the employee, his or her legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the

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

16 B. Notwithstanding the date of the injury, illness, or death of
17 an employee, nothing in subsection A of this section shall affect
18 any provision in an executed contract that requires the employer, or
19 any principal, officer, director, stockholder, partner, or prime
20 contractor of the employer, to indemnify, defend, or hold harmless
21 another person or entity against liability for the injury, illness,
22 or death of an employee, including, but not limited to, the ability
23 or requirement to insure for such claims.

24 C. Exclusive remedy shall not apply if:

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

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

18 ~~C.~~ D. The immunity from civil liability described in subsection
19 A of this section shall apply regardless of whether the injured
20 employee is denied compensation or deemed ineligible to receive
21 compensation under ~~this act~~ the Administrative Workers' Compensation
22 Act.

23 ~~D.~~ E. If an employer has failed to secure the payment of
24 compensation for his or her injured employee as provided for in ~~this~~

1 ~~act~~ the Administrative Workers' Compensation Act, an injured
2 employee, or his or her legal representative if death results from
3 the injury, may maintain an action in the district court for damages
4 on account of such injury.

5 ~~F.~~ F. The immunity created by the provisions of this section
6 shall not extend to action against another employer, or its
7 employees, on the same job as the injured or deceased worker where
8 such other employer does not stand in the position of an
9 intermediate or principal employer to the immediate employer of the
10 injured or deceased worker.

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

20 ~~G.~~ H. This section shall not be construed to abrogate the
21 loaned servant doctrine in any respect other than that described in
22 subsection ~~F~~ G of this section. Nothing in ~~this act~~ the
23 Administrative Workers' Compensation Act shall be construed to
24 relieve the employer from any other penalty provided for in ~~this act~~

1 the Administrative Workers' Compensation Act for failure to secure
2 the payment of compensation under ~~this act~~ the Administrative
3 Workers' Compensation Act.

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

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

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

19 A. For the purposes of this section:

20 1. "General contractor" means a person who undertakes to
21 procure the performance of work or a service, either separately or
22 through the use of subcontractors. General contractor shall
23 include, but is not limited to, a principal contractor, an original
24 contractor, a prime contractor or other analogous term, and a

premises owner who contracts all or part of the work being performed on the premises;

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

- a. timing discrepancies between the issuance of workers' compensation insurance policies and contracts between and among general contractors and subcontractors,
- b. factual discrepancies in secondary documentation such as certificates of insurance or enrollment forms,
- c. a general contractor's lack of notice of election of coverage, or
- d. payment of premiums, or lack thereof, by the general contractor; and

3. "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform.

B. A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides

1 workers' compensation insurance coverage to the subcontractor and
2 employees of the subcontractor.

3 C. If a general contractor has workers' compensation insurance
4 to protect the general contractor's employees and if, in the course
5 and scope of the general contractor's business, the general
6 contractor enters into a contract with a subcontractor who does not
7 have employees, the general contractor shall be treated as the
8 employer of the subcontractor for the purposes of the Administrative
9 Workers' Compensation Act and may enter into an agreement for the
10 deduction of premiums paid in accordance with subsection D of this
11 section. A premises owner who acts as a general contractor shall be
12 treated as the employer of all subcontractors for the purposes of
13 the Administrative Workers' Compensation Act and may enter into an
14 agreement for the deduction of premiums paid in accordance with
15 subsection D of this section.

16 D. If a general contractor elects to provide coverage, then the
17 actual premiums based on payroll that are paid or incurred by the
18 general contractor for the coverage may be deducted from the
19 contract price or other amount owed to the subcontractor by the
20 general contractor.

21 E. An agreement under this section makes the general contractor
22 the employer of the subcontractor and the subcontractor's employees
23 only for the purposes of this title. A subcontractor or
24 subcontractor's employee's rights and remedies against the general

1 contractor or any principal, officer, director, employee,
2 stockholder, partner, or prime contractor of the general contractor
3 shall be subject to the limitations pursuant to Section 5 of Title
4 85A of the Oklahoma Statutes.

5 F. Notwithstanding subsection B of this section, a person who
6 performs work or provides a service for an oil or gas well operator
7 and who is an independent contractor that has no employees shall be
8 treated in the same manner as an independent contractor with
9 employees and is not entitled to coverage under the general
10 contractor's workers' compensation insurance policy unless the
11 independent subcontractor and the general contractor enter into an
12 agreement under this section.

13 SECTION 3. It being immediately necessary for the preservation
14 of the public peace, health or safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

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