

An Act

ENROLLED SENATE
BILL NO. 642

By: Paxton of the Senate

and

Hilbert, Duel, and Ford of
the House

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.

SUBJECT: Workers' compensation

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

B. Notwithstanding the date of the injury, illness, or death of an employee, the provisions of subsection A of this section shall not affect any provision in an executed contract that requires the employer, or any principal, officer, director, stockholder, partner, or prime contractor of the employer, to indemnify, defend, or hold harmless another person or entity against liability for the injury, illness, or death of an employee, including, but not limited to, the ability or requirement to insure for such claims.

C. Exclusive remedy shall not apply if:

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

2. The injury was caused by an intentional tort committed by the employer. An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that the injury was substantially certain to result from the employer's conduct shall not constitute

an intentional tort. The employee shall plead facts that show it is at least as likely as it is not that the employer acted with the purpose of injuring the employee. The issue of whether an act is an intentional tort shall be a question of law.

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

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

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

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

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

the payment of compensation under ~~this act~~ the Administrative Workers' Compensation Act.

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

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

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

A. For the purposes of this section:

1. "General contractor" means a person or entity who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. General contractor shall include, but is not limited to, a principal contractor, an original contractor, a prime contractor or other analogous term, and one who owns, occupies, possesses, or otherwise controls a premises who enters into contracts with subcontractors for 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 or entity with whom the general contractor has entered into a contract to perform all or part of the work or services that the general contractor has undertaken to perform, and includes a person or entity with whom a subcontractor contracts to perform the work.

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

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

D. If a general contractor elects to provide coverage, then the actual premiums based on payroll that are paid or incurred by the general contractor for the coverage may be deducted from the

contract price or other amount owed to the subcontractor by the general contractor.

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

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

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

Section 45. A. Temporary Total Disability.

1. If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage, but not to exceed the state average weekly wage, for one hundred fifty-six (156) weeks. Provided, there shall be no payment for the first three (3) days of the initial period of temporary total disability. If an administrative law judge finds that a consequential injury has occurred and that additional time is needed to reach maximum medical improvement, temporary total disability may continue for a period of not more than an additional fifty-two (52) weeks. Such finding

shall be based upon a showing of medical necessity by clear and convincing evidence. An employer shall have the right to recover any overpayment of temporary total disability payments from a subsequent permanent partial disability award if the offset is deemed justified by the Oklahoma Workers' Compensation Commission.

2. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Commission to be injured, or in the event that the employee, without a valid excuse, misses three consecutive medical treatment appointments, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If, however, an objection to the termination is filed by the employee within ten (10) days of termination, the Commission shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall be reinstated. The temporary total disability shall remain terminated until such time as the employee complies with medical orders of the treating physician. Notwithstanding the provisions of this paragraph, benefits under this subsection shall be permanently terminated by order of the Commission if the employee is noncompliant or abandons treatment for sixty (60) days, or if benefits under this subsection have been suspended under this paragraph at least two times. The administrative law judge may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties.

B. Temporary Partial Disability.

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

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

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

C. Permanent Partial Disability.

1. A permanent partial disability award or combination of awards granted to an injured worker may not exceed a permanent partial disability rating of one hundred percent (100%) to any body part or to the body as a whole. The determination of permanent partial disability shall be the responsibility of the Commission through its administrative law judges. Any claim by an employee for compensation for permanent partial disability must be supported by competent medical testimony of a medical doctor, osteopathic physician, or chiropractor, and shall be supported by objective medical findings, as defined in ~~this act~~ the Administrative Workers' Compensation Act. The opinion of the physician shall include employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial disability to parts of the body other than scheduled members must be based solely on criteria established by the Sixth Edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment". A copy of any written evaluation shall be sent to both parties within seven (7) days of issuance. Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Any party may submit the report of an evaluating physician.

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

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

4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee's average weekly wage, not to exceed ~~Three Hundred Fifty Dollars (\$350.00)~~ Three Hundred Sixty Dollars (\$360.00) per week which shall increase to ~~Three Hundred Sixty Dollars (\$360.00) per week on July 1, 2021, for a term not to exceed a total of three hundred sixty (360) weeks for the body as a whole~~ Three Hundred Seventy-five Dollars (\$375.00) per week on July 1, 2025.

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

6. Previous Disability: The fact that an employee has suffered previous disability or received compensation therefor shall not preclude the employee from compensation for a later accidental personal injury or occupational disease. In the event there exists a previous permanent partial disability, including a previous non-work-related injury or condition which produced permanent partial disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent partial disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the preexisting disability or impairment. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment. If workers' compensation benefits have previously been awarded through settlement or judicial or administrative determination in Oklahoma, the percentage basis of the prior settlement or award shall conclusively establish the amount of permanent partial disability determined to be preexisting. If workers' compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Oklahoma, the amount of preexisting permanent partial disability shall be established by competent evidence and determined by the Commission.

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

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

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

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

D. Permanent Total Disability.

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

the lump-sum payment shall be evenly divided between or among such persons. In the event the Commission awards both permanent partial disability and permanent total disability benefits, the permanent total disability award shall not be due until the permanent partial disability award is paid in full. If otherwise qualified according to the provisions of ~~this act~~ the Administrative Workers' Compensation Act, permanent total disability benefits may be awarded to an employee who has exhausted the maximum period of temporary total disability even though the employee has not reached maximum medical improvement.

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

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

2. Upon the request of either party, an administrative law judge shall determine 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 expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer.

3. Upon receipt of such report, and after affording all parties an opportunity to be heard, the administrative law judge shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the administrative law judge may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection,

refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

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

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

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

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

F. Disfigurement.

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

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

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

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

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

Passed the Senate the 21st day of May, 2025.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2025.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____