

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2836

 By: Deck

5
6
7 AS INTRODUCED

8 An Act relating to workers' compensation; amending
9 85A O.S. 2021, Sections 45 and 82, which relate to
10 vocational and rehabilitation training; providing for
11 payment of benefits during certain retraining or job
12 placement period; providing benefits additional to
13 other workers' compensation benefits; providing for
14 continuation of benefits upon certain findings;
 requiring evidentiary support; providing for updates;
15 authorizing request for discontinuance; prohibiting
16 termination of benefits without action by Commission;
17 providing for permanent cessation of benefits under
18 certain circumstances; and providing an effective
19 date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
SECTION 1. 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

1 to exceed the state average weekly wage, for one hundred fifty-six
2 (156) weeks. Provided, there shall be no payment for the first
3 three (3) days of the initial period of temporary total disability.
4 If an administrative law judge finds that a consequential injury has
5 occurred and that additional time is needed to reach maximum medical
6 improvement, temporary total disability may continue for a period of
7 not more than an additional fifty-two (52) weeks. Such finding
8 shall be based upon a showing of medical necessity by clear and
9 convincing evidence. An employer shall have the right to recover
10 any overpayment of temporary total disability payments from a
11 subsequent permanent partial disability award if the offset is
12 deemed justified by the Workers' Compensation Commission.

13 2. When the injured employee is released from active medical
14 treatment by the treating physician for all body parts found by the
15 Commission to be injured, or in the event that the employee, without
16 a valid excuse, misses three consecutive medical treatment
17 appointments, fails to comply with medical orders of the treating
18 physician, or otherwise abandons medical care, the employer shall be
19 entitled to terminate temporary total disability by notifying the
20 employee, or if represented, his or her counsel. If, however, an
21 objection to the termination is filed by the employee within ten
22 (10) days of termination, the Commission shall set the matter within
23 twenty (20) days for a determination if temporary total disability
24 compensation shall be reinstated. The temporary total disability

1 shall remain terminated until such time as the employee complies
2 with medical orders of the treating physician. Notwithstanding the
3 provisions of this paragraph, benefits under this subsection shall
4 be permanently terminated by order of the Commission if the employee
5 is noncompliant or abandons treatment for sixty (60) days, or if
6 benefits under this subsection have been suspended under this
7 paragraph at least two times. The administrative law judge may
8 appoint an independent medical examiner to determine if further
9 medical treatment is reasonable and necessary. The independent
10 medical examiner shall not provide treatment to the injured worker,
11 unless agreed upon by the parties.

12 B. Temporary Partial Disability.

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

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

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

4 C. Permanent Partial Disability.

5 1. A permanent partial disability award or combination of
6 awards granted an injured worker may not exceed a permanent partial
7 disability rating of one hundred percent (100%) to any body part or
8 to the body as a whole. The determination of permanent partial
9 disability shall be the responsibility of the Commission through its
10 administrative law judges. Any claim by an employee for
11 compensation for permanent partial disability must be supported by
12 competent medical testimony of a medical doctor, osteopathic
13 physician, or chiropractor, and shall be supported by objective
14 medical findings, as defined in this act. The opinion of the
15 physician shall include employee's percentage of permanent partial
16 disability and whether or not the disability is job-related and
17 caused by the accidental injury or occupational disease. A
18 physician's opinion of the nature and extent of permanent partial
19 disability to parts of the body other than scheduled members must be
20 based solely on criteria established by the Sixth Edition of the
21 American Medical Association's "Guides to the Evaluation of
22 Permanent Impairment". A copy of any written evaluation shall be
23 sent to both parties within seven (7) days of issuance. Medical
24 opinions addressing compensability and permanent disability must be

1 stated within a reasonable degree of medical certainty. Any party
2 may submit the report of an evaluating physician.

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

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

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

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

22 6. Previous Disability: The fact that an employee has suffered
23 previous disability or received compensation therefor shall not
24 preclude the employee from compensation for a later accidental

1 personal injury or occupational disease. In the event there exists
2 a previous permanent partial disability, including a previous non-
3 work-related injury or condition which produced permanent partial
4 disability and the same is aggravated or accelerated by an
5 accidental personal injury or occupational disease, compensation for
6 permanent partial disability shall be only for such amount as was
7 caused by such accidental personal injury or occupational disease
8 and no additional compensation shall be allowed for the preexisting
9 disability or impairment. Any such reduction shall not apply to
10 temporary total disability, nor shall it apply to compensation for
11 medical treatment. If workers' compensation benefits have
12 previously been awarded through settlement or judicial or
13 administrative determination in Oklahoma, the percentage basis of
14 the prior settlement or award shall conclusively establish the
15 amount of permanent partial disability determined to be preexisting.
16 If workers' compensation benefits have not previously been awarded
17 through settlement or judicial or administrative determination in
18 Oklahoma, the amount of preexisting permanent partial disability
19 shall be established by competent evidence and determined by the
20 Commission.

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

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

3 9. The permanent partial disability rate of compensation for
4 amputation or permanent total loss of use of a scheduled member
5 specified in Section 46 of this title shall be seventy percent (70%)
6 of the employee's average weekly wage, not to exceed Three Hundred
7 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty
8 Dollars (\$360.00) on July 1, 2021, multiplied by the number of weeks
9 set forth for the member in Section 46 of this title, regardless of
10 whether the injured employee is able to return to his or her pre-
11 injury or equivalent job.

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

21 D. Permanent Total Disability.

22 1. In case of total disability adjudged to be permanent,
23 seventy percent (70%) of the employee's average weekly wages, but
24 not in excess of the state's average weekly wage, shall be paid to

1 the employee during the continuance of the disability until such
2 time as the employee reaches the age of maximum Social Security
3 retirement benefits or for a period of fifteen (15) years, whichever
4 is longer. In the event the claimant dies of causes unrelated to
5 the injury or illness, benefits shall cease on the date of death.
6 Provided, however, any person entitled to revive the action shall
7 receive a one-time lump-sum payment equal to twenty-six (26) weeks
8 of weekly benefits for permanent total disability awarded the
9 claimant. If more than one person is entitled to revive the claim,
10 the lump-sum payment shall be evenly divided between or among such
11 persons. In the event the Commission awards both permanent partial
12 disability and permanent total disability benefits, the permanent
13 total disability award shall not be due until the permanent partial
14 disability award is paid in full. If otherwise qualified according
15 to the provisions of this act, permanent total disability benefits
16 may be awarded to an employee who has exhausted the maximum period
17 of temporary total disability even though the employee has not
18 reached maximum medical improvement.

19 2. The Workers' Compensation Commission shall annually review
20 the status of any employee receiving benefits for permanent total
21 disability against the last employer. The Commission shall require
22 the employee to annually file an affidavit under penalty of perjury
23 stating that he or she is not and has not been gainfully employed
24 and is not capable of gainful employment. Failure to file such

1 affidavit shall result in suspension of benefits; provided, however,
2 reinstatement of benefits may occur after proper hearing before the
3 Commission.

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

7 2. Upon the request of either party, an administrative law
8 judge shall determine if it is appropriate for a claimant to receive
9 vocational rehabilitation training or services. If appropriate, the
10 administrative law judge shall refer the employee to a qualified
11 expert for evaluation of the practicability of, need for and kind of
12 rehabilitation services or training necessary and appropriate in
13 order to restore the employee to gainful employment. The cost of
14 the evaluation shall be paid by the employer.

15 3. Upon receipt of such report, and after affording all parties
16 an opportunity to be heard, the administrative law judge shall order
17 that any rehabilitation services or training, recommended in the
18 report, or such other rehabilitation services or training as the
19 administrative law judge may deem necessary, provided the employee
20 elects to receive such services, shall be provided at the expense of
21 the employer. Except as otherwise provided in this subsection,
22 refusal to accept rehabilitation services by the employee shall in
23 no way diminish any benefits allowable to an employee.

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

10 5. Vocational rehabilitation services or training shall not
11 extend for a period of more than fifty-two (52) weeks. This period
12 may be extended for an additional fifty-two (52) weeks or portion
13 thereof by special order of the Commission, after affording the
14 interested parties an opportunity to be heard. A request for
15 vocational rehabilitation services or training shall be filed with
16 the Commission by an interested party not later than sixty (60) days
17 from the date of receiving permanent disability that prevents the
18 injured employee from returning to his or her pre-injury or
19 equivalent position.

20 6. If rehabilitation requires residence at or near the facility
21 or institution which is away from the employee's customary
22 residence, reasonable cost of the employee's board, lodging, travel,
23 tuition, books and necessary equipment in training shall be paid for
24 by the insurer in addition to weekly compensation benefits to which

1 the employee is otherwise entitled under the Administrative Workers'
2 Compensation Act.

3 7. During the period when an employee is actively and in good
4 faith being evaluated or participating in a retraining or job
5 placement program ~~for purposes of evaluating permanent total~~
6 ~~disability status,~~ with the purpose and intention to return the
7 employee to substantial gainful employment and being monitored by a
8 qualified vocational expert from the Commission IME list, the
9 employee shall be entitled to receive benefits at the same rate as
10 the employee's temporary total disability benefits for an additional
11 fifty-two (52) weeks. Temporary total disability benefits are not
12 to exceed fifty-two (52) weeks for the duration the employee is
13 actively being evaluated for and/or participating in the program.
14 This benefit is in addition to the statutory maximums of paragraph 1
15 of subsection A of this section. If an administrative law judge
16 finds that an additional fifty-two (52) weeks of vocational
17 rehabilitation is necessary to restore the employee to substantial
18 gainful employment, benefits would continue under the same
19 provisions as the initial fifty-two (52) weeks. Continuation of
20 benefits shall be based upon a showing of active participation in
21 the program by clear and convincing evidence provided by the
22 vocational expert. The vocational expert shall submit regular
23 updates to the parties outlining the employee's participation in the
24 authorized vocational rehabilitation services. Updates for review

1 are required to be submitted at least every thirteen (13) weeks.
2 Benefits are to conclude upon completion of any approved vocational
3 rehabilitation option. Any party may file a request to discontinue
4 benefits for non-compliance at any point during the vocational
5 rehabilitation period. Benefits shall not be terminated without an
6 order of the Commission after a hearing on the record. The
7 temporary total disability shall remain terminated until such time
8 as the employee complies with recommendations of the qualified
9 vocational expert. Notwithstanding the provisions of this
10 paragraph, benefits under this subsection shall be permanently
11 terminated by order of the Commission after a hearing on the record
12 if the employee is noncompliant, abandons participation in
13 vocational rehabilitation services, or if benefits under this
14 subsection have been suspended under this paragraph at least two
15 times.

16 All tuition related to vocational rehabilitation services shall
17 be paid by the employer or the employer's insurer on a periodic
18 basis directly to the facility providing the vocational
19 rehabilitation services or training to the employee.

20 F. Disfigurement.

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

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

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

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

14 SECTION 2. AMENDATORY 85A O.S. 2021, Section 82, is
15 amended to read as follows:

16 Section 82. A. 1. a. Each party shall be responsible for
17 its legal services and litigation expenses. Fees for legal services
18 may be reviewed by the Workers' Compensation Commission.

19 b. An attorney representing an injured employee may only
20 recover attorney fees up to ten percent (10%) of any
21 temporary total disability or temporary partial
22 disability compensation and twenty percent (20%) of
23 any permanent partial disability, permanent total
24 disability, or death compensation awarded to an

1 injured employee by the Commission from a controverted
2 claim. If the employer makes a written offer to
3 settle permanent partial disability, permanent total
4 disability, or death compensation and that offer is
5 rejected, the employee's attorney may not recover
6 attorney fees in excess of thirty percent (30%) of the
7 difference between the amount of any award and the
8 settlement offer.

9 (1) Attorney fees may not be collected for recovery
10 on noncontroverted claims.

11 (2) Attorney fees shall not be awarded on medical
12 benefits or services.

13 (3) The fee for legal services rendered by an
14 attorney representing an employee in connection
15 with a change of physician requested by the
16 injured employee, controverted by the employer,
17 and awarded by the Commission, shall be Two
18 Hundred Dollars (\$200.00).

19 (4) Attorney fees may include ~~not more than ten~~
20 percent (10%) of the ~~value, or reasonable~~
21 ~~estimate thereof, of vocational rehabilitation~~
22 services cost of the totality of vocational
23 rehabilitation services and the fees are to be
24 paid by the employer or the employer's insurer

1 upon the employee's conclusion of vocational
2 rehabilitation services.

3 c. A "controverted claim" means that the employer or the
4 employer's insurance carrier has controverted whether
5 there has been a compensable injury or whether the
6 employee is entitled to temporary total disability,
7 temporary partial disability, permanent partial
8 disability, permanent total disability, or death
9 compensation. A request for a change in physician
10 shall not trigger a controverted claim for purposes of
11 recovering any attorney fees except the fees under
12 division 3 of subparagraph b of this paragraph. A
13 controverted claim shall not exist if the employee or
14 his or her representative has withheld pertinent
15 information in his or her possession related to the
16 claim from the employer or has violated the provisions
17 of Section 6 of this title.

18 2. In any case where attorney fees are allowed by the
19 Commission, the limitations expressed in subparagraph b of paragraph
20 1 of this subsection shall apply.

21 3. Medical providers may voluntarily contract with the attorney
22 for the employee to recover disputed charges, and the attorney may
23 charge a reasonable fee for the cost of collection.

1 B. An attorney representing an employee under this act may not
2 recover fees for services except as expressly provided in this
3 section.

4 SECTION 3. This act shall become effective November 1, 2023.

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
7 02/16/2023 - DO PASS.

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