

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2501

By: Pfeiffer

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Section 2, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
9 2015, Section 2), which relates to the Administrative
Workers' Compensation Act; modifying definitions; and
providing an effective date.

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

13 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2015, Section 2), is amended to read as
15 follows:

16 Section 2. As used in the Administrative Workers' Compensation
17 Act:

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

21 2. "Carrier" means any stock company, mutual company, or
22 reciprocal or interinsurance exchange authorized to write or carry
23 on the business of workers' compensation insurance in this state.
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1 Whenever required by the context, the term "carrier" shall be deemed
2 to include duly qualified self-insureds or self-insured groups;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 b. "Compensable injury" does not include:

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

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

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

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

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

1 alcohol testing, there shall be a rebuttable
2 presumption that the injury was caused by the use
3 of alcohol, illegal drugs, or prescription drugs
4 used in contravention of physician's orders.

5 This presumption may only be overcome if the
6 employee proves by clear and convincing evidence
7 that his or her state of intoxication had no
8 causal relationship to the injury,

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

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

23 c. The definition of "compensable injury" shall not be
24 construed to limit or abrogate the right to recover

1 for mental injuries as described in Section 13 of this
2 ~~act~~ title, heart or lung injury or illness as
3 described in Section 14 of this ~~act~~ title, or
4 occupational diseases as described in Section 65 of
5 this ~~act~~ title.

6 d. A compensable injury shall be established by medical
7 evidence supported by objective findings as defined in
8 paragraph ~~30~~ 31 of this section.

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

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

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

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 ~~act~~ title
4 and 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
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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, or
- 13 d. any injury occurring while an employee is on a work
14 break, unless the injury occurs while the employee is
15 on a work break inside the employer's facility and the
16 work break is authorized by the employee's supervisor;

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

1 completed at least one hundred eighty (180) days of continuous
2 active employment with the employer;

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

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

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

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

1 performance of duties only while in response to state
2 orders and any authorized voluntary or uncompensated
3 worker, rendering services as a firefighter, peace
4 officer or emergency management worker. Travel by a
5 policeman, fireman, or a member of a first aid or
6 rescue squad, in responding to and returning from an
7 emergency, shall be deemed to be in the course of
8 employment. Activities related to maintenance and
9 operation of volunteer fire department vehicles,
10 machinery and facilities by a volunteer firefighter
11 and activities within the fire station while a
12 firefighter is acting in a capacity as a volunteer
13 shall be deemed to be within the course of employment.

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

15 (1) any person for whom an employer is liable under
16 any Act of Congress for providing compensation to
17 employees for injuries, disease or death arising
18 out of and in the course of employment including,
19 but not limited to, the Federal Employees'
20 Compensation Act, the Federal Employers'
21 Liability Act, the Longshore and Harbor Workers'
22 Compensation Act and the Jones Act, to the extent
23 his or her employees are subject to such acts,
24

- 1 (2) any person who is employed in agriculture or
2 horticulture by an employer who had a gross
3 annual payroll in the preceding calendar year of
4 less than One Hundred Thousand Dollars
5 (\$100,000.00) wages for agricultural or
6 horticultural workers, or any person who is
7 employed in agriculture or horticulture who is
8 not engaged in operation of motorized machines,
- 9 (3) any person who is a licensed real estate sales
10 associate or broker, paid on a commission basis,
- 11 (4) any person who is providing services in a medical
12 care or social services program, or who is a
13 participant in a work or training program,
14 administered by the Department of Human Services,
15 unless the Department is required by federal law
16 or regulations to provide workers' compensation
17 for such person. This division shall not be
18 construed to include nursing homes,
- 19 (5) any person employed by an employer with five or
20 fewer total employees, all of whom are related by
21 blood or marriage to the employer, if the
22 employer is a natural person or a general or
23 limited partnership, or an incorporator of a
24 corporation if the corporation is the employer,

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

5 (7) sole proprietors, members of a partnership,
6 individuals who are party to a franchise
7 agreement as set out by the Federal Trade
8 Commission franchise disclosure rule, 16 CFR
9 436.1 through 436.11, members of a limited
10 liability company who own at least ten percent
11 (10%) of the capital of the limited liability
12 company or any stockholder-employees of a
13 corporation who own ten percent (10%) or more
14 stock in the corporation, unless they elect to be
15 covered by a policy of insurance covering
16 benefits under the Administrative Workers'
17 Compensation Act,

18 (8) any person providing or performing voluntary
19 service who receives no wages for the services
20 other than meals, drug or alcohol rehabilitative
21 therapy, transportation, lodging or reimbursement
22 for incidental expenses except for volunteers
23 specifically provided for in subparagraph a of
24 this paragraph,

1 (9) a person, commonly referred to as an owner-
2 operator, who owns or leases a truck-tractor or
3 truck for hire, if the owner-operator actually
4 operates the truck-tractor or truck and if the
5 person contracting with the owner-operator is not
6 the lessor of the truck-tractor or truck.
7 Provided, however, an owner-operator shall not be
8 precluded from workers' compensation coverage
9 under the Administrative Workers' Compensation
10 Act if the owner-operator elects to participate
11 as a sole proprietor,

12 (10) a person referred to as a drive-away owner-
13 operator who privately owns and utilizes a tow
14 vehicle in drive-away operations and operates
15 independently for hire, if the drive-away owner-
16 operator actually utilizes the tow vehicle and if
17 the person contracting with the drive-away owner-
18 operator is not the lessor of the tow vehicle.
19 Provided, however, a drive-away owner-operator
20 shall not be precluded from workers' compensation
21 coverage under the Administrative Workers'
22 Compensation Act if the drive-away owner-operator
23 elects to participate as a sole proprietor, and
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1 (11) any person who is employed as a domestic servant
2 or as a casual worker in and about a private home
3 or household, which private home or household had
4 a gross annual payroll in the preceding calendar
5 year of less than Fifty Thousand Dollars
6 (\$50,000.00) for such workers;

7 19. "Employer" means a person, partnership, association,
8 limited liability company, corporation, and the legal
9 representatives of a deceased employer, or the receiver or trustee
10 of a person, partnership, association, corporation, or limited
11 liability company, departments, instrumentalities and institutions
12 of this state and divisions thereof, counties and divisions thereof,
13 public trusts, boards of education and incorporated cities or towns
14 and divisions thereof, employing a person included within the term
15 "employee" as defined in this section. Employer may also mean the
16 employer's workers' compensation insurance carrier, if applicable.
17 Except as provided otherwise, this act applies to all public and
18 private entities and institutions. Employer shall not include a
19 qualified employer with an employee benefit plan as provided under
20 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
21 ~~120~~ 213 of this ~~act~~ title;

22 20. "Employment" includes work or labor in a trade, business,
23 occupation or activity carried on by an employer or any authorized
24 voluntary or uncompensated worker rendering services or performing

1 activities provided for in paragraph 18 of this section as a
2 firefighter, peace officer or emergency management worker;

3 21. "Evidence-based" means expert-based, literature-supported
4 and outcomes_validated by well-designed randomized trials when such
5 information is available and which uses the best available evidence
6 to support medical decision_making;

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

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

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

21 25. "Insurance Commissioner" means the Insurance Commissioner
22 of the State of Oklahoma;

23 26. "Insurance Department" means the Insurance Department of
24 the State of Oklahoma;

1 27. "Major cause" means more than fifty percent (50%) of the
2 resulting injury, disease or illness. A finding of major cause
3 shall be established by a preponderance of the evidence. A finding
4 that the workplace was not a major cause of the injury, disease or
5 illness shall not adversely affect the exclusive remedy provisions
6 of this act and shall not create a separate cause of action outside
7 this act;

8 28. "Maximum medical improvement" means that no further
9 material improvement would reasonably be expected from medical
10 treatment or the passage of time;

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

13 30. "Misconduct" shall include the following:

- 14 a. unexplained absenteeism or tardiness,
- 15 b. willful or wanton indifference to or neglect of the
16 duties required,
- 17 c. willful or wanton breach of any duty required by the
18 employer,
- 19 d. the mismanagement of a position of employment by
20 action or inaction,
- 21 e. actions or omissions that place in jeopardy the
22 health, life, or property of self or others,
- 23 f. dishonesty,
- 24 g. wrongdoing,

- 1 h. violation of a law, or
2 i. a violation of a policy or rule adopted to ensure
3 orderly work or the safety of self or others;

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

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

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

18 (3) (a) Objective evidence necessary to prove
19 permanent disability in occupational hearing
20 loss cases may be established by medically
21 recognized and accepted clinical diagnostic
22 methodologies, including, but not limited
23 to, audiological tests that measure air and
24

1 bone conduction thresholds and speech
2 discrimination ability.

3 (b) Any difference in the baseline hearing
4 levels shall be confirmed by subsequent
5 testing; provided, however, such test shall
6 be given within four (4) weeks of the
7 initial baseline hearing level test but not
8 before five (5) days after being adjusted
9 for presbycusis.

10 b. Medical opinions addressing compensability and
11 permanent disability shall be stated within a
12 reasonable degree of medical certainty;

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

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

22 34. "Permanent partial disability" means a permanent disability
23 or loss of use after maximum medical improvement has been reached
24 which prevents the injured employee, who has been released to return

1 to work by the treating physician, from returning to his or her pre-
2 injury or equivalent job. All evaluations of permanent partial
3 disability must be supported by objective findings;

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

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

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

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

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

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

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

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

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

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

1 45. "Surviving spouse" means the employee's spouse by reason of
2 a legal marriage recognized by the State of Oklahoma or under the
3 requirements of a common-law marriage in this state, as determined
4 by the Workers' Compensation Commission;

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

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

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

18 SECTION 2. This act shall become effective November 1, 2016.

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20 55-2-8289 SD 01/13/16

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